

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "E" MUMBAI**

**BEFORE SHRI JOGINDER SINGH (JUDICIAL MEMBER) AND
SHRI N.K. PRADHAN (ACCOUNTANT MEMBER)**

**ITA No. 3104/MUM/2016
Assessment Year: 2011-12**

ACIT-16(1)
Room No. 439,
Aayakar Bhavan,
M.K. Marg Mumbai-
400020.

Vs.

M/s UTV Global Broadcasting Ltd.
(now known as M/s Disney
Entertainment (India) Ltd. 7th floor,
Building No. 11, Solitaire Corporate
Park, Guru Hargovind Singh Road
Chakala, Andheri (E), Mumbai-400093.
PAN No. AAACU9044R

Appellant

Respondent

Revenue by : Mr. V. Justin, DR
Assessee by : Mr. Naresh Kumar, AR

Date of Hearing : 24/05/2018
Date of pronouncement: 30/05/2018

ORDER

PER N.K. PRADHAN, AM

This is an appeal filed by the Revenue. The relevant assessment year is 2011-12. The appeal is directed against the order of the Commissioner of Income Tax (Appeals)-14, Mumbai [in short CIT(A)] and arises out of the penalty order passed u/s 271(1)(c) of the Income Tax Act 1961, (the 'Act').

2. The grounds of appeals filed by the Revenue read as under:
 - A. On the facts and circumstances of the case and in law, whether the Ld. CIT(A) was justified in directing to delete the penalty levied u/s. 271(l)(c) of the Income-tax Act, 1961 by holding that there is no finding that any inaccurate particular has been furnished in the return of income or that there is any concealment of income in the return of income, without appreciating that the instant case is squarely covered by the ratio of the decision in *Raj Kishore Chaurasiya Vs CIT* [2007] 288 ITR 329 (All), where it has been held that where the assessment order itself contains facts, which justifies an inference of furnishing incorrect particulars of income or concealment, the penalty order is sustainable.
 - B. On the facts and circumstances of the case and in law, whether the Ld.CIT(A) was justified in directing to delete the penalty levied u/s. 271(l)(c) of the Income-tax Act, 1961 by placing reliance on the Apex Court's judgment in the case of *CIT vs Reliance Petro Products* [322 ITR 158] (SC) without appreciating that the facts in that Case are not per material to the instant case?
 - C. On the facts and circumstances of the case and in law, whether the Ld. CIT(A) was justified in directing to delete the penalty levied u/s. 271(1)(c) of the Income-tax Act, 1961, without appreciating that explanation (1) of section 271(l)(c) is squarely applicable in the instant case, as in the ratio laid down by the Hon'ble Supreme Court's judgments in *Addl. CIT Vs Jeevan Lal San* [1994] 205 ITR 244 (SC), *B. A. Ralasubramaniam and Bros. Co. vs CIT* [1999] 236 ITR 977 [SC] and *UOI vs Dharmendra Textile Processors* [2008] 306 ITR 277 (SC)?
 - D. The appellant prays that the order of the CIT(A) on the above grounds be set aside and that of the Assessing Officer be restored.
3. In a nutshell, the facts are that the assessee filed its return of income for the assessment year (AY) 2011-12 on 23.09.2011 declaring

loss of Rs.25,98,33,788/-. The Assessing Office (AO) made the following additions while completing assessment u/s 143(3) on 24.02.2014.

(1) Disallowance of interest – Rs.6,56,78,016/-

(2) AIR reconciliation difference – Rs.33,80,458/-

The addition on which the AO initiated penalty proceedings is bifurcated as under:

S. No.	Particulars	Amount in Rs.
1.	Interest on advances of subsidiary	5,89,08,000/-
2.	Interest on debtors outstanding for more than 6 months	31,70,016/-
3.	Interest on capital advances	36,00,000/-
		6,56,78,016/-

The AO came to a finding that the assessee had furnished inaccurate particulars of income within the meaning of section 271(1)(c) and deliberately concealed the income with intention to evade tax and therefore, levied a minimum penalty of Rs.2,18,16,594/- u/s 271(1)(c) of the Act.

4. Aggrieved by the order of the AO, the assessee filed an appeal before the Ld. CIT(A). The Ld. CIT(A) relying on the decision of the Hon'ble Supreme Court in *CIT v. Reliance Petroproducts Pvt. Ltd.* 230 CTR 320, deleted the penalty of Rs.2,18,16,594/- levied by the AO.

