

**आयकर अपीलीय अधिकरण, मुंबई न्यायपीठ, 'ई', मुंबई।**

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCHES, 'E' MUMBAI**

**श्री जोगिन्दर सिंह, न्यायिक सदस्य एवं  
श्री मनोज कुमार अग्रवाल, लेखा सदस्य, के समक्ष**

**Before Shri Joginder Singh, Judicial Member, and  
Shri Manoj Kumar Aggarwal, Accountant Member**

**ITA No.1015/Mum/2016  
Assessment Year: 2008-09**

Technocraft Industries (India) Limited, A-25, MIDC Marol Indl. Area, Road No.03, Opp. ESIC Hospital, Andheri East, Mumbai-400093	<b><u>बनाम/</u></b> Vs.	DCIT, Circle-8(3), Mumbai
(निर्धारिती /Assessee)		(राजस्व /Revenue)
<b>PAN. No. AAAC2724P</b>		

निर्धारिती की ओर से / Assessee by	Ms. Purvi Gupta
राजस्व की ओर से / Revenue by	Shri V. Justin-DR

सुनवाई की तारीख / <b>Date of Hearing:</b>	<b>16/05/2018</b>
आदेश की तारीख / <b>Date of Order:</b>	<b>16/05/2018</b>

**आदेश / O R D E R**

Per Joginder Singh(Judicial Member)

The assessee is aggrieved by the impugned order dated 04/12/2015 of the Ld. First Appellate Authority, Mumbai, confirming the imposition of penalty amounting to Rs.5,82,000/- u/s 271(1)(c) of the Income Tax Act, 1961 (hereinafter the Act).

2. During hearing, Ld. Counsel for the assessee Ms. Purvi Gupta, argued that a *bona-fide* claim was made by the assessee, therefore, penalty u/s.271(1)(c) of the Act may not be imposed. It was claimed that even if a wrong claim is made still the assessee gets shelter from the decision from Hon'ble Apex Court in Reliance Petro Products Pvt. Ltd. 322 ITR 158 (SC). On the other hand, Shri V. Justin, Ld. DR claimed that the assessee made a wrong claim which was disallowed by the Assessing Officer, therefore, penalty u/s.271(1)(c) of the Act was rightly imposed/confirmed. The crux of the argument is in support of the penalty.

2.1 We have considered the rival submissions and perused the material available on record. The facts in brief are that the assessee is engaged in the business of

manufacture and exporting of drum closures, pipe and cotton yarn. The assessee declared total income of Rs.29,48,92,807/- after claiming Rs.1,25,000/- as deduction u/s 80G of the Act. Subsequently, the assessee revised the income to Rs.29,50,44,322/- on 23/04/2009, which was processed u/s 143(1) of the Act. Later on the case of the assessee was selected for scrutiny, therefore, notice u/s 143(2) and 142(1) of the Act was served upon the assessee. The assessee attended the proceeding and furnished various details as is evident from Assessing Officer itself. The Ld. Assessing Officer made disallowance with respect to bank guarantee charges paid on behalf of foreign subsidiary and imposed penalty of Rs.5,82,000/- with respect to claim of such expenses of bank guarantee charges.

On appeal before the Ld. Commissioner of Income Tax (Appeal), the penalty was confirmed which is under challenged before this Tribunal. Considering the totality of facts, we are of the view that even if a wrong claim is made still it is not the case that the assessee concealed his income or furnished inaccurate particulars of such income. It is the duty of the Assessing Officer to allow/disallow the claim of

the assessee. In such a situation, the decision from Hon'ble Apex Court in Reliance Petro Chemicals(322 ITR 158 (SC)) comes to the rescue of the assessee, wherein the Hon'ble Court held that even if a wrong claim is made that automatically does not lead to the conclusion that the assessee concealed its income or furnished inaccurate particulars of such income. In the return filed by the assessee, the assessee made the claim which may not be accepted by the Assessing Officer, therefore, in our opinion, neither there is concealment nor furnishing of inaccurate particulars of such income, thus, the penalty is directed to be deleted, resultantly, the appeal of the assessee is allowed.

Finally, the appeal of the assessee is allowed.

This Order was pronounced in the open court in the presence of Ld. representative from both sides at the conclusion of hearing on 16/05/2018.

**Sd/-**

(Manoj Kumar Aggarwal)

लेखा सदस्य / ACCOUNTANT MEMBER

**Sd/-**

(Joginder Singh)

न्यायिक सदस्य / JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated : 16/05/2018

*Shekhar, P.S/नि.स.*

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

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

**आदेशानुसार/ BY ORDER,**

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