IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "H" DELHI

BEFORE SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER
&
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER

I.T.A. No.8914/DEL/2019
Assessment Year 2012-13

ACIT, Circle-27(1), New Delhi.	Vs.	M/s. Unitech Ltd., 6, Unitech House, Community Center, Saket, New Delhi.
TAN/PAN: AAACU1482H		
(Appellant)		(Respondent)

Appellant by:	None		
Respondent by:	Ms. Sapna Bhatia, CIT-DR		
Date of hearing:	09	02	2023
Date of pronouncement:	15	02	2023

O R D E R

PER PRADIP KUMAR KEDIA, A.M.:

The captioned appeal has been filed by the Revenue against the order of the Commissioner of Income Tax (Appeals)-IX, New Delhi ['CIT(A)' in short] dated 13.08.2019 arising from the penalty order dated 28.03.2018 passed by the Assessing Officer (AO) under Section 271(1)(c) of the Income Tax Act, 1961 (the Act) concerning AY 2012-13.

2. As per the captioned appeals, the assessee has challenged the imposition of penalty of Rs.72,25,64,867/- imposed under Section 271(1)(c) of the Act.

3. When the matter was called for the hearing, the ld. DR for the Revenue made references to the assessment order, penalty order and placed reliance on such orders.

4. The ld. counsel for the assessee, on the other hand, relied upon the order of the CIT(A) and submitted that the CIT(A) has rightly deleted the penalty in tune with the order of the ITAT in quantum proceedings and having regard to the law prevailing in respect of application of Section 271(1)(c) of the Act.

5. We have heard the rival submissions. The CIT(A) has taken note of the order of the ITAT in quantum proceedings in ITA No.1905 to 1907/Del/2017 order dated 24.07.2019 and reversed the action of the Assessing Officer towards imposition of penalty under Section 271(1)(c) of the Act. The relevant operative paragraphs of the order of the CIT(A) is extracted hereunder:-

> *"5.1 I have considered the facts of the case and contention of the AR of the appellant. At the outset, the contentions of the AR in stating that the order levying penalty is liable to be set aside as the same is passed mechanically by the AO by picking incorrect figures of addition in the quantum proceedings is analysed. The AR in this regard has submitted that "In paragraph 3 of the impugned penalty order, the AO has observed that the Ld. CIT(A) in the appellate order has confirmed the addition of Rs.213,39,95,818/- and deleted the addition of Rs.13,12,68,142/- Further, in paragraph 6 of the impugned penalty order, the AO has passed an order levying penalty of Rs.72, 53,45,179/- which is calculated on the basis of the said confirmed additions of Rs.213,39,95,818/-*
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> *It is submitted in this regard that the AO has proceeded mechanically and without any application of mind in stating that the Ld. CIT(A) has confirmed additions of Rs.213,39,95,818/-, It is ear from the appellate order (summarised in the table above) that the Ld. CIT(A) has sustained additions only of an amount of Rs.207,74,25,698."*
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> *The AR has relied upon the following chart in this regard:*

Sr. No.	*ADDITIONS / DISSALLOWANCES BY AO*	*AMOUNT Rs/-*	*MODIFICATIONS By Ld. CIT(A)*
1.	*Capital Gains treates as Business Income*	*73,25,73,425*	*Addition upheld*
2.	*Notional Interest on Share Application Money*	*13,89,50,000*	*Addition upheld*

3.	*Notional Interest on Unsecured Loans*	*1,15,59,49,171*	*Addition upheld*
4.	*Rental Income treated as Business Income*	*1,17,61,101*	*Addition upheld*
5.	*Claim of Fixed Assets Written off*	*81,79,795*	*Addition upheld*
6.	*Advertising & Promotional Expenses*	*40,01,831*	*Addition upheld*
7.	*Prior Period Charges*	*5,22,683*	*Addition upheld*
8.	*Cash Payments U/s. 40A(3)*	*15,08,87,908*	*Addition upheld*
9.	*Disallowance U/s. 14A*	*15,08,87,908*	*Addition modified to Rs.4,17,05,381/-*
	TOTAL ADDITIONS SUSTAINED		*207,74,25,698*

On perusal of the order passed by the CIT(A), it is observed that there is merit in this submission of the AR.

5.2 (a) Treatment of gains arising on sale of 100% shares by the assessee company of its wholly owned subsidiaries as business income instead of capital gain.