5. Before us, the Ld. DR relies on the order passed by the AO. Reliance is placed by him on the decision in *Rajkumar Chaurasia v. CIT* (2008) 172 Taxman 365 (Allahabad).

On the other hand, the Ld. counsel of the assessee relies on the decision in *Reliance Petroproducts (P.) Ltd.* (supra) and *CIT v. Aditya Birla Nova Ltd.* (ITA No. 3899 of 2010) by Hon'ble Bombay High Court.

6. We have heard the rival submissions and perused the relevant materials on record. The reasons for our decisions are given below.

In *Rajkumar Chaurasia* (supra), relied on by the Ld. DR, the assessee was doing the business of selling cigarettes and cold drinks. For the assessment years 1971-72 to 1976-77, the assessee filed his returns of income and assessments were completed accordingly. In July 1976, the returns of income were filed in the name of the assessee's wife for the assessment years 1974-75 to 1976-77 declaring certain income from the cold drinks business. In September 1976, the assessee filed his revised returns for those assessment years which included certain unexplained investments. In said returns, the assessee submitted that he had stopped doing cold drinks business; that said business was being done by his wife and, as such, the income from that business was not included in his revised returns. As regards unexplained investments, he submitted that same were the funds, left by his late father. The Assessing Officer rejected the submissions of the assessee. On second appeal, the Tribunal, after examining the facts, held that the assessee's contention that the business of cold drinks was done by his wife from the assessment year 1973-74 was not worthy of credence; and that the

assessee himself had been looking after the said business. Therefore, the income from the cold drinks business was assessed in the hands of the assessee. The Assessing Officer also imposed penalty under section 271(1)(c) upon the assessee. On appeal, the Commissioner (Appeals) cancelled the penalty. However, on appeal by the revenue, the Tribunal upheld the imposition of penalty under section 271(1)(c). On a reference, the Hon'ble High Court held that since in penalty proceedings, the assessee neither gave any fresh material or evidence nor offered any other plausible explanation to show that there was no gross or wilful neglect on his part and there was no fraud in not disclosing correct income, penalty was rightly imposed upon the assessee.

In the instant case, the AO has made a disallowance of interest of Rs.6,56,78,016/- while making the assessment u/s 143(3). Then the AO levied penalty u/s 271(1)(c) on the above disallowance. Therefore, the case of the assessee is distinguishable from the above decision relied on by the Ld. DR.

6.1 In the instant case the appellant had paid Rs.5,89,08,000/- as advance to its subsidiaries. The AO computed notional interest on this amount @ 12% and disallowed the interest. Similarly, there were debtors to the tune of Rs.31,70,016/- outstanding for more than six months on which the AO also disallowed notional interest @ 12%. Further, capital advance of Rs.3 crore had been made for the purchase of the property, as submitted by the assessee on which again the AO disallowed notional interest @ 12%. Thereafter, the AO imposed penalty u/s 271(1)(c) on the additions so made.

In *Reliance Petroproducts (P.) Ltd.* (supra), the Hon'ble Supreme Court has held that merely because assessee had claimed expenditure, which claim was not accepted or was not acceptable to the revenue, that by itself would not attract penalty u/s 271(1)(c). The Hon'ble Bombay High Court in *Aditya Birla Nova Ltd.* (supra), equally held at para 20:

“20. We do not agree, as the assessee had furnished all the details of its expenditure as well as income in its return, which details, in themselves, were not found to be inaccurate nor could be viewed as the concealment of income on its part. It was up to the authorities to accept its claim in the return or not. Merely because the assessee had claimed the expenditure, which claim was not accepted or was not acceptable to the Revenue, that by itself would not, in our opinion, attract the penalty u/s 271(1)(c). If we accept the contention of the Revenue then in the case of every return where the claim made is not accepted by the assessing officer for any reason, the assessee will invite penalty u/s 271(1)(c). That is clearly not the intendment of the legislature.”

6.2 Examined on the touchstone on the above enunciation of law, we uphold the order of the Ld. CIT(A).

7. In the result, the appeal filed is dismissed.

Order pronounced in the open Court 30/05/2018.

Sd/-
(JOGINDER SINGH)
JUDICIAL MEMBER

Mumbai;

Sd/-
(N.K. PRADHAN)
ACCOUNTANT MEMBER

Dated: 30/05/2018
Rahul Sharma, Sr. P.S.

Copy of the Order forwarded to :

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

//True Copy//

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai