

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

**BEFORE SHRI KULDIP SINGH, JUDICIAL MEMBER  
AND  
SHRI S. RIFAUR RAHMAN, ACCOUNTANT MEMBER**

**ITA Nos.2050 & 3175/M/2019  
Assessment Years: 2002-03 & 2004-05**

Dy. CIT-10(2)(1), 5 <sup>th</sup> Floor, Room No.509, Aayakar Bhavan, Churchgate, Mumbai - 400020	Vs.	M/s. Lyka Labs Ltd., Ground Floor, Spencer Building, 30, Forjett Street, Grant Road West, Mumbai – 400 036 <b>PAN: AAACL0820G</b>
(Appellant)		(Respondent)

**Present for:**

Assessee by : Shri Jayesh Dadia, A.R.  
Revenue by : Shri Manoj Sinha, D.R.

Date of Hearing : 08 . 09 . 2022  
Date of Pronouncement : 27 . 09 . 2022

**O R D E R**

**Per : Kuldip Singh, Judicial Member:**

For the sake of brevity aforesaid interconnected appeals bearing common question of law and facts are being taken up for disposal by way of composite order.

2. The appellant, Dy. CIT-10(2)(1), Mumbai (hereinafter referred to as 'the Revenue') by filing the present appeals, sought to set aside the impugned orders dated 31.01.2019 & 26.03.2019 passed by Commissioner of Income Tax (Appeals)-17, Mumbai [hereinafter referred to as the CIT(A)] qua the assessment years

2002-03 & 2004-05 respectively on identically worded grounds except the difference in figures inter alia that:-

***“1. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in deleting the penalty amounting to Rs.2,64,18,000/- & Rs.7,17,50,000/- for A.Y. 2002-03 & 2004-05 levied u/s 271(l)(c) of the Income-tax Act, 1961, ignoring the fact that nature of receipts received on account of Brand, Trade Mark, Marketing know-how is no more debatable after the amendment in section 55(2) of Income-tax Act, 1961 w.e.f 01-04-2002.”?***

***4. The appellant prays that the order of the Ld.CIT(A) on the above grounds be set aside and that of the AO be restored.***

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

2. Briefly stated facts necessary for adjudication of the controversy at hand are : On the basis of assessment framed under section 143(3) of the Income Tax Act, 1961 (for short ‘the Act’) at nil income after adjusting the brought forward unabsorbed losses Assessing Officer (AO) rejected the claim of assessee and brought to tax the amount of Rs.7.40 crore under the head “capital gain” and also alternatively taxed as revenue receipt under section 28(iv) of the Act, penalty proceedings under section 271(1)(c) of the Act were initiated for concealment of income/furnishing of inaccurate particulars of income. Declining the contentions raised by the assessee that “it has not filed any inaccurate particulars of income rather assessee has shown the consideration received as a capital receipt which was not capital but a revenue receipt” AO proceeded to levy the penalty to the tune of Rs.2,64,18,000/- & Rs.7,17,50,000/- @ 100% of the tax sought to be evaded under section 271(1)(c) of the Act respectively.

3. Assessee carried the matter before the Ld. CIT(A) by way of filing appeal who has deleted the penalty by accepting the appeals

filed by the assessee. Feeling aggrieved the Revenue has come up before the Tribunal by way of filing present appeals.

4. Ld. D.R. for the Revenue challenging the impugned orders passed by the Ld. CIT(A) contended that when assessee has apparently concealed the facts during assessment the AO has rightly levied the penalty and thereby relied upon the penalty order passed by the AO.

5. However, on the other hand, the Ld. A.R. for the assessee contended that there was no occasion for the assessee to conceal the income/ furnishing of inaccurate particulars of income rather entire facts have been brought on record and further contended that in the identical facts and circumstances of the case, order of the Ld. CIT(A) deleting the penalty has been upheld by the Tribunal in assessee's own case for A.Y. 2001-02 in ITA No.2934/M/2019 order dated 29.08.2022.

6. We have perused the impugned orders passed by the Ld. CIT(A) who has duly thrashed the facts in the light of the case law applicable thereto by returning following findings:

*“Adverting to the facts of this case, the appellant is a listed company and during year under reference, it had received a sum of Rs.49,80,00,000/- from Lyka Hetero Healthcare Ltd. (LHHL) on transfer of domestic activities of the company. Out of this sum, the sum received on transfer of trademark were shown as short-term capital gain, marketing information and consultancy fee was shown as business income. The amount received on account of non-compete fee, scientific know how and technical information was claimed as non-taxable. This fact was clearly mentioned in the audited reports and also in the notes attached in the computation of income. In the assessment, the A.O. has treated consideration towards non-compete fee, technical know how as revenue receipt. The CIT(A) upheld the order of the A.O. However, the Hon'ble ITAT, Mumbai, has allowed a partial relief and treated the consideration towards the non-compete fee as not taxable. Thereafter, the A.O. has imposed penalty u/s*