The AR has submitted the judgment dated 24.07.2019 in ITA No. 1906/Del/2017 passed in its case on quantum issues by the Hon'ble ITAT. The AR has drawn my attention to paragraph nos. 5 to 11 of the said decision, reproduced below:

5. For the assessment year 2007-08, assessee filed return of income on 31/10/2007 declaring total income of Rs. 12,18,53,37,410/-including long-term capital gains of Rs.11,10,82,73,627/-. Learned Assessing Officer, to the extent these appeals are concerned, made additions on account of capital gains treating it as business income to the tune of Rs.1,53,98,17,883/-, loan from BUUIPL treating it as a deemed dividend to the tune of Rs. 11,07,40,708/-, notional interest on share application money to the tune of Rs. 1,85,35,549/-, and notional interest on unsecured loans to the tune of Rs. 2,13,38,368/-.

6. When the assessee preferred appeal, Ld. CIT(A) by way of impugned order deleted the addition made on account of deemed dividend under section 2 (22) (e) of the Act and confirmed the other additions. Hence, the assessee preferred appeal.

7. In respect of the issue relating to taxing, the gains arising from the sale of shares, learned Assessing Officer found that the assessee entered into share purchase agreement with various buyers in respect of shares of all the wholly owned subsidiaries who are carrying land and whose land development rights were transferred to the assessee, and held that what was being

transferred through the apparent to transfer of shares in all these companies were the properties held by the wholly owned subsidiarycompany. Learned Assessing Officer relied upon the assessment orders relating to assessment years 2009-10 and 2010-11 to reach a conclusion that the transactions of sale of shares were in fact in accordance with the ordinary lines of business as defined in MOU and Articles of Association of the company. Learned Assessing Officer further found that the transactions were found to be carried out in a manner which indicates systematic and organised activity with profit motive and, therefore, the transaction of sale of shares of a wholly owned subsidiary companies is infected business profit and not capital gain as the intention of the company was not to earning dividend but again profit by sale of shares of those companies.

8. Ld. CIT(A), on these facts, noticing his predecessors order dated 16/08/2013 for the assessment year 2009-10 in assessee's own case, felt that the said order for the assessment year 2009-10 is self explanatory, exhaustive on the basis of modus operand! adopted by the assessee, and to follow the rule of judicial consistency, he found it difficult to take a different view and, therefore, upheld the addition.

9. AR submitted that this issue is no longer res Integra and vide paragraph No. 15 of the order dated 12/02/2019 in ITA No. 6585/Del/2015 for assessment year 2011-12, a co-ordinate Bench of this Tribunal held the issue in favour of the assessee. A copy of the order is produced before us and we have gone through the same. Vide paragraph No.

15, it was held that,-

15. "Further the guide line issued by the CBDT, clearly lays down that, what has to be seen is, firstly, the objective of acquiring the shares, that is, whether it has been treated as investment or to enjoy income there from or to make profit by buying and selling shares in short run; secondly, the period of which shares have been held, that is, whether the shares are held for more than three years; thirdly, whether there is frequency of transactions in a particular share; and lastly, the treatment and classification given in the books of accounts has to be given significance. If we apply the said guidelines, then all the factors indicate that intention was never to trade in shares. Here the revenue's stand that there was trading of under lying assets of the subsidiary companies, cannot be upheld in law as shareholder does not have right to assets of the company but only share in profit. The company alone can with the approval of board of directors sell its assets. Thus, we do not find any reason as to why sale of shares is treated as trading in land so as to be taxed as business income in the hands of the assessee. Hence, in view of our discussion made above, we hold that income from saleof shares cannot be taxed as business income

but has to taxed as capital gain. In the result, these grounds are allowed."

10. It is, therefore, clear that under similar set of facts, it was held by the Tribunal that the income from sale of shares cannot be taxable as business income, but has to be taxed as capital gain. Since there is no dispute as to the similarity of facts, in the absence of any reasons compelling us to take a different view, while following the same, we hold the issue in favour of the assessee.

11. Similar is the issue involved in ground No. 1 in ITA No. 1906/Del/2017 in respect of the assessment year 2012-13. Hence, this ground in respect of the assessment year 2012-13 is also held in favour of the assessee.

5.3(b) Notional Disallowance of interest on an estimated rate of interest under Section 36(1)(iii) of the Income Tax Act, 1961 to the extent of share application money:

With respect to this disallowance, nos. 12 to 14 of the ITAT decision dated 24.07.2019, reproduced below:

12. Now coming to the issue relating to the disallowance of proportional interest under section 36 (1)(iii) of the Act on the borrowed funds to the extent of funds advanced in respect of share application money, it is involved for the assessment years 2007-08, 2012-13 and 2013-14. Learned Assessing Officer found certain amounts shown as outstanding balance of share application money, which are exceeding 6 were sold, a period considered reasonable for allotment of shares and, therefore, held that interest should have been charged on these loans as the company is operating on borrowed funds. While following the assessment orders for the assessment years 2009-10 and 2010-11, learned Assessing Officer brought the proportionate interest to tax.

13. It is submitted that this issue also is no longer res Integra and is covered by the order in ITA No. 6585/Del/2015 for the assessment year 2011-12. On a perusal of the order, we find that the Tribunal dealt with this issue vide paragraph numbers 16-21 of the order, and vide paragraph No. 21 held that,-

21. "Further, if at all such disallowance is being made on notional and hypothetical basis treating share application money as advance or interest free loan, then AO also needs to take into consideration, whether assessee company has sufficient surplus fund or not; and if surplus fund exceeded the amount of advance, then again, no notional interest or disallowance can be made. Here it is undisputed fact that assessee company has more than Rs.9281.87 crores of accumulated reserves and during the year itself its reserves have increased by Rs. 1379 crores and amount of share application money advance was only Rs. 245.34 crores. Thus, in such circumstances, presumption is always in the favour

of the assessee that these are advances out of surplus funds only and such presumption has been laid down by the Hon'ble Jurisdictional High Court in the case of CIT vs. Max India Ltd. (P&H) High Court, reported in 398ITR 209. Thus, under the facts and circumstances of this case, we hold that no disallowance can be made. In so far as reliance placed on earlier year orders, Counsel has brought on record that the revenue's appeals for the Asstt. Year 2009- 10 and 2010-11 have been dismissed by the Tribunal by quashing the assessments on the ground of limitation. Thus, on merits we hold that no addition is called for and consequently the ground no. 4 to 4.2 is treated as allowed."

14. Since the facts and circumstances are very similar to those involved for the years under consideration, while respectfully following the same, we hold that in view of the decision of the Hon'ble Jurisdictional High Court in the case of CIT vs. Max India Ltd (P & H High Court), 398 ITR 209 the presumption in favour of the assessee that the advances were only out of this surplus funds and such a presumption does not stand reverted, and consequently the issue is held in favour of the assessee. Ground No. 2 in assessee's appeals for the assessment years 2007-08, 2012-13, and ground No. 1 in the appeal for the assessment year 2013-14 are answered, accordingly in favour of the assessee.

5.4(c) Notional Disallowance of interest on an estimated rate of interest under Section 36(1)(iii) of the income Tax Act, 1961 to the extent of interest free advances to its subsidiaries.

With respect to this disallowance, paragraph nos. 15 to 17 of the ITAT decision dated 24.07.2019, reproduced below:

15. Insofar as the issue relating to the disallowance of interest under section 36(1)(iii) of the Act on borrowed funds to the extent of funds advanced by the assessee to its subsidiaries, such an issue covers ground No. 3 in the appeals of the assessee for the assessment years 2007-08, 2012-13 and 2013-14. On this aspect, case of the Revenue is that the assessee had shown certain outstanding balance amount is of interest free loans to various subsidiary companies of the assessee, having separate business/Project activities and during the assessment proceedings for the years 2009-10 and 2010-11, it was held that such interest (at the rate of average rate of interest paid by the assessee during the year, which is 11% in 2007-08, on interest free loans to related concerns must be added to the income of the assessee.

Learned Assessing Officer, therefore, made such an addition and basing on the same analogy of the earlier year findings of 2009-10 and 2010-11, Ld. CIT(A) also upheld the same.

16. It is brought to our notice that this issue is covered by the order dated 12/02/2019 for the assessment year 2011-12, vide paragraph numbers 27-31 and vide paragraph numbers 30 and 31,

a co-ordinate Bench of this Tribunal held as follows:-

"27. In ground No. 6 to 7.2 assessee has challenged the disallowance of Rs. 1,32,17,15,364/- as interest imputed by AO on interest free loan/ advance to sister concerns. The facts in brief are that assessee company has given advances during the year to subsidiaries/Joint venture/associates for sum of Rs. 233.01 crores. The outstanding balance as on 31.3.2001 aggregated to Rs. 986,67,87,694/-, the details of outstanding balances have been incorporated at page 11 of the assessment order. AO has held that this issue has been examined in detail during the assessment proceedings for the assessment year 2009-10 and 2011-12, wherein it has been held that interest paid by the assessee on this borrowed fund should be disallowed @ 14%. Following the same precedent AO has calculated the disallowance of interest on borrowed capital funds to Rs. 1,32,17,15,364/- by applying the interest rate of 14°/o.

28. Before us, Ld. Counsel has submitted that the assessee has huge surplus funds which is evident from the fact that it has accumulated reserves of Rs. 9281.87 crores, therefore there cannot be any presumption that money has been advanced to subsidiaries out of borrowed funds. In any case the money which has been advanced to these companies/concerns were also engaged in real estate business and such an advance was for the business purpose which is incidental to the business carried out by the assessee, because assessee had entered into joint venture on various projects with these companies. Thus, there was not only commercial expediency but business link in advancing such funds to the companies.

29. On the other hand, Ld. DR strongly relied upon the order of the AO.

30. After considering the rival submissions and relevant finding given in the impugned orders, we find that nowhere the AO has rebutted the contention of the assessee that these advances to sister concerns were for business purpose or for commercial expediency nor he has tried to establish the nexus between the money advanced from the borrowed funds or has asked the assessee to establish that such advance has been given out of surplus or interest through fund. Here in this case the subsidiary companies/concerns to whom money have been advanced were also engaged in real estate business with whom assessee company had entered into Joint venture for various projects. Once such a contention of the assessee has not been rebutted or refuted by the AO, then it has to be accepted that such an advance was for the business purpose. Accordingly, we hold that such an advance was for commercial expediency and therefore, no disallowance could have been made in view of the judgment of Hon'ble Supreme Court in the case of SA Builders Ltd. vs

CIT(A) 288 ITR 1(SC).

31. It is further noticed that the assessee company had huge surplus funds which far exceeded the advances; and therefore, without their being a nexus proved by the AO that only borrowed funds were advanced, then presumption can be drawn that such advances have been given out of interest free funds. This view is now well supported by various judgments, like; CIT vs. Reliance Utilities Ltd. reported in 313 ITR 340 (Bom); and CIT vs. Max India Ltd., reported in 398 ITR 209 (P&H). Accordingly, such a disallowance is deleted on this ground also."

17. Revenue does not dispute the applicability of these findings for the years under consideration also and in view of the above finding of the Tribunal, we hold that in the absence of any nexus proved by the learned Assessing Officer that only borrowed funds were advanced, a presumption has to be drawn that such advances were provided out of interest free funds, in view of the decision of the Hon'ble Punjab and Haryana High Court in the case of CIT vs. Max India Ltd (supra). Hence, ground No. 3 of the appeals of the assessee for the assessment year 2007-08 and 2012-13 and ground No. 2 for the appeal for the assessment year 2013-14 are answered in favour of the assessee and the addition stands deleted.

5.5(d) Disallowance of standard deduction u/s 24 on account of treatment of Income from House Property as Business IncomeIt is observed from the order passed by the CIT(A) that the disallowance on this ground is deleted by the CIT(A). Further, it is observed from the judgment dated 24.07.2019 in ITA No. 1906/Del/2017 passed in appellant's case on quantum issues by the Hon'ble ITAT that the department had preferred an appeal on this ground before the Hon'ble ITAT. The said appeal has been dismissed with the following findings by the Hon'ble ITAT:

24. In respect of the addition out of deduction under section 24 of the Act, the Tribunal dealt with this issue vide paragraph numbers 32-35, and vide paragraph No. 35 thereof it was held that,-

