IN THE INCOME TAX APPELLATE TRIBUNAL
"G" Bench, Mumbai

Before Shri Pramod Kumar, Vice President
and Shri Ravish Sood, Judicial Member

ITA No.4303/Mum/2018
(Assessment Year: 2008-09)

Shabbir E. Boxwala 40/401, Shabbir Apartments, Sherley, Rajan Road, Bandra (W), Mumbai. PAN – AABCC8160D	Vs.	ITO-11(1)(4), [Now, ITO-16(1)(4) Mumbai]
(Appellant)		**(Respondent)**

Appellant by: Shri Dinesh Acharya, A.R
Respondent by: Shri V. Vinod Kumar, D.R

Date of Hearing: 11.11.2019
Date of Pronouncement: 27.11.2019

O R D E R

PER RAVISH SOOD, JM

The present appeal filed by the assessee is directed against the order passed by the CIT(A)-4, Mumbai, dated 17.04.2018, which in turn arises from the order passed by the A.O under Sec. 271(1)(c) of the Income Tax Act, 1961 (for short 'Act'), dated 20.03.2014 for A.Y. 2008-09. The assessee has assailed the impugned order on the following grounds of appeal before us:

"1. On the facts and in the circumstances of the case, the Learned CIT (Appeals) in his appellate order failed to consider Ground No. 4 of the Grounds of Appeal before him by which the appellant had prayed for cancellation of penalty since Explanation 4, para (a) of Section 271(1)(c) does not apply to a positive income with set off of brought forward business loss and with taxable income as 'NIL' and tax payable as 'NIL' but applies only to a loss return and also that para (c) of Explanation 4 of Section 271(1)(c) is not workable in the appellant's case and therefore the machinery provisions of calculating the penalty fail and hence 'NIL' penalty should have been calculated by the I.T.O.

Without prejudice to Ground No.1

2. On the facts and in the circumstances of the case, the Learned C.I.T. (Appeals) was not justified in upholding the levy of penalty under Section 271(1)(c) on an addition of Rs.596085/- made by the ITO in his assessment

order U/s.143(3) which at best was an addition of a 26AS difference, but termed as "excess realization on account of exchange" by the ITO and also without considering the remarks of the Learned C.I.T. (Appeals) in quantum appeal in its proper perspective and also not appreciating the explanations given and evidences adduced on the fact that the appellant had not realized any monies in its books in excess of what was stated in the agreement and that each of the foreign exchange realizations were fully substantiated by the F.I.R.Cs' issued by the bankers and that there was no concealment of income and that the appellant being a small film producer could not afford further quantum appeal. The appellant prays earnestly that this ground may please be allowed by cancelling the levy of penalty arising out of addition of Rs.596085.

3. On the facts and in the circumstances of the case, the Learned C.I.T. (Appeals) was not justified in upholding the levy of penalty under Section 271(1)(c) on an addition of Rs.1,94,731/- made by the I.T.O. in his assessment order U/s.143(3) on account of disallowance of 100% of business promotion expenses incurred by the appellant in Turkey and fully borne as expenditure on the books of account of the appellant and in respect of which full explanation was offered by the appellant. The appellant prays earnestly that this ground may please be allowed by cancelling the levy of penalty arising out of addition of Rs.194731/-.

4. On the facts and in the circumstances of the case, the Leaned C.I.T. (Appeals) was not justified in upholding the levy of penalty under Section 271(1)(c) in respect of interest received of Rs.2455/- on income tax refund which through oversight could not be considered as income by the appellant since it was credited to personal savings account of the appellant and being a small amount with details not available. The appellant prays that the ground may please be allowed by cancelling the levy of penalty arising out of addition of Rs.2455.

5. The appellant craves leave to add to, to alter or to amend the above grounds of appeal."

2. Briefly stated, the assessee who is engaged in the business of film production, was however during the year under consideration only in receipt of income only from the professional services which were provided by him to M/s Popcorn Motion Pictures Pvt. Ltd. Return of income for A.Y 2008-09 was e-filed by the assessee on 16.09.2008, declaring his income at Rs.nil. Subsequently, the case of the assessee was selected for scrutiny assessment under Sec. 143(2) of the Act.

