IN THE INCOME TAX APPELLATE TRIBUNAL
"D" BENCH, MUMBAI

BEFORE SHRI B.R. BASKARAN, AM &
SHRI N. K. CHOUDHRY, JM

I.T.A. No. 2039/Mum/2023
Assessment Year: 2006-07)
and
I.T.A. No. 2040/Mum/2023
Assessment Year: 2008-09)
and
I.T.A. No. 2038/Mum/2023
Assessment Year: 2010-11)

ACIT Circle-1(2)(1), Aayakar Bhavan, M.K. Road, Mumbai-400020.	Vs.	**MSEB Holding Company Ltd.** 3rd & 4th Floor, Hsbc Building, M.G. Road, Fort, Mumbai-400049. PAN No. **AAECM2934Q**
Appellant)	:	**Respondent**)

Appellant/ Department by	:	Ms Sanyogita Nagpal, Ld. CIT-DR
Respondent/Assessee by	:	Shri Ketan Ved, Ld. CA
Date of Hearing	:	21.09.2023
Date of Pronouncement	:	30.10.2023

O R D E R

Per N. K. Choudhry, JM:

The Revenue Department/Appellant herein has preferred these appeals against the common orders even dated 31.03.2023 impugned herein, passed by National Faceless Appeal Centre- Delhi {'NFAC'} / Ld. Commissioner of Income Tax (Appeals)-2, Mumbai {in short 'Ld. Commissioner'} under section 250 of the Income Tax Act 1961 (in short 'the Act').

2. As the issues involved in the instant appeals are identical, therefore, for the sake of brevity, the same were heard together and are thus disposed off by this Composite order.

3. For brevity, we are deciding **ITA No. 2039/Mum/2023** which pertains to AY 2006-07 first. The Assessee-company claimed to be a wholly owned undertaking of the Government of Maharashtra and having three subsidiaries companies. The Assessee declared loss of Rs. **-**396,59,46,316/- during the year under consideration by e-filing its return of income on dated 29.11.2006, which was subsequently revised on 27.03.2008, whereby the loss was also revised to Rs. 396,58,52,710/. The return filed by the Assessee was processed under section 143(1) of the Act.

3.1 Lateron the re-assessment proceedings were started and consequently notice dated 21.04.2010 under section 148 of the Act was issued and served upon the Assessee, in response to which, the Assessee requested the AO to treat the revised return filed on 27.03.2008 in response to the notice under section 148 of the Act. Thereafter, statutory notices have also been issued to the Assessee, which were complied with by the Assessee. As per the revised computation of income, the Assessee computed Income from House Property to the tune of Rs. 22,42,24,077/- against which business loss to the tune of Rs. 419,01,70,393/- has been set off and the balance business loss has been claimed for carry forward to subsequent years along with brought forward losses of the MSEB, as apportioned to the Assessee-Company. For ready reference, details of expenditure debited in its P & L A/c are as under:

Employees Remuneration		30,62,900/-
Repairs & Maintenance		8,03,830/-
Administrative & General		68,17,092/-
Interest & Finance Expenses		41,82,45,283/-
Depreciation		1,98,94,049/-
Total		**44,88,23,154/-**

3.2 The AO considered the said expenditures, but found not acceptable on the reason that the above expenditures does not relate to the earning of the Assessee's Income from House Property computed at Rs. 22,42,24,077/- qua its eligible deductions granted pursuant to section 24(a) of the Act as has been claimed by the Assessee. The AO ultimately rejected the said claim of the Assessee for deduction of the above expenditures and also initiated penalty proceedings under section 271(1)(c) of the Act for furnishing inaccurate particulars of income.

4. The said additions/disallowances on appeal stands affirmed by the Ld. Commissioner vide order dated 27.07.2011, against which the Assessee preferred 2nd appeal before the Hon'ble Tribunal, who vide its order dated 21.04.2017 passed in ITA No. 7725/Mum/2011 partly allowed the Assessee's appeal with a direction that the Assessee's claim that the amount of Rs. 59,49,98,856/- was offered as income in the AY 2007-08 should be examined and if such amount was offered as income in AY 2007-08 then deduction to that extent should be allowed to the Assessee in AY 2006-07.

4.1 The Hon'ble Tribunal also directed that consequent to the completion of set-aside proceedings, if any relief occurs to the Assessee in AY 2007-08, then the penalty order will be modified accordingly.