*271(1)(c) of the Act placing the reliance on the decision of Dharamendra Textile (supra), Zoom Communications (supra) and Rakesh Suri 232 CTR (AU) 4. The penalty has been imposed for furnishing of inaccurate particulars leading to concealment but question arises has the company really concealed particulars of income. The appellant company has clearly disclosed all the related facts in its audited accounts rather the disclosure of income in computation of income was supported by certain case laws. The A.O. has relied on the Hon'ble Pune Tribunal in the case of Kanbay Software India Pvt. Ltd. (supra) where the expression "particulars" has been explained. According to the Hon'ble Tribunal, if all the particulars are available in the return of income and none of such particulars are false or misleading, then it cannot be considered as furnishing of inaccurate particulars of income. Similarly, the Hon'ble Supreme Court in the case of Reliance Petro products Ltd. (supra), held that when all the factual details of income furnished by the assessee were found to be correct, then simply penalty cannot be imposed on the basis of allowance or disallowance of a particular claim.*

*4.12 Moreover, there is a bonafide belief of the appellant company that consideration under reference are in the nature of capital receipts and as such not taxable. The bonafide is also established from the fact that there are number of case laws in support of their claim of capital receipt. The appellant company has also referred the appellate proceeding in its own appeal for A.Y. 1999-2000 where the Hon'ble Tribunal has held that consideration received on transfer of trademark, brand, technical know how etc. are capital receipts. By quoting this reference, the appellant has tried to buttress its argument that the taxability of issues under reference are debatable. The appellant company has also relied on the CIT(A)'s order in case of penalty for A.Y. 1998-99, the penalty was deleted holding –*

*"Facts of the case, order of the AO and submission of the Ld. AR have been considered carefully. It is not in dispute that the assessee has made disclosure of full facts in the return by way of a note. The disclosure made in the return by way of note has not been found to be false or misleading or inaccurate. It cannot be denied that there is no failure on the part of the assessee to make full and true disclosure of all material facts and any explanation of assessee has not been found to be false. Therefore, this is a case where penalty for concealment u/s 271(1)(c) of the Act cannot be levied. Hence, penalty levied is hereby directed to be deleted. "*

*4.13 Thus, from the above discussion it is clear that the appellant has provided all the necessary facts and information in the audited accounts as well as computation of income filed along with the return of income. It has also claimed that the said receipt as capital receipt out of bonafide belief and thus in the background of above judicial*

*ratios, particularly, the principles laid down in the case of Reliance Petroproducts Ltd. (supra), every disallowance of claim of appellant does not automatically attract penalty until and unless furnishing of inaccurate particulars is proved and therefore, in the facts and circumstances of the totality, I am of the considered opinion that this is not a fit case for levy of penalty and hereby direct the Assessing Officer to delete the penalty of Rs.2,64,18,000/-."*

7. We are of the considered view that when the assessee has put forth entire facts bonafidely, "that the entire consideration under reference is in the nature of capital receipt and as such not taxable as assessee's view is supported with plethora of case laws and as such consideration in question is a capital receipt, apparently provisions contained under section 271(1)(c) of the Act are not attracted". Moreover, in A.Y. 1999-2000 in assessee's own case Tribunal has held that consideration received on transfer of trademark, brand, technical knowhow etc. are capital receipts. So when the assessee has provided necessary details contained in the audited financials, computation of income filed with the return of income there is no question of concealment of income or furnishing of inaccurate particulars of income. This issue has already been decided by the Hon'ble Supreme Court in case of CIT Vs. Reliance Petro Products Pvt. Ltd. [(2010) 322 ITR 158 (SC)].

8. Not only this, bare perusal of the assessment order framed in this case goes to prove that the AO has not applied his mind by not recording valid satisfaction to initiate the penalty proceedings under section 271(1)(c) of the Act in the assessment order rather vaguely and ambiguously recorded that "penalty proceedings under section 271(1)(c) of the Act are initiated separately read with explanation thereunder" rather the AO was required to specifically record the

satisfaction as to whether he has initiated the penalty proceedings for concealment of income or for furnishing of inaccurate particulars of income which is not a valid satisfaction.

9. In view of what has been discussed above, we find no illegality or perversity in the impugned order passed by the Ld. CIT(A) deleting the penalty levied by the AO under section 271(1)(c) of the Act. Resultantly, both the appeals filed by the Revenue are hereby dismissed.

**Order pronounced in the open court on 27.09.2022.**

**Sd/-  
(S. RIFAUR RAHMAN)  
ACCOUNTANT MEMBER**

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

Mumbai, Dated: 27.09.2022.

\* Kishore, Sr. P.S.

Copy to: The Appellant  
The Respondent  
The CIT, Concerned, Mumbai  
The CIT (A) Concerned, Mumbai  
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.