

**IN THE INCOME TAX APPELLATE TRIBUNAL “C” BENCH, MUMBAI  
BEFORE SRI MAHAVIR SINGH, JM AND SRI G. MANJUNATHA, AM**

**ITA No. 5950/Mum/2016**

(A.Y. 2008-09)

The Dy. Commissioner of Income Tax 8(1)(1), Room No. 624, 6 <sup>th</sup> Floor, Aayakar Bhavan, M.K. Marg, Mumbai-400 020	Vs.	M/s Reliance Petromarketing Ltd., 5 <sup>th</sup> Floor, Court House, L.T. Marg, Dhobi Talao, Mumbai-400 002
<b>Appellant</b>	..	<b>Respondent</b>
<b>PAN No. AABCR1721M</b>		

**Revenue by** : Ram Tiwari, AR

**Assessee by** : Madhur Agarwal, AR

**Date of hearing:** 15-03-2018 **Date of pronouncement :** 21-03-2018

**ORDER**

**PER MAHAVIR SINGH, JM:**

This appeal by the revenue is arising out of the order of Commissioner of Income Tax-14, Mumbai [in short CIT(A)], in appeal No. CIT(A)-14/IT-345AB/13-14 dated 29.07.2016. The original Assessment was framed by the Asst Commissioner of Income Tax, Circle-7(2), Mumbai (in short 'ACIT') for the A.Y. 2008-09 vide order dated 20-12-20101 under section 143(3) of the Income Tax Act, 1961 (hereinafter 'the Act'). The reassessment was framed by DCIT, Circle-7(2) Mumbai under section 143(3) r.w.s 147 of the Act vide order dated 04-12-2012 for AY 2008-09. The penalty was levied by the DCIT 7(2), Mumbai for AY 2008-09 vide order dated 18-03-2014 under section 271(1)(c) of the Act.



2. The only issue in this appeal of Revenue is against the order of CIT(A) deleting the penalty levied by the AO under section 271(1)(c) of the Act on the claim of levy encashment, which actually is allowable in AY 2009-10 instead of 2008-09. For this Revenue has raised the following ground No. 1

*"1. On the facts and in the circumstances of the case and in law, the Id. CIT(A) erred in deleting the penalty order passed by the AO under section 271(1)(c) of the Income Tax Act, 1961 imposing penalty of ₹ 64,18,672/-"*

3. Briefly stated facts are that during the year under consideration, the assessee filed is return of income declaring Loss of Rs.8,47,58,4981- under the normal provisions and Book Loss of Rs.11,96,334/- under section 115JB of the Act. The assessee in its return of income based on Tax Audit Report had claimed deduction of provision for leave encashment of Rs.2,85,39 770/- which was allowed by the AO in the regular assessment u/s.143(3) of the Act determining total Loss at Rs 96,03,498/- under normal provisions and Rs.11,96,334/- under section 115JB of the Act. The Assessment was re-opened u/s 148 of the Act re-assessment order was passed determining the total income at Rs.92,80,502/- under normal provisions and Loss of Rs.11,96,334/- u/s 115JB of the Act. In the reassessment order the AO disallowed the assesses claim for deduction of provision for leave encashment of Rs.1,88,84,001- under section 43B of the Act This re-assessment was accepted by the assessee and no further appeal was preferred against quantum addition.



4. The AO started penalty proceedings under section 271(1)(c) of the Act for furnishing of inaccurate particulars of the income. The AO levied the penalty by observing as under:-

*"25. In view of the above and detailed discussion in the assessment order, there is not even a iota of doubt that the assessee is guilty of concealment of income as well as furnishing of inaccurate particulars of income within the meaning of section 271(1)(c) of the Income Tax Act, 1961 because the assessee did not properly disclose this income in the return of income and no note claiming this amount as exempt was submitted along with the return of income. The assessee furnished inaccurate particulars by claiming that this is an allowable deduction and was a ploy to hide the correct nature of transaction and its taxability as per the Income Tax Act, 1961. Therefore, I have no doubt in my mind that this is a case which is a fit case for imposition of penalty."*

Aggrieved, assessee preferred appeal before CIT(A).

5. The CIT(A) deleted the penalty levied by the AO by observing as under:-

*"3.4 As regards the other grounds, I have considered the submissions made by the appellant. The materials and facts relating to the issue under consideration was clearly disclosed in the Audited Financial Statement. The claim of leave encashment was based on actuarial valuation report while claim for deduction was based on the basis of actual payment made. The Tax Auditor have duly certified the liability as allowable. These facts are duly*



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*mentioned by the AO in para 3 of the penalty order. The issue is directly covered by the decision in the case of Rama Newspaper and Paper Ltd Vs DCIT ITA No. 6087/Mum/2012 dated 5/11/2014 in A.Y 2007-08. In this case the Hon'ble Jurisdictional ITAT observed that the claim of provision for leave encashment is otherwise allowable as deduction, but for the specific provisions of see. 43B of the Act. Thus, the said claim could not be substantiated in law. Hence, the decision rendered by Hon'ble Supreme Court in the case of Reliance Petro Products (P) Lid shall squarely apply to this claim. The Hon'ble Jurisdictional ITAT thereafter cancelled the penalty order. The facts in the present case are similar and therefore respectfully following the decision of Hon'ble Jurisdictional ITAT in the case or of Rama Newspaper and Paper Ltd Vs DCIT (Supra), the penalty order is hereby cancelled."*

Aggrieved, revenue is in second appeal before Tribunal.

