

**IN THE INCOME TAX APPELLATE TRIBUNAL**

**AHMEDABAD “D” BENCH**

**(BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER  
& SHRI MAHAVIR PRASAD, JUDICIAL MEMBER)**

**ITA. No: 999/AHD/2014  
(Assessment Year: 2003-04)**

<b>M/s. Kajal Exports Anjani Avenue Bungalows, Besides Sambhav House, Opp: Judges Bungalow, Bodakdev, Ahmedabad</b>	<b>V/S</b>	<b>ACIT, Ahmedabad</b>	<b>Circle-10,</b>
<b>(Appellant)</b>		<b>(Respondent)</b>	

**PAN: AACFK 1564H**

**Appellant by : Shri P.M. Mehta, AR  
Respondent by : Shri V.K. Singh, Sr. D.R.**

**(आदेश)/ORDER**

Date of hearing : 11 -01-2018

Date of Pronouncement : 15 -01-2018

**PER N.K. BILLAIYA, ACCOUNTANT MEMBER:**

1. With this appeal, the Assessee has challenged the correctness of the order of the Ld. CIT(A)-XVI, Ahmedabad dated 14.02.2014 pertaining to A.Y. 2003-04.

2. The only grievance of the assessee is that the Id. CIT(A) erred in confirming penalty levied u/s. 271(1)(c) of the Act.
3. The roots for the levy of penalty lie in the assessment order dated 28.03.2006 framed u/s. 143(3) of the Act. While scrutinizing the return of income, the A.O. found that the assessee has claimed, inter alia, LC Opening & Processing Charges of Rs. 8,49,108/- under the head interest and finance charges. The assessee was asked to justify the claim of LC Charges. On finding no plausible reply, LC Opening Charges of Rs. 8,49,108/- were disallowed and penal proceedings were separately initiated.
4. The quantum disallowance travelled up to the Tribunal and the Tribunal in ITA No. 496 & 497/Ahd/2010 confirmed the disallowance. The relevant findings of the Tribunal read as under:-

*12. Regarding the disallowance of Rs. 8,49,108 being the expenditure on L/C, we find that a clear finding is given by Ld. CIT(A) that if the L/C was for the benefit of the assessee then why the name of M/s. Karnavati Petrochem P. Ltd. was mentioned therein. He has also given a finding that actual beneficiary is Karnavati Petrochem Pvt. Ltd. and the assessee had made purchases for them. He has also given a finding that the liability to pay the L/C charges is that of Karnavati Petrochem Pvt. Ltd. and not of the assessee. He has also noted that as per clause 71B of the L/C it was stated that beneficiary is M/s. Karnavati Petrochem Ltd. and the charges would be accounted for in their account. These findings of Ld. CIT(A) could not be controverted by the Ld. A.R. and hence, we find no reason to interfere in the order of Ld. CIT(A) on this issue. This ground no. 2 of the assessee for the assessment year 2003-04 is rejected whereas ground no. 1 of this year is partly allowed.*
5. A perusal of the aforementioned findings of the Tribunal shows that in the LC, the name of Karnavati Petrochem Pvt. Ltd. was mentioned which happens to be a sister concern of the assessee. It is also clear that the assessee was having

business transaction of purchases with its sister concern. The disallowance have been confirmed because the liability to pay the LC charges is that of Karnavati Petrochem Pvt. Ltd. and not of the assessee. A perusal of the aforementioned facts as discussed by the Tribunal in its order in ITA No. 496 & 497/Ahd/2010 clearly shows that the assessee has furnished all the details in relation to the claim of LC charges though the same was disallowed but that does not mean that the assessee has furnished some inaccurate particulars liable for penalty u/s. 271(1)(c) of the Act. We further find that the A.O. has levied the penalty for filing inaccurate particulars of income whereas the Id. Commissioner has confirmed the levy of penalty for concealment of income. In our considered opinion, merely because the claim of LC charges was denied would not ipso facto make the assessee liable for penalty u/s. 271(1)(c) of the Act. For this proposition, we draw support from the decision of the Hon'ble Supreme Court in the case of Reliance Petro Products 322 ITR 158.

6. Considering the facts in totality, we do not find this to be a fit case for the levy of penalty u/s. 271(1)(c) of the Act. We accordingly set aside the findings of the Id. CIT(A) and direct the A.O. to delete the penalty so levied.
7. Appeal filed by the Assessee is allowed.

Order pronounced in Open Court on	15 - 01- 2018
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Sd/-

**(MAHAVIR PRASAD)**  
**JUDICIAL MEMBER**      **True Copy**  
Ahmedabad: Dated      15/01/2018

Sd/-

**(N. K. BILLAIYA)**  
**ACCOUNTANT MEMBER**