

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCHES "G", MUMBAI**

**BEFORE SHRI S. RIFAUH RAHMAM (AM) AND SHRI RAM LAL NEGI (JM)**

**ITA No. 719/MUM/2019  
Assessment Year: 1995-1996  
&  
ITA No. 720/MUM/2019  
Assessment Year: 1996-1997**

Stock Traders Private Limited, 63, Sonawala Buildig, Bombay Samachar Marg, Fort, Mumbai PAN: AAACS7235A	<b>Vs.</b>	The Assistant Commissioner of Income Tax – 2(3)(2), Room No. 552, Aayakar Bhavan, Maharshi Karve Road, Mumbai
<b>(Appellant)</b>		<b>(Respondent)</b>

Assessee by : Shri Nitesh Joshi (Advocate)  
Revenue by : Shri V. Vinod Kumar (DR)

Date of Hearing: 14/10/2019  
Date of Pronouncement: 29/10/2019

**ORDER**

**PER RAM LAL NEGI, JM**

These appeals have been filed by the assessee against the two orders dated 05.11.2018 passed by the Commissioner of Income Tax (Appeals)-6 (for short 'the CIT(A), Mumbai, for the assessment years 1995-96 and 1996-97 respectively, whereby the Ld. CIT(A) has partly allowed the appeals filed by the assessee against the penalty orders passed u/s 271 (1) (c) of the Income Tax Act, 1961 (for short the 'Act'). Since, these appeals pertain to the same assessee and the issues involved are identical, these were clubbed, heard together and are being disposed of by this common and consolidated order for the sake of convenience.

**ITA No. 719/MUM/2019 (Assessment Year: 1995-1996)**

2. In this case, assessment order for the relevant assessment year u/s 143 (3) of the Act determining the total income of the assessee at Rs. 3,48,94,340/-.

The assessee challenged the assessment order before the Ld.CIT (A). The Ld.CIT (A) set aside the assessment order to the AO with the direction to examine the additional evidence brought on record by the assessee and to determine the issues afresh. Accordingly, the AO completed the assessment u/s 143 (3) confirming the income determined in original assessment after making addition of Rs. 45,09,637/- after making disallowance of professional fees paid to Preroy AG (PAG) with whom the assessee entered into agreement in January, 1995 for availing services and Rs. 9,33,988/- on account of disallowance of foreign travel expenses claimed. The AO initiated penalty proceedings on the basis of the said additions. In the first appeal, the Ld. CIT (A) confirmed the penalty in respect of addition made on account of disallowance of professional fees paid to PAG and deleted the penalty in respect of disallowance of expenses on foreign travel. Still aggrieved, the assessee is in appeal before the Tribunal.

3. The assessee has challenged the impugned order passed by the Ld. CIT (A) on the following effective grounds:-

*“In concluding that the Appellant has furnished inaccurate particulars of income by upholding the penalty levied by the learned Assessing Officer amounting to INR 2,074,433 under section 271 (1) (c) of the Act”.*

4. At the outset, the Ld. counsel for the assessee submitted that this issue is covered in favour of the assessee by the order of the ITAT in the assessee's own case for the assessment year 2003-04. The Ld. counsel further submitted that the ITAT has deleted the penalty imposed u/s 271 (1) (c) of the Act initiated on the basis of the similar addition made by the AO and the confirmed by the Ld. CIT (A) and the ITAT. The Ld. counsel further submitted that since this issue is covered in favour of the assessee by the order of the ITAT, the penalty imposed in the present case is not sustainable.

5. On the other hand, the Ld. Departmental Representative (DR) fairly admitted that in the assessee's own case the ITAT has deleted the penalty levied

on the similar addition. However, the Ld. DR supported the order passed by the Ld. CIT (A).

6. We have gone through the relevant material on record including the order passed by the coordinate Bench in assessee's own case, ITA No. 3297/Mum/2009 for the AY 2003-04 dated 15.02.2019. As pointed out by the Ld. counsel for the assessee, the coordinate Bench has deleted the penalty levied u/s 271 (1) (c) of the Act on the basis of similar addition on legal ground as well as on merits. The observations of the coordinate Bench reads as under:-

*"17. We have considered rival submissions and perused material on record. At the outset, we propose to deal with the issue raised by the learned Counsel for the assessee. On a careful perusal of the assessment order for the impugned assessment year, it is very much clear that the Assessing Officer has initiated proceedings for imposition of penalty under section 271(1)(c) of the Act alleging filing of inaccurate particulars of income by the assessee. However, in the penalty order passed, the Assessing Officer has imposed penalty under section 271(1)(c) of the Act under both the limbs i.e., concealment of income and furnishing of inaccurate particulars of income. Even in the show cause notice issued under section 271(1)(c) r/w section 274 of the Act, the Assessing Officer has not specified the specific limb under which he intends to impose penalty under section 271(1)(c) of the Act. Thus, from the aforesaid factual position, it is very much clear that the Assessing Officer himself was not sure about the nature of offence/violation committed by the assessee. Therefore, the Assessing Officer has imposed penalty under section 271(1)(c) of the Act on a ground other than the ground on which he had initiated proceeding for imposition of penalty under section 271(1)(c) of the Act. That being the case, as per the ratio laid down by the Hon'ble Jurisdictional High Court in case of Samson Perinchery (supra), the penalty order passed under section 271(1)(c) of the Act is invalid.*

