

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

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

**ITA No. 7160/MUM/2017  
Assessment Year: 2010-11**

Dy. Commissioner of Income-  
tax-3(3)(2), Room No. 609, 6<sup>th</sup>  
floor, Aayakar Bhavan, M.K.  
Road, Mumbai-400020.

Vs. Universal Chemicals  
& Industries Pvt. Ltd.,  
507, Raheja Centre,  
214, Nariman Point,  
Mumbai-400021.

**PAN No. AAACU0974C**

**Appellant**

**Respondent**

Revenue by : Mr. B. Satyanarayan Raju, DR  
Assessee by : Mr. Manish R. Reshmwala, AR

Date of Hearing : 15/01/2019  
Date of pronouncement : 30/01/2019

**ORDER**

**PER N.K. PRADHAN, AM**

This is an appeal filed by the Revenue. The relevant assessment year is 2010-11. The appeal is directed against the order of the Commissioner of Income Tax (Appeals)-8, Mumbai [in short 'CIT(A)'] and arises out of levied penalty u/s 271(1)(c) of the Income Tax Act 1961, (the 'Act').

2. The grounds of appeal filed by the Revenue read as under:

- i. Whether of the facts and circumstances of the case and in law, the Ld. CIT(A) was right in deleting the penalty of Rs.67,08,064/- levied u/s 271(1)(c) of the I.T. Act, 1961 without appreciating the fact that the

assessee had understated his income by furnishing inaccurate particulars of its income and concealed particulars of income, which were detected during the course of assessment proceedings only and hence, provisions of section 271(1)(c) is clearly attracted in this case.

- ii. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) was right in deleting the penalty of Rs.67,08,064/- levied u/s 271(1)(c) of the I.T. Act, 1961 without appreciating the fact that the claims made is not only incorrect in law but is also wholly without any basis and the explanation furnished by him for making such claim is not found to be bona fide; triggering Explanation 1 to section 271(1)(c) of the I.T. Act, 1961 as held by Hon'ble Delhi High Court in the case of Zoom Communications Pvt. Ltd., 40 DTR 249 (2010).

3. Briefly stated, the facts of the case are that the assessee-company filed its return of income for the assessment year (AY) 2010-11 on 14.10.2010 declaring current year loss at Rs.11,30,84,832/-. In the assessment made u/s 143(3) dated 28.03.2013, the Assessing Officer (AO) made the following additions/disallowances:

S.N.	Particulars	Amount (Rs.)
i.	Addition of income earned on sale of goods generated on 'trial run'	8,55,17,656
ii.	Addition of 'interest income' under the head of 'income from other sources'	6,96,185
iii.	Addition of income on mutual funds transactions under the head of 'Short Term Capital Gain'	7,48,736
iv.	Disallowance of Additional depreciation	1,86,64,853
v.	Disallowance u/s 14A of the Act	11,104

Thereafter, the AO held that the assessee had furnished inaccurate particulars of its income in respect of items at serial No. (ii), (iii) and (iv) and thereby levied a minimum penalty of Rs.67,08,604/- on addition/disallowance of Rs.2,01,09,774/-.

4. Aggrieved by the order of the AO, the assessee filed an appeal before the Ld. CIT(A). In the appellate order dated 04.09.2017, the Ld. CIT(A), relying on the decision in *CIT v. Reliance Petroproducts (P.) Ltd.* 322 ITR 158 (SC), *CIT v. Nalin P. Shah (HUF)* 40 taxmann.com 86 (Bom), *Sesa Resources Ltd. v. ACIT* 219 Taxman 92 (Bom), *DIT v. Administrator of the Estate of Late Mr. E.F. Dinshaw* 218 Taxman 125 (Bom), *CIT v. M/s Aditya Birla Nova Ltd.* (ITA No. 3899 of 2010) of Bombay High Court, *CIT v. Dalmia Dyechem Industries Ltd.* (ITA No. 1396 of 2013) of Bombay High Court, *CIT v. Gujarat Insecticides Ltd.* 218 Taxman 130 (Guj), *Harsha H. Jhaveri v. DCIT* 53 SOT 59, *Narang's International Hotels (P.) Ltd. v. DCIT* 22 taxmann.com, deleted the penalty of Rs.67,08,064/- on the ground that the appellant cannot be said to not have given an explanation nor the explanation was found as false nor can it be said it could not be substantiated.

5. Before us, the Ld. DR relies on the order of the AO, whereas the Ld. counsel of the assessee relies on the order of the Ld. CIT(A).

6. We have heard the rival submissions and perused the relevant materials on record. The AO has levied the penalty on addition/disallowance of (i) additional depreciation of Rs.1,86,64,853/-, (ii) income from interest of Rs.6,96,185/- and (iii) capital gains of Rs.7,48,736/-.

We begin with the additional depreciation of Rs.1,86,64,853/-. A perusal of the assessment order clearly indicates that the assessee has apportioned a sum of Rs.21,78,04,109/- being the 'pre-operative capitalized' to its various assets such as building, plant and machinery

etc. On such 'pre-operative capitalized', the assessee has claimed additional depreciation of Rs.1,86,64,853/- in respect of pre-operative capitalized assets. The AO made a disallowance of the above amount of Rs.1,86,64,853/- on the reason that the assessee has adopted such a methodology of apportionment, which shows that the assessee itself is not in a position to arrive at the actual and true cost of the assets.

As regards the interest income of Rs.6,96,185/-, the AO treated the same as 'income from other sources', though observing that the assessee is in receipt of the above amount from fixed deposits maintained with the banks. It is only a change of head of income.

Finally, in respect of capital gains of Rs.7,48,736/-, the AO has mentioned in his assessment order that the assessee has purchased certain mutual funds which were subsequently sold during the year itself. As a result of such purchase and subsequent sale of mutual funds, the assessee earned short term capital gains of Rs.7,48,736/-. As per the AO, though the assessee has earned short term capital gains on sale of mutual funds, the same has been adjusted against pre-operative expenses and accordingly shown as Nil capital gain. However, the AO was not convinced with the above action of the assessee and brought to tax the above amount of Rs.7,48,736/- as capital gains.

A perusal of the above details clearly indicate that it is not a case for levy of penalty u/s 271(1)(c) of the Act. In the case of *Reliance Petroproducts (P.) Ltd.* (supra), it is held by the Hon'ble Supreme Court that a mere making of claim, which is not sustainable in law, by itself,

will not amount of furnishing inaccurate particulars regarding income of assessee.

Respectfully following the above decision, we uphold the order of the Ld. CIT(A).

7. In the result, the appeal is dismissed.

**Order pronounced in the open Court on 30/01/2019.**

Sd/-  
(JOGINDER SINGH)  
VICE PRESIDENT

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

Mumbai;

Dated: 30/01/2019

*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,

(Sr. Private Secretary)  
**ITAT, Mumbai**