

**IN THE INCOME TAX APPELLATE TRIBUNAL “H” BENCH, MUMBAI**

**BEFORE SHRI AMARJIT SINGH, JM AND SHRI S. RIFAUR RAHMAN, AM**

आयकर अपील सं/ I.T.A. No. 7278/Mum/2019

(निर्धारण वर्ष / Assessment Year: 2009-10)

DCIT-4(3)(2) Room No.649, 6 <sup>th</sup> Floor, Aayakar Bhavan, Mumbai- 400020.	<b>बनाम/</b> Vs.	SKF India Ltd. 5 <sup>th</sup> Floor, M.G.M. Building, Netaji Subhash Road, Charni Road, Mumbai-400002.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAACS0684H		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)
Assessee by:	Shri R. P. Papat	
Revenue by:	Mrs. Neha Thakur (DR)	

सुनवाई की तारीख / Date of Hearing: 28/03/2022

घोषणा की तारीख /Date of Pronouncement: 28/04/2022

**आदेश / ORDER**

**PER AMARJIT SINGH, JM:**

The revenue has filed the present appeal against the order dated 23.09.2019 passed by the Commissioner of Income Tax (Appeals) -9, Mumbai [hereinafter referred to as the “CIT(A)”] relevant to the A.Y.2009-10 in which the penalty levied by the AO has been ordered to be deleted.

2. The revenue has raised the following grounds: -

“1. On the facts and in the circumstances of the case, the Learned CIT(A) is right in directing to delete the penalty levied u/s 271(1(c) of the I. T. Act. 1961 without appreciating the fact that the assessee failed to follow inclusive method of accounting as prescribed u/s 145A of the I. T. Act resulting into adjustment of Rs.4,10,30,720/-



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*which is reduction in taxable income by the assessee amounting to furnishing of inaccurate particulars of income within the meaning of provision u/s 271(1)(c) of the I. T. Act.*

*2. The appellant craves leave to amend or alter any ground/or add new grounds which may be necessary.”*

3. The brief facts of the case are that the assessment u/s 143(3) of the Act was completed on 22.03.2013 assessing the total income to the tune of Rs.165,27,38,230/- against the returned income of Rs.159,81,12,005/-. While completing the assessment, additions on account of adjustments of Rs.4,10,30,720/- u/s 145A of the Act, disallowance of club expenses of Rs.14,05,566/-, disallowance of claim of bad debts of Rs.6,94,158/- and non-reconciliation of Rs.1,14,95,779/- of AIR/ITS details were made. Consequent to the aforesaid additions/disallowances made to the income of the assessee, the penalty proceeding was initiated. Notice was issued and after the reply of the assessee, the penalty to the tune of Rs.1,55,37,451/- levied u/s 271(1)(c) of the Act. Feeling aggrieved, the assessee filed an appeal before the CIT(A) who deleted the penalty, therefore, the revenue has filed the present appeal before us.

### **ISSUE NO.1**

4. Under this issue the revenue has challenged the deletion of penalty with regard to adjustment of Rs.4,10,30,720/- u/s 145A of the Act. The Ld. Representative of the revenue has argued that the AO has rightly passed the order, therefore, the finding of the CIT(A) is not justifiable, hence, is liable to be set aside. However, on the other hand, the Ld. Representative of the assessee has strongly relied upon the order passed by the CIT(A) in



question. Before going further, we deem it necessary to advert the finding of the CIT(A) on record:

*“4.3.2 I have perused the penalty orders for A.Y. 2005-06 and 2006-07 in the case of the appellant. I have also verified the audit report, financial and notes of account. It is seen that necessary information in respect of cenvat credit, purchases and sales provided by the appellant in the return of income. The appellant is following method prescribed by the ICAI for accounting of purchases as well as sale. The addition has been made by the AO merely because of difference of opinion about the method of accounting of purchase and sales and more particularly the cenvat credit available to the appellant. The AO’s argument that the appellant’s act of not reporting its income on account of cenvat credit available in line with the assessment made by the AO over the years is resulting into filing of inaccurate particulars of income doesn’t appears to be fair and as per Law. The appellant is legally entitled to follow a method of accounting which it is consistently following even though the same has not found favour with the AO.*

*4.3.3. In order to appreciate the issue in proper perspective, the relevant provisions of section 271(1)(c) of the Act, are reproduced here-in-below:*

*“Failure to furnish returns, comply with notices, concealment of income, etc. Section 271:*

*(1) If the Assessing Officer or the Commissioner (Appeals) or the Commissioner in the course of any proceedings under this Act, is satisfied that any person*



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*(c) has concealed the particulars of his income or furnished inaccurate particulars of such income, he may direct that such person shall pay by way of penalty - ;*