3. In the course of the assessment proceedings, it was observed by the A.O that the assessee during the preceding year relevant to A.Y. 2007-08 had completed the production of a film titled as "Yu Hota To Kya Hota". On the basis of an 'agreement' dated 15.03.2007, all the Intellectual Property Rights (for short 'IPR') of the aforesaid film were sold by the assessee company to M/s UTV Motion Pictures Mauritius Limited (upto 20.06.2022) for a consideration of USD 4,75,000. Accordingly, the assessee had accounted for an amount of Rs.1,92,01,434/- as sale consideration in his 'books of accounts' for the year ended 31.03.2007. As the amount was

not received by the assessee till the end of the aforesaid preceding year i.e F.Y 2006-07, therefore, the said amount was reflected under the head 'Sundry debtors' in his 'balance sheet' for the year ended 31.03.2007. As per the details furnished by the assessee in the course of the assessment proceedings, it was observed by the A.O, that the aforesaid amount was received by the assessee in the month of May, 2007. In the course of the assessment proceedings, the assessee had filed with the A.O a letter alongwith a TDS certificate and "Form No. 26AS" (in the name of the assessee) as was gathered from the NSDL Portal. As per the "Form No. 26AS" filed by the assessee, M/s UTV Motion Pictures Mauritius Ltd. had deducted TDS amounting to Rs.11,22,519/- on the payment made to the assessee, and had deposited the said amount in the Govt. Account on 03.05.20007. It was observed by the A.O, that as per the "Form No. 26AS" the amount shown to have been credited to the assesse's account was Rs.1,97,97,519/-, as against the amount of Rs.1,92,01,434/- that was accounted by the assessee in A.Y 2007-08 as 'sale consideration' of the IPR of the aforesaid film that were sold to M/s UTV Motion Pictures Mauritius Ltd. On the basis of the aforesaid facts, the A.O called upon the assessee to explain the nature of the transaction on account of which the amount of Rs.1,97,97,519/- was credited to his account by M/s UTV Motion Pictures Mauritius Ltd. In reply, it was submitted by the assessee that M/s UTV Motion Pictures Mauritius Ltd. for the limited purpose of filing the e-TDS return in the year 2009 had applied the average conversion rate of Rs. 41.678 on the payment USD 4,75,000. It was the claim of the assessee, that the aforesaid rate may have been the prevailing rate at the time of filing of the e-TDS return in the year 2009, as a result whereof the amount in "Form No. 26AS" was reflected at Rs.1,97,97,519/-. Accordingly, it was submitted by the assessee, that the difference of Rs.5,96,085/- [Rs.1,97,97,519/- (-) Rs.1,92,01,434/-] was on account of difference in the rate of conversion of foreign exchange that was applied by M/s UTV Motion Pictures Mauritius Ltd. on the sale consideration of USD 4,75,000 for the limited purpose of quantifying its TDS liability. However, the A.O declined to accept the aforesaid explanation of the assessee. It was observed by the A.O, that a perusal of the TDS certificate filed by the assessee revealed that his account was credited as on 03.05.2007 with an amount of Rs.1,97,97,510/-. Further, it was noticed by the A.O, that the aforesaid TDS certificate was stated to have been issued on 26.06.2008 and the date of deposit of tax was shown as 05.01.2008. On the contrary, It was observed by the A.O that as per "Form No. 26AS" filed by the assessee the date of deposit of

