

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES "B", MUMBAI**

BEFORE SHRI R.C.SHARMA (AM) AND SHRI RAM LAL NEGI (JM)

**ITA No. 5330/MUM/2013
Assessment Year: 2006-07**

The DCIT- 10(1), 455, 4 th Floor, Aaykar Bhavan, Mumbai- 400020.	Vs.	M/s. Mahanagar Gas Ltd. G-33, MGL House, Opp. ICICI Bank, Bandra Kurla Complex, Bandra (E), Mumbai- 400051. PAN : AABCM4640G
(Appellant)		(Respondent)

Appellant by : Shri. M.Mohandoss
Respondent by : Shri. P. P. Jayaraman

Date of Hearing: 27/05/2016
Date of Pronouncement: 25/08/2016

ORDER

PER RAM LAL NEGI, JM

This appeal has been filed by the revenue against the order dated 15/05/2013 passed by the Ld. CIT(Appeals)-21, Mumbai, for the Asst. year 2006-07 whereby the Ld.CIT(A) granted relief to the assessee/appellant by deleting penalty of Rs 10,09,800/-levied by the A.O. u/s 271(1)(c) of the Act.

2. The brief facts of the case are that the appellant/assessee engaged in the business of supply and distribution of piped natural gas to domestic, commercial and industrial consumers and CNG to vehicles, received compensation on guaranteed supply of gas and delay payment in the supply of gas. The appellant offered the income on receipt basis. However, the Assessing Officer estimated the income at Rs. 30,00,000/- on accrual basis during the

assessment proceedings for the reason that the appellant has been following mercantile method of accounting.

3. On the basis of the addition aforesaid, the Assessing Officer levied penalty u/s 271(1)(c) of the Act, holding that the appellant has furnished inaccurate particulars of income. Against the penalty order, the assessee filed first appeal before the CIT(A). The Ld. CIT(A) after hearing the assessee allowed the appeal of the assessee by the following the ratio laid down by Hon'ble supreme court in *CIT vs. Reliance Petro products Ltd. 322 ITR 158(SC)*. The revenue is in appeal before the tribunal against the impugned order passed by the Ld.CIT(A). The revenue has challenged the present appeal on the following effective ground of appeal:-

“On the facts and the circumstances of the case and in law, the Ld. CIT(A) erred in deleting penalty of Rs. 10,09,800/- u/s 271(1)(c).”

4. Before us, the Ld. DR submitted that in quantum appeal, since the Ld. CIT(A) has upheld the income assessed by Assessing Officer on accrual basis, the assessee is liable to pay the penalty u/s 271(1)(c) of the Act for concealment of income. Therefore, the impugned order is apparently erroneous and liable to be set aside.

5. On the other hand the Ld. AR relying on the order of the Ld. CIT(A) submitted that the Ld.CIT(A) has rightly deleted the penalty impose by the Assessing Officer in the light of the judgment of Hon'ble supreme court in *CIT vs. Reliance Petro products Ltd. 322 ITR 158 (SC)*. The assessee had to deviate from the general practice of following accrual method in the given situation due to uncertain nature of the income. Hence, there is no scope to interfere with the order passed by the Ld. CIT(A).

6. We have heard the rival submissions and also perused the documents on record in the light of the rival contentions of the parties. The only issue to be adjudicated in this appeal is whether mere act of offering income in question on receipt basis by the assessee amounts to furnishing of inaccurate particulars of income within the meaning of section 271(1)(c) of the Act so as to impose penalty under the said section? In order to answer this question it is necessary to ascertain the real intention of the assessee behind following the receipt basis for calculating the income in question. As a matter of fact the Assessing Officer in the present case has assessed the income from compensation received from customers on accrual basis for the reason that the assessee had been following the mercantile system. In our considered view there is merit in the contention of the assessee that the income in question was offered on receipt basis because there was no certainty and it was not possible for the assessee to offer the same on accrual basis. The Ld. CIT in quantum appeal has issued direction to the AO to give relief to the assessee on the ground that the assessee is required to offer the said income to tax in the subsequent year on accrual basis. Therefore, in our considered view, in this particular case, the act of the assessee to offer the income on receipt basis does not amount to furnishing inaccurate particulars of the income. Moreover, in *Reliance Petro products Ltd.* (supra) the Hon'ble Supreme court has held that making an incorrect claim in law cannot tantamount to furnishing of inaccurate particulars.

7. In view of the ratio laid down by the Hon'ble Supreme court, we do not find any legal or factual infirmity in the order of Ld.CIT(A) to interfere with. Hence, we find no merit in the appeal of the revenue. We, therefore, dismiss the sole ground of the appeal of revenue and uphold the order of the Ld. CIT(A).

8. In the result appeal filed by the revenue for the Assessment year 2006-07 is dismissed.

Order pronounced in the open court 25th Aug, 2016.

Sd/-
(R.C.SHARMA)
ACCOUNTANT MEMBER
मुंबई Mumbai; दिनांक Dated: 25/08/2016

Sd/-
(RAM LAL NEGI)
JUDICIAL MEMBER

आदेश प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR,
ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai

Pramila