



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

**BEFORE SHRI R.C. SHARMA, ACCOUNTANT MEMBER &
SHRI RAM LAL NEGI, JUDICIAL MEMBER**

ITA NO.4269/MUM/2016	:	A.Y : 2003-04
M/s. Atcom Technologies Ltd 6A, Lalwani Industrial Estate 14, G.D. Ambedkar Road Wadala, Mumbai – 400 031	vs.	The Dy. Commissioner of Income Tax Circle-6(1), Aaykar Bhavan M.K.Road, Mumbai - 400020
PAN NO:AABC2058C		

**Assessee by : Shri Jayesh Dadia
Revenue by : Shri Michael Jerald**

**Date of Hearing : 06/12/2019
Date of Pronouncement : 27/02/2020**

ORDER

PER R.C. SHARMA, ACCOUNTANT MEMBER

This is an appeal filed by the assessee against the order of CIT(A)-12, Mumbai in appeal No.CIT(A)-12/IT 86/DCIT 6(1)(1)/2014-15 dated 01/03/2016 for A.Y.2003-04 in the matter of imposition of penalty u/s.271(1)(c) of the IT Act.

2. In this appeal assessee is aggrieved for penalty of Rs.2,53,25,760/- imposed by the AO u/s.271(1)(c) of the IT Act.

3. Rival contentions have been heard and record perused. Facts in brief are that assessee is a limited company engaged in the business of manufacturing of retail automation products, components and services, polycarbonate bottles and plastic articles. Assessee filed return of income for the impugned assessment year 2003 - 2004 on 28-11-2003 and the same was revised on 01-12-2003 declaring the total loss of Rs.34,96,20,610/-. The Assessing officer passed the order u/s

143(3) assessing the total loss at Rs.11,11,52,561/- as against Rs.34,06,20,610/- as claimed by the Assessee. The Assessing officer made the following disallowances, amongst other:

a. Disallowance of Rs.3,51,55,074/- being interest capitalised on advance paid to Shree Siddhivinayak Builders, claimed in the profit and loss account.

b. Disallowance of interest of Rs.3,37,58,560/- claimed in profit and

4. The CIT(A) vide order 26-12-2007 confirmed the disallowance. On further appeal, the Tribunal vide order dt.06-11-2013 confirmed the CIT(A) order. The Assessing officer thereafter, levied penalty u/s 271 (1)(c) of Rs.2,53,25,760/- vide order dt:22-05-2014.

5. By the impugned order, CIT(A) confirmed the order of the AO imposing the penalty.

6. Before us assessee has alleged penalty so imposed u/s.271(1)(c) on the ground of limitation under proviso to Section 271A, also on merit of the penalty so imposed.

7. We have considered rival contentions and carefully gone through the orders of the authorities below and found from record that the assessee had paid Rs.7,88,90,000/- as advance to Shree Siddhivinayak Builders towards purchase of immovable property. The interest for A.Y. 1997-98 to 1999-2000 on the money borrowed were capitalised in the books of account and were included in the work-in-progress of Rs.3,51,55,074/-. However, there was huge delay in the project and the disputes arose with the builders. Finally, the transaction did not

materialise and hence, the assessee wrote off the interest in the Profit and loss account in the impugned assessment year.

8. However, in the revised return, the assessee had made a specific disclosure of above fact that the interest pertains to earlier years and has been written off during the year as the project did not materialize. Alternatively, it was claimed that the expenses may be allowed in the respective years. The amount given to Shree Siddhivinayak Builders was just an advance. The assessee is not itself constructing an asset.

9. The disallowance has been confirmed on the ground that the assessee is following mercantile system of accounting. The Tribunal has given a specific finding that the interest is allowable in earlier years.

10. From the record we found that expenses were crystallized during the year, therefore penalty is not imposable for the amount claimed during the year under consideration on the ground of crystallisation.

11. AO has also levied penalty with regard to disallowance of Rs.3,37,58,560/-. From the record we found that assessee had paid a sum of Rs.7,18,35,000/- to Saraldisha Investments in AY. 2000-2001 as advance to acquire shares of one of its subsidiary company Atco Healthcare Ltd. The assessee could not get the shares and hence it was treated as loan. The Assessing officer disallowed the corresponding interest u/s 36(1)(iii) on the ground that it was not utilised for business purpose.

12. With regard to both the disallowances we found that all the claims and figures are noticeable and available on record, it cannot be said that

the assessee had falsely supplied or given inaccurate particulars of income or that it had concealed particulars of income.

13. As per our considered view, the penalty proceeding can be initiated on two charges i.e. (1) concealment of particulars of income and (2) furnishing of inaccurate particulars of income. There must be a clear finding about the charge of penalty

14. In the instant case, whatever claim in the accounts and submitted during the course of assessment and appellate proceedings are found to be correct. Therefore, mere disallowance of assessee's claim cannot be equated with filing of inaccurate particulars. Moreover, the assessee has given explanation of its allowability during the course of assessment as well as in the appellate proceedings. Therefore, if the explanation has not been accepted by the AO and the appellate authorities, this does not lead to levy of concealment penalty.

15. Furthermore, there is nothing to suggest that claim was malafide. In view of the above, we do not find any merit for the penalty so imposed with regard to disallowance of assessee's claim of interest written off and the expenses which were claimed on crystallization.

16. In the result, appeal of the assessee is allowed.

Order pronounced in the open court on this 27/02/2020

**Sd/-
(RAM LAL NEGI)
JUDICIAL MEMBER**

**Sd/-
(R.C.SHARMA)
ACCOUNTANT MEMBER**

Mumbai; Dated 27/02/2020
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.

सत्यापित प्रति //True Copy//

BY ORDER,

(Asstt. Registrar)

ITAT, Mumbai