TDS was stated as 20.02.2009. In the backdrop of the aforesaid facts, the A.O was of the view that the TDS certificate filed by the assessee in "Form No.16A" was erroneous, incorrect and invalid. Observing, that the TDS claimed did not pertain to A.Y. 2008-09, the A.O was of the view that the same could not be considered during the year under consideration. On the basis of his aforesaid observations, the A.O was of the view that as the assessee was fully aware of the fact that his account had been credited with an amount of Rs.1,97,97,519/-, while for he had accounted for an amount of Rs.1,92,01,434/- in A.Y. 2007-08, therefore, he ought to have considered the differential amount of Rs. 5,96,085/- as his income for A.Y. 2008-09 on account of excess realization due to exchange rate difference. As such, the A.O considered the amount of Rs. 5,96,085/- as the income of the assessee for the year under consideration. Also, "business promotion expenses" of Rs.1,94,731/- which were claimed by the assessee were disallowed by the A.O and added to his total income. Further, taking cognizance of the fact that the assessee had failed to account for a sum of Rs. 2,455/- that was received by him as interest under Sec.244A on the Income Tax Refund for A.Y 2006-07, the A.O added the same to his returned income.

4. Aggrieved, the assessee inter alia assailed the aforesaid additions/disallowances before the CIT(A). As regards the addition made by the A.O on account of the impugned excess realization on account of exchange rate difference of Rs.5,96,085/-, it was averred by the assessee in the course of the quantum appellate proceedings, that as it had not realized any exchange rate difference of Rs.5,96,085/-, therefore, the A.O had erred in merely picking up the amount of Rs.1,97,97,519/- from the TDS certificate of M/s UTV Motion Pictures Mauritius Ltd. and taxing the said difference in the hands of the assessee. However, the CIT(A) did not find favour with the aforesaid claim of the assessee and sustained the addition of Rs.5,96,085/-, with a direction to the A.O to allow the corresponding credit of TDS of Rs.11,22,519/- that was deducted on the aforesaid amount. Also, the disallowance of "business promotion expenses" amounting to Rs.1,94,731/- and the addition made by the A.O of interest on Income Tax refund of Rs. 2,455/- was also sustained by the CIT(A). Accordingly, the CIT(A) after sustaining the aforesaid additions/disallowances partly allowed the appeal of the assessee.

5. After receiving the order of the CIT(A), the A.O called upon the assessee to explain as to why penalty may not be imposed on him as regards the aforesaid additions/disallowance as

were upheld by the CIT(A). As regards the explanation of the assessee that no penalty under Sec. 271(1)(c) was called for in his hands as regards the amount of Rs,5,96,085/- that was assessed as his income on account of excess realization on account of exchange rate difference, which thereafter had been confirmed by the CIT(A), the same did not find favour with the A.O. Accordingly, the A.O imposed penalty under Sec. 271(1)(c) on the aforesaid addition of Rs. 5,96,085/-. Also, the A.O not being persuaded to subscribe to the claim of the assessee that no penalty under Sec. 271(1)(c) was called for in respect of the remaining two additions/disallowances viz. (i). disallowance of business promotion expenses : Rs.1.94,731/-; and (ii). addition of interest on Income Tax refund : Rs.2,455/-, thus subjected the same to penalty under Sec. 271(1)(c).

6. Aggrieved, the assessee assailed the imposition of penalty under Sec.271(1)(c) before the CIT(A). Observing, that the assessee had failed to account for the differential amount of Rs.5,96,085/- as his income towards foreign exchange fluctuation gain during the year under consideration i.e A.Y. 2008-09, the CIT(A) was of the view that the assessee had concealed the particulars of his income to that extent. Accordingly, not finding favour with the contentions advanced by the assessee, the CIT(A) upheld the penalty imposed by the A.O under Sec. 271(1)(c) of the Act. Also, penalty that was imposed by the A.O as regards the remaining two other additions/disallowances viz. (i) disallowance of “business promotion expenses” : Rs.1,94,731/-; and (ii) addition of interest received of the Income tax refund: Rs.2,455/-, the same were also sustained by the CIT(A).