5. Subsequently the AO vide show-cause notice dated 26.02.2018 show-caused the Assessee, as to why penalty should not be levied. The Assessee in response to the same, at the outright claimed that the penalty order cannot be passed now, as the same has become time barred. The said contention of the Assessee was rejected by the AO on the ground that ITAT order was received in August 2017 and therefore, the penalty proceedings are well within the time as per the provisions of section 275 of the Act.

5.1 The Assessee on merit before the AO claimed as under:

> *"On merits of the issue, the assessee has submitted,…. that while the appeal was pending before the ITAT, the Maharashtra Electricity Reforms Transfer Scheme 2005, dated 04.06.2005, notified by the Govt. of Maharashtra, (by virtue of which it was directed that all property, interest in property, rights and liabilities immediately before the said date vested in MSEB, shall be vested with the assessee company), was amended by the Govt. of Maharashtra vide a Notification dated 31.03.2016 with retrospective effect from 05.06.2005 whereby inter alia the liabilities of the erstwhile MSEB, which were transferred to the assessee Company, were taken over by the Govt. of Maharashtra wref 05.06.2005. Subsequently when the quantum appeal filed by the assessee company for the year under consideration before the ITAT came up for hearing, in view of the fact that the loan liability for which the assessee was claiming the interest expenditure was taken over by the State Government with effect from 05.06.2005, no longer remained a liability of the assessee, the assessee suo-moto during the course of the proceedings before the ITAT pointed out that it is not entitled to the deduction of the Interest expenditure on such loan liability....*
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> *It is further submitted by the assessee, Inter alia, that the assessee has not concealed its Income nor furnished any inaccurate particulars in respect thereof and hence there can be no question of levy of any penalty whatsoever."*

6. The AO though considered the said submissions/claim of the Assessee carefully, however, did not find the same as tenable and ultimately vide penalty order dated 28.02.2018, levied the penalty @ 100% of the tax sought to be evaded which works out to Rs. 141,65,57,002/-.

7. The Assessee being aggrieved challenged the penalty order before the Ld. Commissioner, who vide impugned order though sustained the passing of the order under section 271(1)(c) of the Act, well within the time limit as prescribed under section 275 of the Act, however, deleted the penalty imposed by the AO, against which the Revenue Department is in appeal before us.

8. We have heard the parties and perused the material available on record and given thoughtful consideration to the peculiar facts and circumstances of the case and observe that the AO vide assessment order dated 19.11.2010 under section 143(3) r.w.s 147 of the Act, made the following additions / disallowances:

Employees Remuneration		30,62,900/-
Repairs & Maintenance		8,03,830/-
Administrative & General		68,17,092/-
Interest & Finance charges		41,82,45,283/-
Depreciation		1,98,94,049/-
Total		**44,88,23,154**/-

8.1 The Assessee against the aforesaid disallowances/additions preferred first appeal before the Ld. Commissioner, who vide impugned order partly deleted/sustained the additions in the following manner:

	Amount in Rs.	**Deleted/ Sustained**
Employees Remuneration	30,62,900/-	Deleted
Repairs and maintenance of Rs. 8,03,830/- {7466/- **+** 7,96,364/-}	7466/- 7,96,364/-	Deleted Sustained
Disallowance on interest and finance charges	41,82,45,283/-	Sustained
Disallowance of depreciation	1,98,94,049/-	Sustained
Disallowance of Administrative and general charges of Rs. 68,17,092/- {52,89,600/- **+** 15,27,492/-}	15,27,492/- 52,89,600/-	Deleted Sustained

8.2 The Revenue Department is in appeal before us and mainly claimed that as the Assessee has not prepared its Account as per the provisions of Income Tax Act and has concealed important particulars of income and as per notification dated 31.03.2016 issued by Government of Maharashtra, the liabilities of erstwhile MSEB were taken by the State Government from 05.06.2005 onwards and therefore, the Ld. Commissioner was not right in deleting the penalty levied by the AO under section 271(1)(c) of the Act.