6. We have heard rival contentions and gone through facts and circumstances of the case. Before the Ld Sr. DR argued that merely because the assessee complied with statutory procedural requirements of filing of prescribed forms and certificates of chartered accountant and audit reports, it could not absolve assessee of its liability, if act of or attempt in claiming deduction was not bonafide. According to him, the assessee had made a wrong claim which cannot be allowed in the relevant assessment year and by making a claim in this year the assessee has furnished inaccurate particulars of income. According to him, in the original return of income the assessee failed to produce the details with regards to provisions made and the treatment given in the



books of account, the fact was revealed during reassessment proceedings only. According to him, it clearly shows that the assessee has intentionally tried to furnish inaccurate particulars of income, therefore the assessee is liable for penalty under section 271(1)(c) of the Act for furnishing of inaccurate particulars of income.

7. Before us Ld Counsel for the assessee argued that it had neither concealed any income nor furnished any inaccurate particulars of such income. The assessee Company had made provision for leave encashment on 31.03.2008 for an amount of Rs. 3,00,09,000/- out of which Rs.2,85,39,7701- has been paid upto the date of filing of return and therefore the same was claimed as allowable expenditure u/s.43B of the Act, in the return of income. Further the liability of Rs.1,88,84,000/- which existed as on 31.03.2007 was reversed on 01.04.2007. The auditor had accordingly certified that the same as allowable since it is reversal of provision and credited to leave encashment expenditure account in Annexure No.4 to Form 3CD annexed to the audit report furnished u/s.44AB of the Act The above claim was based on the actuarial valuation report obtained as on 31.03.2008 whereby the leave encashment liability which had accrued on 31.03.2008 is determined at Rs.3,00,09,000/-. Accordingly, provision for the liability was created in the Books of accounts on 31.03.2008 for Rs.3,00,09,000/--. Thus, the assessee had made full and complete disclosure of the claim for leave encashment. In-fact the AO himself allowed this claim in the subsequent year i.e. A Y 2009-10. Therefore, it has not kept away anything from the AO, which he found during the reassessment proceeding which could justify that there was any concealment or furnishing of inaccurate particulars of income. All the materials are clearly demonstrated in audited financial statements only. It is also worth mentioning here again that the books of accounts of the assessee are duly audited and there is



no qualification in the Auditors Report of the Auditor to the effect that the assessee has followed improper accounting to record its transaction.

8. We find from the facts of the case that assessee had made provision for leave encashment as on 31.03 2008 for Rs. 3,00,09,000/- out of which Rs 2,85,39,770/- has been paid up to the date of filing of return and therefore the same was claimed allowable expenditure u/s.43B of the Act. Further the liability of Rs1,88,84,000/- which existed on 31.03.2007 was reversed on 01.04.2007. The auditor had accordingly certified that the same as allowable since it is reversal of provision and credited to leave encashment expenditure account in Annexure No 4 to Form 3CD annexed to the audit report furnished u/s.44AB of the Act. The above claim was based on the actuarial valuation report obtained as on 31.03.2008 whereby the leave encashment liability which had accrued on 31.03.2008 is determined at Rs.3,00,09,000/-. Accordingly, provision for the liability was created in the Books of accounts on 31.03.2008 for Rs 3,00,09,000/-. The above claim for provision was duly verified and allowed by the AO in the order u/s.143(3) of the Act. However, subsequently the AO has passed an order u/s143(3) r.w.s.147 of the Act and hold that the liability towards leave encashment of Rs.1,88,84,000/- existed from 01.04.2007 (i.e was carried forward from F.Y. 2006-2007) and the payment was made on 30.09.2008. Therefore, the same were not allowable in the year under consideration as per the provisions of section 43B of the Act. However, the AO in the order u/s143(3) r.w.s. 147 has stated that, "Thus, according to provisions of section 43B deduction for such payment can be allowed in A.Y. 2009-10 relevant to previous year 2008-09". The AO has allowed this claim for leave encashment of Rs.1,88,84,000/- in the subsequent year i.e. AY 2009-10 vide his order u/s154 of the Act dated 23.04.2013. In view, of the fact since the claim of



deduction of leave encashment of Rs.1,88,84,000/- was allowed in the subsequent year, the assessee withdrew its appeal filed with CIT(A).