"35. "After hearing both the parties and on perusal of theumpugned order it is seen that, nowhere it has been denied that the rental income by the assessee is from leasing of the premises and such rental income has been declared under the head 'income from house property'. The entire finding of the AO is based on presumption that assessee must have incurred certain expenditure in relation to the earning of rental income without identify as to which expenditure can be said to be related to earning of rental income or there is any systematic activity for exploiting the property for commercial or business purpose. Here the entire rental income has been earned from letting out the properties owned by the assessee, hence when

income has been earned from simply letting out the property then it has to be taxed under the head 'income from house property'. Hon'ble Supreme Court in the case of Raj Dadarkar & Associates v. Asstt. CIT [2017] 81 taxmann.com 193/248 Taxman 1/394 ITR 592, after considering the earlier judgements of the Hon'ble Supreme Court as cited by the Ld. Counsel has held that wherever there is an income from leasing out of premises and collecting rent, normally such an income is to be treated as income from house property, if the conditions of provisions of Section 22 of the Act are satisfied. Moreover, it has also been pointed out by the Ld. Counsel that all throughout in the earlier years assessee has been showing rental income under the head 'income from house property' which has been accepted by the revenue under the scrutiny proceedings in various years. The details of earlier assessment accepting the rental income as income from house property has been given in the chart enclosed at page 3 of the paper book volume V. Thus, under these facts and circumstances, we hold that rental income cannot be treated as business income and consequently, benefit of standard deduction of 30% has to be allowed." 27. In view of the observation taken by the Tribunal in assesses's own case for the assessment year 2011-12 which is applicable to the facts of the case for the assessment years 2012-13 and 2013-14, we find that grounds No. 1 to 3 of ITA No. 6437 and 4781/Del/2017 are liable to be dismissed.

5.6 Based on above deliberation, it emanates that following additions / disallowances made by the AO on the basis of which penalty was levied have been found to be erroneous by the Hon'ble ITAT; and consequentially the same have been deleted.

SR. NO.	*ADDITIONS / DISALLOWANCES*	*AMOUNT IN RS./-*
1.	*Capital Gains treated as Business Income*	*73,25,73,425*
2.	*Rental Income treated as Business Income*	*5,85,37,003*
3.	*Notional Interest disallowance on Share Application Money*	*13,89,50,000*
4.	*Notional Interest disallowance on Unsecured Loans*	*1,15,59,49,171*
5.	*Disallowance U/s. 14A*	*15,08,87,908*

5.7 Since all the above additions / disallowances made by the AO were the genesis of the present penalty proceedings; once the said genesis has been found to be erroneous, nothing remains. It is trite that the penalty proceedings cannot be made to reach a logical conclusion, once it is held that-|he

additions made by the AO are erroneous. It is no longer res Integra that once the quantum additions are deleted, the penalty cannot sustain. Accordingly, since all the above quantum additions / disallowances have been decided in favour of the appellant by the Hon'ble ITAT, the penalty determined by the AO on the above addition I disallowances merits deletion and is accordingly deleted.

5.8 The AO however had also made disallowance on account of claim of Fixed Assets Written off Rs. 81,79,795/- and Cash Payments U/s. 40A(3) 67,926/- which were subject matter of Appeal before Ld. CIT(A) but were upheld in the Quantum Appeal. I have gone through the submissions of the Appellant but do not find the same. The appellant has not been able to place a bonafide explanation as required u/s 271 (1)(c) with respect to above claim. In fact, on the issue of fixed assets written off amounting to Rs.8179795/- , the appellant has neither challenged the judgment of Ld. CIT(A) before the Hon'ble 1TAT. At this point, even if it is admitted that not contesting an addition before appellate authority does not sanctify the penalty, still this is incumbent on the appellant to explain the basis of making claim of write off when provisions of the Act does not provide the same. It is also not a case of claim being outcome of interpretation of a provision of the Act.

5.9 In this regard, reliance is placed on the judgment in the case of CIT vs. NG Technologies Ltd. wherein Hon'ble Jurisdictional High Court of Delhi has interalia held thus:

"9. Section 271(1)(c) and Explanation 1 thereto read as under:

"271.(1) If the Assessing Officer or the Commissioner (Appeals) or the Principal Commissioner or Commissioner in the course of any proceedings under this Act, is satisfied that any person-...

(c) has concealed the particulars of his income or furnished inaccurate particulars of such income, or...

Explanation 1. - Where in respect of any facts material to the computation of the total income of any person under this Act,-

such person falls 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

such person offers an explanation which he is not able to substantiate and fails to prove that such explanation is bona fide and that all the facts relating to the same and material to

the computation of his total income have been disclosed by him,

Then, the amount added or disallowed in computing the total income of such person as a result thereof shall, for the purposes of clause (c) of this subsection, be deemed to represent the income in respect of which particulars have been concealed."

