

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

**BEFORE SHRI VIKAS AWASTHY (JUDICIAL MEMBER) AND
SHRI AMARJIT SINGH (ACCOUNTANT MEMBER)**

**ITA No. 7806/MUM/2019
Assessment Year: 2000-01**

Travel Corporation (India) Ltd.
[now merged with Thomas
Cook (India) Ltd.],
B Wing, 13th floor, Marathon
Furthex, N.M. Joshi, Marg,
Lower Parel (East),
Mumbai-400013.

PAN No. AAAC 6856 C

Appellant

Vs. Dy. CIT-3(3)(1),
Room No. 668-B, 6th floor,
Aayakar Bhavan, M.K. Road,
Mumbai-400020.

Respondent

Assessee by : Mr. Ketan Ved, AR
Revenue by : Mr. Sanjeev Kashyap, DR

Date of Hearing : 08/12/2021
Date of pronouncement : 20/12/2021

ORDER

PER AMARJIT SINGH, A.M.

The solitary ground of appeal of the assessee is directed against the decision of Ld. CIT(A)-8, Mumbai in sustaining the penalty u/s 271(1)(c) of the Act of ₹16,97,850/- levied by the Assessing Officer.

2. The fact in brief is that the assessee has filed return of income in the year under consideration on 30.11.2000 declaring total income at ₹2,47,56,080/-. The case was subject to scrutiny assessment and order u/s 143(3) of the Act

was passed on 27th March 2003 determining total income at ₹3,08,28,382/- after making disallowance of ₹44,10,000/- towards payment for development of software. The issue pertaining to the aforesaid addition was travelled up to ITAT and the ITAT vide order dated 18th September 2009 set aside the issue to the file of Assessing Officer for afresh examination in the light of the Special Bench decision in the case of M/s Amway India Enterprises 301 ITR 80. Thereafter, the AO has passed order dated 30th September 2010 wherein the Assessing Officer has rejected the claim of deduction of ₹44,10,000/- towards payment for development of software. Subsequently, the assessee has contested this issue before the Ld. CIT(A) and the ITAT. However, the appeal of the assessee was dismissed by the ITAT.

3. The AO has also initiated penalty u/s 271(1)(c) of the Act. The Assessing Officer was of the view that expenditure claimed by the assessee was of capital in nature and assessee had furnished inaccurate particulars of income by claiming the same as Revenue expenditure. Therefore, the penalty u/s 271(1)(c) of the Act to the amount of ₹16,97,850/- was levied for furnishing inaccurate particulars of income.

4. Aggrieved, the assessee filed appeal before the Ld. CIT(A), the Ld. CIT(A) has dismissed the appeal of the assessee. During the course of appellate proceedings before us, the Ld. counsel has filed paper book comprising details and copies of document furnished before the Assessing Officer and the Ld. CIT(A) during the course of assessment and appellate proceedings. The Ld. counsel referred page No. 2 of the Paper Book and contended that in the notes to the computation of total income the assessee has categorically mentioned at point No. 4 in its claim of legal and professional charges that an amount of

₹44,10,000/- was pertained to software development expenses which was abandoned for technical reason. Therefore, the Ld. counsel submitted that the assessee has not submitted any inaccurate particulars of income. The Ld. counsel has also referred the other pages of Paper Book pertaining to the accounts of the assessee-company showing that it has disclosed the complete particulars of income of the assessee-company. The Ld. counsel has also placed reliance on the decision of Hon'ble Supreme Court of India in the case of *CIT v. Reliance Petroproducts (P) Ltd.* [2010] 322 ITR 158 (SC)].

5. On the other hand, the Ld. DR has supported the order of lower authorities.

6. Heard both the sides and perused the material on record. Without reiterating the facts as elaborated above in the set aside assessment proceedings, the Assessing Officer has disallowed the claim of deduction of ₹44,10,000/- made by the assessee towards payment for development of software. The Assessing Officer observed that nature of expenditure was of capital nature and assessee had furnished inaccurate particulars of income by claiming the same as Revenue expenditure. Therefore, levied penalty u/s 271(1)(c) of the Act. On perusal of the material on record, it is noticed that the assessee had entered into a contract with Chrysalis Information System Ltd. (CISL) to develop a package tour and accounting software as per assessee's requirement. However, the said referred contractor failed to deliver the required software within the stipulated time, therefore, the assessee-company has abandoned the project to avoid further expenditure. Consequently, the assessee has written off the software development advance given to the contractor in its books of account. The assessee has demonstrated from the

material placed in the paper book that it had made full disclosure of all the points and particular of its claim in the computation of income and also furnished the complete particulars during assessment proceedings. It is clear from the relevant evidences placed in the record that assessee has merely made a claim of expenditure, however, the same was not admissible in law and the assessee has furnished the complete particulars of the nature of claim made by it. The Assessing Officer has failed to controverted the submission of the assessee that it has furnished the complete particulars of its claim made in the notes to return of income and during the course of assessment. The assessee has relied upon the decision of *Reliance Petroproducts (P) Ltd. (supra)*. With the assistance of the Ld. Representative, we have gone through the above referred decision of the Hon'ble Supreme Court wherein it is held that a mere making of claim, which is not sustainable in law, by itself, will not amount to furnishing inaccurate particulars regarding the income of the assessee. Such a claim made in the return cannot amount to furnishing inaccurate particulars. In the light of the facts as discussed above and following the decision of Hon'ble Supreme Court in the case of *Reliance Petroproducts (P) Ltd. (supra)*, we consider that decision of the Ld. CIT(A) in sustaining the penalty levied in the case of the assessee is not justified. Therefore, we direct the AO to delete the impugned penalty. Accordingly, grounds raised by the assessee is allowed.

7. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open Court on 20/12/2021.

Sd/-
(VIKAS AWASTHY)
JUDICIAL MEMBER

Sd/-
(AMARJIT SINGH)
ACCOUNTANT MEMBER

Mumbai;

Dated: 20/12/2021.

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