7. The assessee being aggrieved with the order of the CIT(A) has carried the matter in appeal before us. The ld. Authorized Representative (for short ‘A.R’) for the assessee at the very outset of the hearing of the appeal took us through the facts of the case. It was submitted by the ld. A.R, that the lower authorities were in error in imposing/sustaining penalty under Sec. 271(1)(c) in respect of the impugned additions made by the A.O viz.(i) addition of the impugned foreign exchange difference : Rs.5,96,085/-; (ii) disallowance of “business promotion expenses”: Rs.1,94,731/-; and (iii) addition of interest of Income tax refund: Rs.2,455/-. Adverting, to the additions made by the A.O in respect of the impugned excess realization of foreign exchange difference of Rs.5,96,085/-, it was submitted by the ld. A.R, that as the same pertained to the sale of IPR of its film “Yu Hota To Kya Hota” to M/s UTV Motion Pictures

Mauritius Ltd., which were duly disclosed and accounted for by the assessee in his "books of accounts" for A.Y. 2007-08, therefore, no penalty under Sec. 271(1)(c) in respect of the aforesaid duly disclosed sale transaction was called for in his hands. Insofar the disallowance of the 100% business promotion expenses of Rs.1,94,731/- was concerned, it was submitted by the ld. A.R that the expenses therein involved were incurred by the assessee in respect of the possible tie ups with the team of Turkish people for carrying out a co-production of a film whose shooting was to be done in India. It was submitted by the ld. A.R, that as the A.O while framing the assessment had merely inferred that the personal element involved in incurring of the aforesaid expenses could not be ruled out, therefore, it was in the backdrop of such presumptions that he had disallowed the aforesaid expenses. It was the claim of the ld. A.R, that no penalty under Sec. 271(1)(c) was liable to be imposed in respect of the aforesaid disallowance of expenses claimed by the assessee. As regards the addition of Rs.2,455/- made by the A.O in respect of interest on refund received by the assessee, it was submitted by the ld. A.R, that as the assessee had inadvertently omitted to account for the aforesaid interest income, therefore, no penalty under Sec.271(1)(c) merely for the said reason could have been validly imposed.

8. Per contra, the ld. Departmental Representative (for short 'D.R') relied on the orders of the lower authorities.

9. We have heard the authorised representatives for both the parties, perused the orders of the lower authorities and the material available on record. As is discernible from the orders of the lower authorities, the assessee during the period relevant to A.Y. 2007-08 had completed the production of a film titled "Yu Hota To Kya Hota". On the basis of an 'agreement', dated 15.03.2007, the IPR's of the said film were sold by the assessee (for the period upto 20.06.2022) for a sale consideration of USD 4,75,000 to M/s UTV Motion Pictures Mauritius ltd. Accordingly, the assessee had recorded the agreed 'Sale consideration' of Rs.1,92,01,434/- in his 'books of accounts' for the year ending 31.03.2007. As the aforesaid amount was not received by the assessee till the end of the aforesaid preceding year i.e up to 31.03.2007, therefore, the same was shown as 'Sundry debtor' in his 'balance sheet' for A.Y. 2007-08. Subsequently, the aforesaid amount was received by the assessee in the month of May, 2007. As per the "Form No. 26AS" filed by the assessee in the course of the assessment