8.3 The Assessee on the contrary controverted the claim of the Revenue Department by submitting that the Assessee had inadvertently missed out to disallow the Repair and Maintenance expenses while filing its return of income, however, it is a fact that during the appellate proceedings before the Ld. Commissioner, accepted its mistake and immediately after realizing its mistake, offered the said amount to tax as it appears in para-14 of the quantum appeal order dated 17.08.2011 passed by the Ld. Commissioner, hence, no penalty is leviable, as the

Hon'ble Tribunal vide order dated 03.08.2018 passed in ITA No. 853/Mum/2018 in the Assessee's own case for the AY 2007-08, deleted the similar penalty levied on account of sustenance of disallowance of Repair and Maintenance Expenses.

8.4 With regard to penalty levied on account of disallowance of Interest and Finance Charges of Rs. 418,24,48,398/- which has also been affirmed by the Tribunal vide order dated 21.04.2017 passed in ITA No. 7725/Mum/2011, the Assessee claimed that in the similar facts and circumstances, the Tribunal vide order dated 03.08.2018 passed in ITA No. 853/Mum/2018 for AY 2007-08 and ITA No. 852/Mum/2018 for the AY 2008-09, deleted the penalty on such disallowance, therefore, penalty on this count is also not sustainable.

8.5 With regard to the penalty levied on account of disallowance of depreciation of Rs. 1,98,94,049/-, the Assessee claimed that the Hon'ble Tribunal in ITA No. 853/Mum/2018 also deleted the identical penalty levied by the AO and sustained by the Ld. Commissioner, therefore, this penalty is also not sustainable.

8.6 The Assessee further claimed that the addition of Rs. 52,89,600/- has also been sustained by the Ld. Commissioner on account of disallowance of Administrative and General expenses, which infact missed out to disallow while filing returns of income by the Assessee, however, the Assessee by realizing its mistake during the appellate proceedings before the Ld. Commissioner in quantum appeal, accepted its mistake and offered to tax the said amount of Rs. 52,89,600/- as it also clearly appears from page no. 14-15 of the order dated 17.08.2011 passed by Ld. Commissioner in quantum appeal. The Assessee further claimed even

otherwise the Hon'ble Tribunal in ITA No. 853/Mum/2018 in the similar facts and circumstances deleted the penalty levied on the said addition and therefore, the levy of penalty on the said addition is also un-sustainable.

8.7 We observe that the Co-ordinate Bench of the Tribunal, not only in the Assessee's case for AYs 2007-08 and 2008-09 respectively in ITA Nos. 853/Mum/2018 and 852/Mum/2018 decided on 03.08.2018 dealt with the levy of penalty and affirmation thereof and ultimately deleted the levy of penalty made and sustained qua expenditure on Repair and maintenance, interest and finance charges, depreciation on administrative and general expenses, by concluding as under:

> *"6. The assessing officer levied the penalty vide his order dated 31.03.2012 by observing that the CIT(A) has confirmed these disallowance on account of repair and maintenance expenses, depreciation and interest and financial expenses in quantum proceedings. According to AO, the assessee's explanation is not tenable and therefore it is held that the assessee has knowingly furnished inaccurate particulars of its income. Aggrieved, assessee preferred the appeal before CIT(A), who also confirmed the action of the AO. Aggrieved, now assessee is in appeal before Tribunal.*
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> *7. Before us, the learned Counsel for the assessee argued that the opening balances of assets and liabilities as on 06.06.2005 have been incorporated in the accounts pursuant to the provisional Transfer scheme for restructuring of erstwhile Maharashtra State Electricity Board, notified vide Govt. Notification No. Reform 1005/CR 90611(1) NRG-5, dated 4 June 2005, notified by the Government of Maharashtra (GOM) and thereafter as approved by the Board, the said scheme being provisional and the balances of assets & liabilities are subject to change on notification of final transfer scheme by Govt. of Maharashtra. Any effect arising out of the finalization of transfer scheme shall be incorporated in the year, the finalization takes place and the accounts for the period 2005-2006 shall not be*

affected. Allocation of opening balances as on 06.06.2005 into five restructured entities namely Maharashtra State Power Generation Company Ltd. (MSPGCL), Maharashtra State Electricity Transmission Company Ltd. (MSETCL), Maharashtra State Electricity Distribution Company Ltd. (MSEDCL), MSEB Holding Company Ltd. (MSEBHCL) and MESS (residual Board) has been arrived at on the basis of audited balances of erstwhile MSEB as on 05.06.2005 The allocation of these balances has been as approved by the Board of the company. Details of certain opening balances as allocated to the company are in the process of being obtained from the concerned departments of erstwhile MSEB and the further adjustment if any, arising out of such details will be carried out in due course.