11. Mens rea is not a necessary attribute to impose penalty under section 271(1)(c) of the Act. Penalty under the said section is imposed as a civil liability/obligation. The provision is both remedial and coercive in nature. It is far different and unlike any penalty for a crime or a fine or forfeiture imposed under the criminal and penal laws. Penalty under section 271(1)(c) of the Act refers to blameworthy conduct for contravention of the Act and it equally applies to tax delinquency cases. In Dharamendra Textile Processors (supra), it was held that the earlier decision of the Supreme Court in Dilip N. Shroff v. Jt. CIT [2007] 291 ITR 519/161 Taxman 218, was wrongly decided as it did not consider the effect and relevance of section 271(1)(c) of the Act. The object behind the enactment of section 271 (1)(c) along with Explanations was to provide for a remedy for loss of revenue and imposes a civil liability. Wilful conduct, etc., is not an essential ingredient.

12. However, it is not necessary that penalty should be imposed in all cases where inaccurate particulars have been furnished. This is the object and purpose behind enacting Explanation 1, which consists of two limbs, i.e., clause (A) and clause (B). Clause (A) applies when an assessee fails to furnish an explanation or when the explanation offered is found to be false. In such cases, penalty can be imposed. Clause (B) applies to cases wherein explanation is offered but the assessee has not been able to substantiate the same. The assessee can escape rigours of penalty, provided he satisfies the two conditions, namely, (1) the assessee should demonstrate that his explanation was bona fide ; and (2) he had furnished and disclosed facts and material relating to computation of his income. Onus of establishing that the two conditions are satisfied is on the assessee. Both the conditions are cumulative and when the conditions are satisfied, penalty under section 271 (1)(c) of the Act should not be imposed.

16. We have examined the aforesaid reasoning but are unable to accept the said finding. All claims or deductions wrongly made cannot be treated as bona fide and protected by Explanation 1 to section 271 (1)(c) of the Act. Whether or not

the conduct of the assessee was legitimate or mere legerdemain would depend upon^pcts of each case, nature and character of the claim, whether the legal provision applicable was capable of two interpretations, whether the claim/exemption was plausible and conceivable, etc. In cases where interpretive skills and divergent views are plausible, penalty for concealment should not be imposed. The assessee need not be asked to pay penalty if he has taken a particular legal stand and preferred an interpretation in his favour. However, at the same time, the interpretation put forward or the claim made should not be banal or a ruse, per se or ex facie incorrect or wrong. Platitudinous conduct or claim is not a bona fide conduct.

17. In the facts of the present case, it is noticeable that the assessee had claimed loss on account of sale of plant and machinery, i.e., the fixed assets, in the profit and loss account. This should not have been obviously claimed. It was without any debate and discussion a capital loss. The claim cannot be explained and justified by any argument and reasoning. The claim was positively and meaningfully incorrect and contrary to the principles of straight forward and primary accountancy. It is true and correct that an assessee would normally rely upon the legal opinion of a chartered accountant, who is required to audit accounts of the company and also submit an audit report but penalty cannot be deleted on guise or pretence of legal opinion as a smokescreen and facade. The claim or the entry in the present case was contrary to the elementary and well-known the basic principles of accountancy. The present case is not a case of a debatable issue relating to legal or accountancy principle which could have been interpreted differently.

18. It is mandatory and compulsory for a company to get their accounts audited from a chartered accountant, who is required to submit an audit report to be filed with the return. We cannot, therefore, accept the contention of the assessee as universal and comprehensive that all claims howsoever untenable, once certified by a chartered accountant or the directors of the company, cannot be made a subject matter of penalty proceedings. This will be fetching and making the requirement to prove bona fide conduct illusionary and ineffective and would fail to, check and stop fanciful and incredible claims. It is noticeable that most of the income-tax returns are accepted without scrutiny or regular assessment and self-compliance of tax provisions is a rule required to be followed. The view, which we have taken, is in consonance with the ratio expounded in Reliance Petroproducts (P.) Ltd.

(supra).

19. The second aspect, which arises for consideration, is whether the revised return was filed voluntarily and before the notice of the inaccurate particulars by the Assessing Officer. The factum of filing a revised return to rectify an earlier mistake is an important and relevant factor to determine whether the conduct of the assessee was bona fide. The Tribunal, in the impugned order, has held that the revised return was filed before any specific query was raised by the Assessing Officer. The Tribunal at the same time observed that the Assessing Officer had directed the assessee to file tax audit report, depreciation chart, details of all exemptions and deductions as well as details of addition to fixed assets but no question had been raised about deduction in respect of the assets. The aforesaid reasoning by the Tribunal accepts the fact that the assessee had been asked to furnish details of fixed assets and details of all deductions were called. Noticeably, in the assessment order, the Assessing Officer has recorded the following facts :

The case was taken up for scrutiny assessment by issue of notice under section 143(2) dated October 12, 2007, was duly served on the respondent-assessee within the prescribed statutory time limit.

