

**IN THE INCOME TAX APPELLATE TRIBUNAL "A", BENCH  
MUMBAI**

**BEFORE SHRI MAHAVIR SINGH, JM  
&  
SHRI M.BALAGANESH, AM**

**ITA No.6631/Mum/2018  
(Assessment Year : 2011-12)**

M/s. Lift & Shift India Pvt. Ltd., 96, Chembur Mankhurd Link Road, Shivaji Nagar Mumbai – 400 043	Vs.	Deputy Commissioner of Income Tax, Central Circle 7(1) Mumbai
<b>PAN/GIR No. AACCB6406A</b>		
<b>(Appellant)</b>	..	<b>(Respondent)</b>

Assessee by	Ms. Sindhu Giresh Bagwe
Revenue by	Shri Michael Jerald
<b>Date of Hearing</b>	<b>07/01/2020</b>
<b>Date of Pronouncement</b>	<b>15/01/2020</b>

**आदेश / ORDER**

**PER M. BALAGANESH (A.M):**

This appeal in ITA No.6631/Mum/2018 for A.Y.2011-12 arises out of the order by the Id. Commissioner of Income Tax (Appeals)-49, Mumbai in appeal No.CIT(A)-49/IT-58/2017-18 dated 20/08/2018 (Id. CIT(A) in short) in the matter of imposition of penalty u/s.271(1)(c).

2. The only issue involved in this appeal is as to whether the Id. CIT(A) was justified in upholding the levy of penalty u/s.271(1)(c) of the Act in the facts and circumstances of the case.

3. We have heard rival submissions. We find that assessee is engaged in the business of heavy transportation for which it had imported equipments by availing buyers credit facility from bank. The exchange rate difference between the date of import and the actual date of payment resulted in loss and the same was claimed by the assessee as revenue expenditure on a bonafide belief by placing reliance on the decision of the Hon'ble Supreme Court in the case of Indian Cements Ltd. vs. CIT reported in 60 ITR 52 (SC) wherein it was held that the purpose for which the funds have been utilised is not relevant. The entire factual matrix of assessee availing buyers credit facility from bank for importing equipments together with the workings for exchange rate difference thereon were duly placed on record before the lower authorities. During the course of proceedings, the assessee understood that since the exchange rate difference arose on account of import of equipments which were capital in nature and accordingly, agreed to the contention of the Id. AO that the exchange loss thereon should also add to the cost of depreciable asset. Accordingly, no appeal was preferred by the assessee

against the quantum disallowance made by the Id. AO. We find from the penalty order passed by the Id. AO u/s.271(1)(c) of the Act dated 30/03/2017 that ultimately, the penalty was levied for concealment of income by the Id. AO. We find that the entire factual matrix of arriving at the exchange fluctuation loss has been voluntarily and duly placed on record by the assessee in the return of income and in subsequent furnishing of details during the course of assessment proceedings and also the bonafide belief of the assessee by placing reliance on the decision of Hon'ble Supreme Court in the case of Indian Cements referred to supra. Hence, there cannot be any concealment of income that could be alleged on the assessee by the Id. AO warranting levy of penalty merely because the assessee had agreed to the quantum addition. If the contention of the revenue is to be accepted, then in every case wherever addition / disallowance has been made, it would automatically result in levy of penalty u/s 271(1)(c ) of the Act which would admittedly ignore the principles of bonafide belief and understanding of laws of the assessee. In these facts and circumstances, we have no hesitation in directing the Id. AO to cancel the levy of penalty in the sum of Rs.2,43,607/- u/s.271(1)(c) of the Act. Accordingly, the grounds raised by the assessee are allowed.

**4. In the result, appeal of the assessee is allowed.**

Order pronounced in the open court on this 15/01/2020

**Sd/-**  
**(MAHAVIR SINGH)**  
JUDICIAL MEMBER

**Sd/-**  
**(M.BALAGANESH)**  
ACCOUNTANT MEMBER

Mumbai; Dated 15/01/2020  
KARUNA, *sr.ps*

**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar)  
ITAT, Mumbai