*Explanation I where in respect of any facts material to the computation of the total income of any person under this Act*

*(A) Such person fails to offer an explanation or offers an explanation which is found by the Assessing Officer or the Commissioner (Appeals) or the Commissioner to be false. Or*

*(B) Such person offers an explanation which he is not able to substantiate and to prove that such explanation is bone fide and that all the facts relating to same and material to the computation of his total income have been disclosed by him*

*Clause A of the Explanation applies when an assessee fails to furnish any explanation or when an explanation is found to be false.*

*Further, sub-clause (B) to the explanation provides for examination of two conditions; i.e. (i) the assessee has been able to show his explanation was bonafide and (ii) he had furnished facts relevant and material to the computation of his income.*

*4.3.4 Following are the settled principles laid down in various judicial precedents including Hon'ble Supreme Court in relation to the penalty proceedings:*

*(a) Findings recorded in the quantum proceedings are relevant but it one on follow that every addition justifies and compulsorily mandates impose penalty.*



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*(b) Subject matter in the assessment proceedings is computation of correct income as per the Act, whereas, the subject matter of the penalty proceedings is the conduct of the assessee i.e. concealment or furnishing of inaccurate particulars of income which has resulted in additions in the quantum proceedings.*

*(c) If the assessee discloses all the relevant details in the return of income and does not conceal or tries to camouflage the nature of expense, then penalty u/s. 271(1)(c) of the Act is not exigible.*

*(d) Levy of penalty is not an automatic consequence when an addition is made by disallowing an expense and by not accepting the interpretation given by the assessee,*

*(e) Merely, making a claim which is held as not sustainable under law should not lead to penalty, when the assessee had furnished full details in the return of income and the claim is reasonably plausible.*

*4.3.5 In the instant case, the appellant has disclosed all material facts. Merely, accounting of purchases and sales in certain manner which is disproved by tie, - AO, even though the same is a valid way of representation of profits should not lead to penalty, when the assessee had furnished full details in the return of income and the method of accounting is reasonably plausible.*

*4.3.6 In the case of CIT vs. Reliance Petroproducts Pvt. Ltd., (322 ITR 158), the Hon'ble Supreme Court has held that penalty u/s. 271(1)(c) cannot be imposed for making unsustainable claims.*

*4.3.7 The relevant extract of the said Supreme Court decision is reproduced as under:-*



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*“We do not agree, as the assessee had furnished all the details of its expenditure as well as income in its Return, which details, in themselves, were not found to be inaccurate nor could be viewed as the concealment of income on its part. It was up to the authorities to accept its claim in the Return or not. Merely because the assessee had claimed the expenditure, which claim was not accepted or was not acceptable to the revenue, that by itself would not, in our opinion, attract the penalty under section 271(1)(c). If we accept the contention of the revenue then in case of every Return where the claim made is not accepted by Assessing Officer for any reason, the assessee will invite penalty under section 271(1)(c). That is clearly not the intendment of the Legislature.”*

*4.3.8 In view of the above discussion, the penalty u/s. 271(1)(c) levied in respect of the adjustment of Rs. 4,10,30,720/- made u/s. 145A of the Act is deleted.”*

**5.** On appraisal of the above mentioned finding, we noticed that the assessee was following the consistent method prescribed by the ICAI for accounting of purchases as well as sales. The addition raised by AO because of difference of opinion about the method of accounting of purchase and sale and more particularly the cenvat credit to the appellant. The contention of the AO is that the assessee’s act for not reporting its income on account of cenvat credit available in line with the assessment made by the AO over the years is resulting into filing of inaccurate particulars of income which nowhere seems justifiable. The appellant was consistently following the method of accounting. Merely following the different method of accounting nowhere leads to the penalty. The CIT(A) has also placed reliance upon the decision in the case of **CIT Vs. Reliance**



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**Petroproducts Pvt. Ltd. (322 ITR 158).** No penalty is justifiable specifically in the circumstances, when there is no concealment of income nor any furnishing inaccurate particulars of income. The assessee disclosed all the material facts before the AO. The adoption of specific method of accounting adopted by the assessee leads nowhere imposition of penalty, hence, we are of the view that the finding of the CIT(A) is quite justifiable which is not liable to be interfered with at this appellate stage. Accordingly, this issue is decided in favour of the assessee against the revenue.

6. In the result, the appeal filed by the revenue is hereby dismissed.

Order pronounced in the open court on 28/04/2022

Sd/-

(S. RIFAUR RAHMAN)

लेखा सदस्य / ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated : 28/04/2022

Vijay Pal Singh, (Sr. PS)

Sd/-

(AMARJIT SINGH)

न्यायिक सदस्य/JUDICIAL MEMBER

**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.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

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