proceedings, it was observed by the A.O that M/s UTV Motion Pictures Mauritius Ltd. had credited to the assesses account an amount of Rs.1,97,97,519/-, on which they have deposited TDS amounting to Rs.11,22,519/-.Observing, that the assessee had accounted for only an amount of Rs.1,92,01,434/- as sale consideration in the immediately preceding year i.e A.Y. 2007-08, the A.O called upon the assessee to put forth an explanation as regards the deficit amount of Rs.5,96,085/- [Rs.1,97,97,519/- (-) Rs.1,92,01,434/-]. As observed by us hereinabove, the assessee had submitted before the A.O, that the aforesaid difference of Rs.5,96,085/- was due to the variance in the "foreign exchange conversion rate" that was applied by UTV Motion Pictures Private Limited, for the limited purpose of computing the amount of its TDS liability. However, not finding favour with the aforesaid claim of the assessee, the A.O had added the said amount of Rs.5,96,085/- to the returned income of the assessee, and had thereafter subjected the same to levy of penalty under Sec.271(1)(c) of the Act. Apart therefrom, we find that the A.O not finding favour with the claim of the "business promotion expenses" which were stated to have been incurred by the assessee for his business purposes in "Turkey", had disallowed the entire claim of such expenses amounting to Rs.1,94,731/- and had added back the same to the total income of the assessee. Further, the A.O had imposed penalty under Sec. 271(1)(c) in respect of the aforesaid disallowance of "business promotion expenses". Also, the A.O had made an addition of the interest on Income Tax refund of Rs.2,455/- for A.Y 2006-07, that was received by the assessee during the year under consideration but was not accounted for by him in his total income for the year under consideration. Also, the A.O had imposed penalty under Sec. 271(1)(c) on the aforesaid addition of interest on Income Tax Refund of Rs. 2,455/-.

10. We have deliberated at length on the aforesaid issues as regards which the assessee had been saddled with penalty under Sec. 271(1)(c) of the Act, which thereafter had been confirmed by the CIT(A). We shall first advert to the addition on account of alleged "excess realisation of foreign exchange difference" of Rs.5,96,085/-, which had been subjected to levy of penalty under Sec.271(1)(c).On the basis of the facts discernible from the records, we find, that it has been the claim of the assessee that as per 'agreement' dated. 15.03.2007, he had only received USD 4,75,000 [i.e Rs.1,92,01,434/-] viz. (i) USD 25,000 received on 04.04.2007 (at a conversion rate of Rs.42.5133) :Rs. 10,62,834/-; and (ii) USD 4,50,000 received on

07.05.2007 (at a conversion rate of Rs.40.308/-) : Rs,1,81,38,600/-. On a perusal of the orders of the lower authorities, we find, that as the aforesaid sale consideration of USD 4,75,000 was not received by the assessee during the preceding year i.e A.Y. 2007-08, therefore, he had accounted for the same as his income on accrual basis in the said year. In fact, the aforesaid amount was received by the assessee in the month of May, 2007. On realising its mistake of not having deducted tax at source on the amount of USD 4,75,000 (i.e Rs.1,92,01,434/-) that was paid to the assessee company viz. (i) USD 25,000 paid on 04.04.2007 (at a conversion rate of Rs.42.5133):Rs. 10,62,834/-; and (ii) USD 4,50,000 paid on 07.05.2007 (at a conversion rate of Rs.40.308/-): Rs,1,81,38,600/-, M/s UTV Motion Pictures Mauritius Pvt. Ltd. had after applying the prevailing exchange rate of Rs.41.67899 worked out the rupee equivalent of USD 475,000 at Rs.1,97,97,519/- [USD415,000*41.67=Rs.1,97,97,519/-], and had deducted TDS of Rs.11,22,519/- on the said amount. Aforesaid amount of TDS of Rs. 11,22,519/- was thereafter deposited on 05.01.2008 by M/s UTV Motion Pictures Mauritius Pvt. Ltd. in the Government account, and a TDS certificate in "Form No. 16A", dated 26.06.2008 was issued to the assessee. It has been the claim of the assessee before the lower authorities, that he had not realised the "exchange rate difference" of Rs.5,96,085/-. Accordingly, it has been the claim of the assessee that the A.O had merely picked up the amount of Rs.1,97,97,519/- from the TDS certificate of M/s UTV Motion Pictures Mauritius Ltd. and taxed the difference i.e Rs. 5,96,085/- in his hands, overlooking the fact that no such exchange rate difference was ever realised by him. Be that as it may, we are of the considered view that the assessee had duly accounted for the sale consideration of USD 4,75,000 (i.e Rs.1,92,01,434/-) in his 'books of accounts' for the immediately preceding year i.e A.Y. 2007-08. In fact, the revenue has not been able to dislodge the claim of the assessee and therein conclusively prove that the difference of Rs.5,96,085/- was realised by the assesseee as part of the sale consideration. Accordingly, it has not been proved by the revenue that the aforesaid amount of Rs. 5,96,085/- was received by the assessee. As a matter of fact, we find that the claim of the assessee that he had not realised the "exchange rate difference" of Rs.5,96,085/- had not been dislodged by the lower authorities. On a perusal of the records, we find that as per F.I.R.C issued by the asseses's bank, it can safely be gathered that M/s UTV Motion Pictures Mauritius Ltd. while making the payments aggregating to Rs.1,92,01,434/- to the assessee on 04.04.2007 and 07.05.2007 had not deducted any tax at source. Realising, the failure on its part in not deducting tax at source, M/s