9. In view of the undisputed facts we are of the view that that it has made provision for leave encashment which has been debited to profit & loss account and the genuineness of the expenses has not been, in anyway doubted by the AO neither any material to this effect has been brought on record by the revenue. The expenses claimed by the Assessee have been disallowed by the AO for the sole reason that the same are not allowable u/s.43B of the Act in the year under consideration and the same shall be allowed in the subsequent year. In such circumstances, we are of the view that when the expenses are otherwise genuine and allowable but disallowed only due to dispute with respect to year of allowability of the claim, then, in such circumstances no penalty u/s 271(1)(c) can be levied. We have also considered the plea of the Ld Sr DR that the claim made by assessee is wrong. We are of the view that mere making of the claim, which is not allowed by the AO by itself will not amount to furnishing of inaccurate particulars regarding the income of the assessee and merely because the assessee's claim for deduction has not been accepted and allowed in the year under consideration but allowed in the subsequent year penalty u/s 271(1)(c) cannot be attracted. We are of the view that the impugned disallowance of expenses was made by the AO on the ground that the same were not allowable in the year under consideration but allowable in the subsequent year as per the provision of section 43B of the act, it clearly shows that the dispute was only relating to the year in which the said expenses are allowable and not about the very deductibility of the said expenses as the genuineness of the same was neither disputed nor doubted.

10. While on the subject, We are of the view that the penalty is initiated for furnishing inaccurate particulars of Income and the word 'particulars'



used in section 271(1)(c)(1)(c) of the Act would embrace the meaning of details of the claim made. It is an admitted position in the assessee's case that no information given by the assessee with respect to claim made found to be incorrect or inaccurate. It is also not the case that any statement made or any details supplied were found to be factually incorrect. Therefore, it cannot be held guilty of furnishing inaccurate particulars of income. The word 'inaccurate' has been defined as not accurate, not exact or correct; not according to truth. The reading of the word 'inaccurate' and 'particulars' in conjunction, they must mean the details supplied by the assessee are not correct. We find that in its case there is no finding that any details supplied by the assessee were found to be incorrect or erroneous or false. Such not being the case, the assessee cannot be put to question for levying the penalty u/s 271(1)(c)(1)(c) of the Act and mere making of a claim which is not sustainable in law, by itself, shall not amount to furnishing inaccurate particulars of the income. Claim made by the assessee in itself cannot amount to the inaccurate particulars of the Income. The reliance placed by the assessee on the case of Hon'ble Supreme Court in the case of CIT v Reliance Petroproducts Pvt. Ltd. (2010) 322 ITR 158 (SC) wherein the Hon'ble Supreme Court has elaborately scrutinized the definition of 'inaccurate particulars of income and held that mere making a claim does not constitute furnishing inaccurate particulars of income. The Operational part of the judgment reads as under: -

*“A glance of provision of section 271(1)(c ) would suggest that in order to be covered, there has to be concealment of the particulars of the income of the assessee. Secondly, the assessee must have furnished inaccurate particulars of his income. The instant case was not the case of concealment of the income. That was not the case of the revenue either. It was an admitted position in the instant case that no*



*information given in the return was found to be incorrect or inaccurate. It was not as if any statement made or any detail supplied was found to be factually incorrect. Hence, at least, prima facie, the assessee could not be held guilty of furnishing inaccurate particulars. The revenue argued that submitting an incorrect claim in law for the expenditure on interest would amount to giving inaccurate particulars of such income. Such cannot be the interpretation of the concerned words. The words are plain and simple. In order to expose the assessee to the penalty unless the case is strictly covered by the provision, the penalty provision cannot be invoked. By any stretch of imagination, making an incorrect claim in law cannot tantamount to furnishing of inaccurate particulars. Therefore, it must be shown that the conditions under section 271(1)(c) exist before the penalty is imposed. There can be no dispute that everything would depend upon the return filed, because that is the only document, where the assessee can furnish the particulars of his income. When such particulars are found to be inaccurate, the liability would arise. To attract penalty, the details supplied in the return must not be accurate, not exact or correct not according to the truth or erroneous. Where there is no finding that any details supplied by the assessee in its return are found to be incorrect or erroneous or false there is no question of inviting the penalty under section 271(1)(c). A mere making of a claim, which is not sustainable in law, by itself, will not amount to furnishing inaccurate particulars regarding the income of the assessee. Such a claim made in the return cannot amount to furnishing inaccurate particulars." (head note) emphasis supplied.*



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11. In view of the above facts and circumstances of the case, we are of the view that CIT(A) has rightly deleted the penalty, and we confirm the same.

12. **In the Result, the appeal of the Revenue is dismissed.**

Order pronounced in the open court on 21-03-2018.

Sd/-  
(G. MANJUNATHA)  
ACCOUNTANT MEMBER

Sd/-  
(MAHAVIR SINGH)  
JUDICIAL MEMBER

Mumbai, Dated: 21-03-2018

*Sudip Sarkar /Sr.PS*

**Copy of the Order forwarded to:**

1. The Appellant
2. The Respondent.
3. The CIT (A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.  
//True Copy//

BY ORDER,

Assistant Registrar  
**ITAT, MUMBAI**