The assessee was asked to furnish the following details

"Furnish the details of all exemptions and deductions claimed. Also Justify as to why the same should not be accepted by the Department."

The assessment order specifically records that one of the deductions claimed was debit of Rs. 2,33,07,349 recorded in schedule 16 "general expenses" of the profit and loss account being loss on account of sale of the fixed assets. Specific reference has been made in the assessment order to this note.

20. Therefore, it is clear to us that the assessee had not filed revised return voluntarily but had filed the revised return after the Assessing Officer confronted the assessee and they were asked to explain how and why the loss on account of sale of fixed assets was claimed in the profit and loss account. The said loss, capital in nature and could not have been claimed in the profit and loss account.

21. In view of the aforesaid discussion, we answer the substantial question of law in favour of the Revenue and against the respondent-assessee. We uphold levy of penalty by the Assessing Officer under section 271(1)(c) of the Act. The appeal is disposed of. No costs."

5.10 In factum of the case and in due deference to the judicial precedents relied on by the Assessing Office in the impugned penalty order and the case of NG Technologies Ltd. (supra), the penalty levied on this issue of fixed assets written off is hereby confirmed.

5.11 As far as penalty on impugned addition of Rs.67926/- u/s 40A(3) is concerned, the same is a technical addition in as much as all information pertaining to particulars of income including expenditure were made available in the tax audit report and in the books of accounts. There is no positive finding in the impugned order that the same was positive in the nature of inaccurate particulars or concealment of income. These type of addition being venial in nature, could not be subjected to rigors of penalty u/s 271 (1)(c). Reliance is placed on the decision of Hon'ble Gujarat High Court in the case of Nayan C. Shah versus ITO 386 ITR 204 wherein the Hon'ble Court held thus:

Section 271(1)(c), read with section 40(a)(ia), of the Income-tax Act, 1961 - Penalty - For concealment of income (Disallowance of claim, effect of) - Assessment year 2006-07 - Whether words 'inaccurate particulars' used in section 271(1)(c) must mean details supplied in return, which are not accurate, not exact or correct or not according to truth or erroneous - Held, yes - Whether merely submitting an incorrect claim in law for expenditure would not amount to furnishing inaccurate particulars of income - Held, yes - Whether therefore, where assessee had made a claim of expenditure in relation to labour payments, which he was not entitled to claim in view of section 40(a) (ia), it would not amount to furnishing inaccurate particulars of income so as to attract penalty under section 271(1)(c) - Held, yes [Paras 8-10] [In favour of assessee]

Though the above judgment, is in respect of penalty u/s 271 (1)(c) r.w.S 40(a)(ia) of the Act, the ratio decidendi is equally applicable to the fact of the present case with respect to addition made u/s 40A(3) of the Act which interalia deals with addition to be made for technical violation of payment in cash over and above a prescribed limit. This is not a case where it can be concluded that there has been a positive finding with respect to concealment or inaccurate particulars of income being furnished by the appellant.

In view of the factual matrix of the case and judicial precedent relied above (supra), the levy of penalty on this issue is directed to be deleted.

6. In the result, appeal is partly allowed."

6. On perusal, we see that the CIT(A) has objectively analyzed the fact situation and additions made in quantum proceedings on various issues. The CIT(A) has also taken cognizance of the order of the ITAT in quantum proceedings as noted above while adjudicating the issue in favour of the assessee in the light of the quantum proceedings. The CIT(A) observed that Co-ordinate Bench of ITAT has deleted the additions / disallowances in the quantum procedings and thus the basis for imposition of penalty does not survive at all. Having regard to the observations made by the CIT(A) as noted above, we see no reason to interfere therewith. We thus find no merit in the appeal of the Revenue.

7. In the result, the appeal of the Revenue is dismissed.

Order pronounced in the open Court on 15/02/2023.

Sd/-	Sd/-
[CHALLA NAGENDRA PRASAD]	**[PRADIP KUMAR KEDIA]**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

DATED: **/02/2023**

Prabhat