UTV Motion Pictures Mauritius Ltd. had thereafter by applying the prevailing exchange rate of Rs.41.678 on USD 475,000, had as on 03.05.2007 deducted TDS of Rs. 11,22,519/- on the Indian rupee equivalent amount of Rs.1,97,97,519/- [USD 475,000*41.678 USD]. Accordingly, TDS certificate in "Form No.16A" was thereafter issued to the assessee on 26.08.2008. Although, the impugned exchange rate difference of Rs.5,96,085/- supplementing the actual sale consideration of Rs.1,92,01,434/- had been brought to tax, however, in the totality of the facts of the case, we are of the considered view that the assessee could not have been subjected to penalty under Sec.271(1)(c) in respect of the aforesaid amount. As observed by us hereinabove, there is substance in the claim of the assessee that the difference of Rs.5,96,085/- had emerged, for the reason, that UTV Motion Pictures Mauritius Ltd. which had failed to deduct tax at source at the time of making the payment to the assessee i.e on 05.05.2007 and 07.05.2007, had thereafter for the limited purpose of deducting tax at source applied the aforesaid conversion rate of Rs.41.678 on the amount of USD 475,000 that was already paid to the assessee. We are of a strong conviction that as the aforesaid explanation of the assessee safely falls within the sweep of a plausible explanation, which had not been dislodged or disproved by the revenue till date, therefore, he could not have justifiably been saddled with levy of penalty under Sec.271(1)(c) in respect of the said amount. Accordingly, not finding favour with the view taken by the lower authorities, we set aside the penalty imposed by the A.O under Sec. 271(1)(c) on the impugned "excess realisation of foreign exchange" of Rs.5,96,085/-, which thereafter had been sustained by the CIT(A).

11. We shall now advert to the levy of penalty under Sec. 271(1)(c) on the disallowance of 'business promotion expenses' of Rs.1,94,731/- by the A.O. As observed by us hereinabove, the A.O had disallowed 100% of the "business promotion expenses" claimed by the assessee, which thereafter had been sustained by the CIT(A). As is discernible from the orders of the lower authorities, the 'business and promotion expenses' of Rs.1,94,731/- comprises of two parts viz. (i) the expenses incurred by the assessee through credit card payments in Turkey: Rs.89,964/-; and (ii) the expenses incurred by the assessee towards hotel bills in Turkey (through credit cards): Rs.1,04,767/-. It has been the claim of the assessee that the aforesaid expenses were incurred in respect of possible tie ups with the team of Turkish people for carrying out a co-production of a film whose shooting was to be carried out in India. However,