18. Even otherwise also, the penalty imposed under section 271(1)(c) of the Act is unsustainable. As discussed earlier, out of the four disallowances made by the Assessing Officer in the assessment order on the basis of which penalty under section 271(1)(c) of the Act was imposed, disallowances relating to business service centre and telephone expenses have been set aside by the Tribunal to the Assessing Officer for *denovo* adjudication. That being the case, penalty imposed under section 271(1)(c) of the Act on the aforesaid two additions would not survive. As regards disallowance of professional fees paid to PAG, it is evident that such disallowance was sustained by the Tribunal relying upon its own decision for the preceding assessment years. However, it is worth mentioning that in the assessment order passed in case of PAG for the impugned assessment year, the Assessing Officer has not only assessed the payment received by it from the assessee but has also observed that PAG has rendered technical service to the assessee. Therefore, merely because the deduction claimed by the assessee on account of fees paid to PAG was disallowed on certain reasonings, it cannot be said that the assessee has either furnished inaccurate particulars of income or concealed its income. More so, when the fact of payment made to PAG has not been disputed. in the aforesaid view of the matter, imposition of penalty under section 271(1)(c) of the Act in respect of disallowance arising from payment of professional fees to PAG would not survive. It is also relevant to observe, though, similar disallowance was made in the assessment years 1997-98 to 2001-02 and was sustained by the Tribunal, however, the Assessing Officer has never initiated penalty proceedings under section 271(1)(c) of the Act on such disallowances which gives credence to the fact that while claiming such expenditure, the assessee has neither concealed its income nor furnished inaccurate particulars of income. As regards penalty imposed on the disallowance of foreign travel expenditure, there is no dispute that such expenditure was incurred towards the foreign travel of the wife of director. Though, it may be a fact that in assessee's own case, the Tribunal has sustained the disallowance by holding that the expenditure incurred is not for the purpose of

*business, however, in case of Alfa Laval India Ltd. (supra), the Hon'ble Jurisdictional High Court has held such expenditure to be for the purpose of business, hence, allowable for deduction. Thus, as could be seen, there are divergent views on this issue. That being the case, the assessee cannot be alleged of furnishing inaccurate particulars of income or concealing its income while claiming such deduction. In view of the aforesaid, we delete the penalty under section 271(1)(c) of the Act for the impugned assessment year.”*

7. Since, the coordinate Bench has decided the identical issue in favour of the assessee in assessee's own case for the AY 2003-04 aforesaid and since there is no change of facts in the present case, we do not find any reason to take a different view other than the one already taken by the coordinate Bench in the assessee's own case for the AY 2003-04. Hence, respectfully following the decision of the coordinate Bench rendered in the assessee's own case discussed above, we allow the sole ground of appeal of the assessee and set aside the decision of the Ld. CIT (A). Accordingly, we direct the AO to delete the penalty levied u/s 271 (1) (c) of the Act.

**ITA No. 720/MUM/2019 (Assessment Year: 1996-1997)**

The facts and the issues involved in the present case are identical. Hence, we do not consider it necessary to reproduce the same. In the present case also, the Ld. CIT (A) confirmed the penalty levied on the addition made on account of the professional fees paid to PAG and deleted the penalty levied on account of disallowance of foreign travel expenses.

2. The assessee has challenged the impugned order passed by the Ld. CIT (A) on the following effective grounds:-

*“In concluding that the Appellant has furnished inaccurate particulars of income by upholding the penalty levied by the learned Assessing Officer amounting to INR 4,622,881 under section 271 (1) (c) of the Act”.*

3. Since, the facts and the issue involved in the present case are identical to the facts and issue involved in the assessee's own case for the AY 1995-96 and since we have allowed the appeal of the assessee pertaining to the assessment year 1995-96 and deleted the penalty levied u/s 271 (1) (c) of the Act by following the decision of the coordinate Bench rendered in the assessee's own case for the AY 2003-04, our findings in the assessee's appeal for the AY 1995-96 shall apply *mutatis mutandis* for the assessment year 1996-97. Accordingly, we direct the AO to delete the penalty levied u/s 271 (1) (c) of the Act.

In the result, appeals filed by the assessee for assessment years 1995-96 and 1996-97 are allowed.

Order pronounced in the open court on 29<sup>th</sup> October, 2019.

Sd/-  
(S. RIFAUR RAHMAN)  
ACCOUNTANT MEMBER

Sd/-  
(RAM LAL NEGI)  
JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated: 29/10/2019

Alindra, PS

**आदेश 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.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

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