

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

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

**ITA No. 2480/MUM/2011
Assessment Year: 2003-04**

&

**ITA No. 2479/MUM/2011
Assessment Year: 2004-05**

Asstt. CIT-12(2), Room No.
114, Aayakar Bhavan, M.K.
Road, Mumbai-20.

Vs. L&T Hochtief Seabird
Joint Venture Taxation
Department, L&T House,
N.M. Marg, Ballard
Estate, Mumbai-400001.

PAN No. AAAAL0284E

Appellant

Respondent

Revenue by : Mr. Chaudhary Arunkumar Singh, DR
Assessee by : Mr. J.D. Mistry, AR

Last Date of Hearing : 05/07/2019
Date of pronouncement: 28/08/2019

ORDER

PER N.K. PRADHAN, AM

The captioned appeals filed by the Revenue are directed against the order of the Commissioner of Income Tax (Appeals)-23, Mumbai [in short CIT(A)] and arise out of penalty levied u/s 271(1)(c) of the Income Tax Act 1961 (the 'Act'). As common issues are involved, we are proceeding to dispose them off through a consolidated order for the

sake of convenience. Facts being identical, we begin with the AY 2003-04.

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

1. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in cancelling the penalty of Rs.12,30,38,547/- u/s 271(1)(c).

1a. While doing so, the Ld. CIT(A) has failed to appreciate the fact that the penalty has been levied by the AO on the quantum of disallowance confirmed by the CIT(A).

2. On the facts and in the circumstances of the case and in law the Ld. CIT(A) has failed to appreciate the fact that in view of the section 271(1)(c) of the Act where the word 'deliberately' has been omitted by the Finance Act, 1964 and in the Taxation Law (Amendments and Miscellaneous Provisions) Act, 1986, the word reasonable cause have been omitted from different section regulating imposition of penalty.

3. On the facts and in the circumstances of the case and in law the Ld. CIT(A) has erred in cancelling the penalty u/s 271(1)(c) ignoring the judicial decision in the case of Addl. CIT v. Quality Sweet House (130 ITR 309) wherein it was held that the onus to prove assessee was not guilty of fraud or gross or willful neglect in submitting original return was on the assessee and not on the Department.

3. Briefly stated, the facts are that the assessee filed its return of income for the assessment year (AY) 2003-04 on 20.11.2003 declaring taxable income of Rs.36,61,74,280/-. The Assessing Officer (AO), while passing the order u/s 143(3) made certain disallowances in the return of income filed by the assessee. The assessee preferred an appeal before the CIT(A), against the said additions/disallowances. While disposing

the appeal, the CIT(A) deleted certain additions and upheld the following disallowances on account of appellant's claim :

1. Addition of Rs.20,40,10,166/- on account of other allowances
2. Addition of construction management fees [Rs.2,03,13,027/-], construction management fees upto 31.03.2002 [Rs.2,00,25,714/-], technical management fees [Rs.2,03,13,027/-], technical management fees upto 31.03.2002 [Rs.2,00,25,714/-], and consortium leadership fees [Rs.1,01,56,514/-], paid to Hochtief Ag.
3. Addition of commercial management fees [Rs.2,03,12,027/-], commercial management fees upto 31.03.2002 [Rs.2,00,25,715/-] paid to Larsen & Toubro Limited
4. Reimbursement of head office expenditure Rs.1,01,56,514/- & Rs.1,00,12,857/-(upto 31.03.2002) paid to Hochtief Ag and Rs.9,14,08,622/- & Rs.9,01,15,715/- (upto 31.03.2002) paid to Larsen & Toubro Limited
5. Undervaluation of Closing Stock of Tools Rs.97,74,485/-
6. Undervaluation of closing stock of spares Rs.20,547,323/-
7. Addition on account of temporary structures Rs.9,600,953/-
8. Penalty and interest for default in TDS of Rs.4,92,173/-

3.1 The assessee has preferred a further appeal against the various additions/disallowances confirmed by the CIT(A) before the Tribunal. The AO imposed a penalty of Rs.12,30,38,547/- on various additions confirmed by the order of the CIT(A).

4. Aggrieved by the penalty order of the AO, the assessee filed an appeal before the Ld. CIT(A). We find that the Ld. CIT(A) *vide* order dated 31.01.2011 held -

“2.3 The submissions made for the appellant and the penalty order have been considered. The Assessing Officer had totally relied on the findings given in the assessment order while passing the penalty order. The appellant has claimed that all details were furnished both to the Assessing Officer as also to the Special Auditor appointed by the Department. The Assessing Officer has not brought any materials to justify that there was concealment of income or filing of inaccurate particulars. It is now an accepted fact that the quantum addition does not automatically lead to concealment. The addition may be due to difference in opinion and different perception to the same issue. Additions have been made on the grounds that specific particulars and supporting in respect of expenditure were not furnished, that such expenses were debited and claimed on an ad hoc percentage. Addition has also been made on the ground that provisions of section 40(ba) were applicable in the case of an AOP. With regard to structures claimed to be temporary, depreciation has been claimed @ 100% and disallowed in part. On merits the appellant had submitted a bona fide explanation as to the deductions claimed by it though not accepted by the Assessing Officer. Penalty cannot be levied on the additions made on account of differing opinion. The mere rejection of an explanation does not lead to a conclusion that the explanation was false. In the penalty order the Assessing Officer has not been able to establish that the explanation given by the appellant was not bona fide. Mere difference of opinion where a debatable issue exists does not justify levy of penalty. A difference in interpretation of facts and law cannot be said to amount to furnishing of inaccurate particulars of income. Claims preferred by an appellant supported by adopting of certain established accounting principles (in this case AS-7) and judicial decisions does not lead to the inference that appellant has furnished inaccurate particulars of income. In view of the above, the penalty of Rs.12,30,38,547/- stands cancelled.”

5. Before us, the Ld. DR relies on the order of the AO. On the other hand, the Ld. counsel for 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. In the instant case, the assessee has furnished all the details to the AO as well as to the Special Auditor appointed by the Department. The AO has failed to bring any material to justify that there was concealment of income or filing of inaccurate particulars. In the case of *CIT v. Reliance Petroproducts (P.) Ltd.* (2010) 189 Taxman 322 (SC), the Hon'ble Supreme Court has held that the mere making of claim, which is not sustainable in law, by itself, will not amount to furnishing inaccurate particulars regarding income of assessee. Further it 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) of the Act.

Respectfully following the decision in *Reliance Petroproducts (P.) Ltd.* (supra), we uphold the order of the Ld. CIT(A).

Facts being identical, our decision for AY 2003-04 applies *mutatis mutandis* to AY 2004-05.

7. In the result, the appeals filed by the revenue are dismissed.

Order pronounced in the open Court on 28/08/2019.

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

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

Mumbai;

Dated: 28/08/2019

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