the A.O was of the view, that as the assessee during the year had not carried out any production activity of his own, and was in fact fully engaged in providing professional services to M/s Popcorn Motion Pictures Pvt. Ltd. for their film "Mission Istanbul", therefore, his aforesaid claim of expenses did not merit acceptance. In fact, the A.O was of the view that personal element involved in incurring of the aforesaid expenses could not be completely ruled out. Apart therefrom, the A.O had observed that the assessee could not justify his aforesaid claim of expenditure on the basis of any supporting evidence. In the backdrop of the aforesaid facts, we find that the disallowance of the assesse's claim of "business promotion expenses" is backed by a presumption that the same were in the nature of personal expenses. In our considered view, though the failure on the part of an assessee to substantiate the veracity of its claim of expense would justify an addition in his hands, however, merely on the said standalone basis he cannot be subjected to penalty under Sec.271(1)(c) of the Act. As a matter of fact, we find that the aforesaid claim of expenses had been disallowed by the A.O, for the reason, that the same had remained unproved by the assessee. We find that the **Hon'ble High Court of Bombay** in the case of **CIT Vs. Upendra V Mithani [ITA (L) No. 1860 of 2009, dated 0.08.2009]** had observed, that no penalty under Sec. 271(1)(c) can be imposed if the facts and circumstances are equally consistent with the hypothesis that the amount does not represent concealed income as with the hypothesis that it does. It was further observed by the Hon'ble High Court, that if the assessee gives an explanation which is unproved but not disproved, i.e it is not accepted but circumstances do not lead to the reasonable and possible inference that the assesse's case is false, then no penalty under Sec. 271(1)(c) could be imposed. On the basis of our aforesaid observations, we are of the considered view that a mere disallowance of the aforesaid unsubstantiated claim of 'business and promotion expenses' of the A.O, shorn of any material/evidence disproving the genuineness of such claim to the hilt, would thus not justify subjecting the same to imposition of penalty under Sec.271(1)(c). Accordingly, not finding favour with the view taken by the lower authorities, we vacate the penalty imposed by the A.O under Sec.271(1)(c) in respect of the disallowance of the 'business promotion expenses' aggregating of Rs.1,94,731/-.

12. We shall now advert to the levy of penalty by the A.O under Sec. 271(1)(c) on the addition of interest on Income tax refund of Rs.2,455/- pertaining to A.Y 2006-07, which was

received by the assessee during the year under consideration. As can be gathered from the orders of the lower authorities, the assessee had credited a sum of Rs.1,08,910/- in his 'Capital account' on account of Income tax refund received (including interest component) for A.Y.2006-07. As the assessee had failed to offer the interest portion of the aforesaid Income Tax refund amounting to Rs.2,455/- as his income in his return of income, therefore, the A.O had added the same to his returned income. Subsequently, the A.O had subjected the assessee to penalty under Sec. 271(1)(c) in respect of the aforesaid addition of interest on Income Tax Refund.

13. We have given a thoughtful consideration and are unable to subscribe to the imposition of penalty under Sec.271(1)(c) on the amount of interest of Rs.2,455/- received by the assessee on the Income Tax Refund for A.Y 2006-07 received during the year under consideration. As observed by us hereinabove, the assessee had credited his 'Capital account' for the year under consideration by the amount of the Income Tax Refund (including interest) of Rs.1,08,910/-. In our considered view, a mere bonafide omission on the part of the assessee to account for the interest portion of the refund (which though had duly been reflected in his 'Capital account'), would though have justified an addition to the said extent, however, a levy of penalty under Sec. 271(1)(c) merely for the said bonafide mistake would be totally unjustified. Our aforesaid view is fortified by the judgment of the **Hon'ble Supreme Court** in the case of **Price Waterhouse Coopers Pvt. Ltd. Vs. CIT (2012) 348 ITR 306 (SC).** We thus 'set aside' the penalty imposed by the A.O in respect of the addition of the Income Tax refund of Rs.2,455/-.

14. On the basis of our aforesaid observations, we vacate the penalty aggregating to Rs.2,44,811/- imposed by the A.O under Sec.271(1)(c), which thereafter had been sustained by the CIT(A).

15. Resultantly, the appeal filed by the assessee is allowed.

Order pronounced in the open court on 27.11.2019

Sd/-	Sd/-
(Pramod Kumar)	(Ravish Sood)
VICE PRESIDENT	JUDICIAL MEMBER

मुंबई Mumbai; दिनांक 27.11.2019
PS. Rohit

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

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

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)

आयकर अपीलीय अधिकरण, मुंबई / **ITAT, Mumbai**