8. In view of the above facts and further the loans from State Govt. amounting to ₹ 2547.09 crores, have been accounted for based on opening balances as received under provisional scheme transfer. Further, details including terms and conditions of payment of principal as well as interest are available with MSEDCL which are being sought for any further necessary accounting adjustments. Interest payable amounting to ₹ 311.61 crs for the period under review has been accounted for on the basis of Government Resolutions (G.Rs.), as available with the company and the loan amount has been adjusted for repayment with G.R.s available in relation to such adjustments. Confirmation, reconciliation and pending accounting adjustments, if any required, will however be done at the time of finalization of transfer scheme. Unsecured Loans also include CPSU Bonds for coal related Liabilities Rs. 567.19 crores; CPSU Bonds for power purchase Rs. 451.41 crores; Interest accrued & due on CPSU bonds for power purchase 56.70 crores; Interest accrued & due on CPSU bond for coal payment, 73.12 crores, which were created by erstwhile MSEB in the books of accounts from 2001-2002 towards amount payable to GOM on securitization of CPSUs dues under one-time settlement scheme of Govt. of India. These balances are as transferred to the company under the provisional scheme of transfer and supporting records thereof are being sought from respective departments of erstwhile MSEB. As per the principles of Provisional Transfer Scheme 2005, these amounts have been proposed to be taken over by GOM. The company has not borrowed any additional amounts during the period. The loans shown in the accounts are as received under the

provisional Transfer scheme. The company is in the process of passing a resolution u/s 293(I)(d) of the Companies Act, 1956 in due course.

9. Further, learned Counsel explain that in view of the above amendment claim of deduction of interest and finance charges of Rs. 4,04,88,60,303/- was no longer necessary since the very liability in respect of which deduction was claimed by the assessee was also taken over by the GOM from the date on which they were originally sought to be transferred to the assessee in terms of the Transfer Scheme. Accordingly, the interest and finance charges on the said loans claimed as an expenditure in the earlier years from 06 June 2005 to 31 March 2015 were written back by the assessee in its books of accounts for the year ended 31 March 2016. Even, during the course of the assessment proceedings for the Assessment Year 2014-15, a detailed note disclosing the above facts was also submitted to the Assessing Officer and the claim for deduction of interest made in terms of the return of income for that year was withdrawn. Considering the facts and submissions the Assessing Officer passed an Order dated 26 December 2016 for the assessment year 2014-15 accepting the assessee's explanation and the withdrawal of the claim for interest debited to its Profit and Loss for the year.

10. Subsequently, when the quantum appeal for the year tiled by the assessee before the ITAT, which came up for hearing and in view of the fact that the loan liability for which the assessee was claiming the interest expenditure was taken over by the State Government with effect from 05 June 2005 (the date from which it was sought to have been transferred to it – the assessee), no longer remained a liability of the assessee. The assessee during the course of the hearing before the ITAT pointed out that it is not entitled to the deduction of the interest expenditure on such loan liability even if otherwise allowable by following the principles laid down by the Apex Court in the case of S.A. Builders v/s. CIT reported in (2006) 288 ITR 1(SC).

11. The second aspect of levy of penalty is regarding repair and maintenance expenses claimed by assessee of ₹ 12,90,040/-, the learned Counsel for the assessee before us, stated that the assessee earned rental income from letting out of its premise to its three subsidiary companies i.e. MSETCL, MSPGCL and MSGEDCL. The

assessee offered this rental income under the head income from house property and deduction under section 24 of the Act was claimed. However, for the purpose of preparing of its books of account, the assessee debited a sum of ₹ 12,90,040/- as repair and maintenance expenditure to its profit and loss account and out of this repair and maintenance expenditure, the amount of ₹ 12,66,486/- pertain to the repair and maintenance for the premises which were let out by the assessee as income earned was offered to tax under the head income from house property. The assessee admitted that while returning its income for the year under consideration this expenditure due to inadvertent left out to be disallowed by the assessee as the expenditure claimed under the head repairs and maintenance amounting to ₹ 12,66,486/-. Before us, now it was claimed that there was in dispute about quantum of claim of expenditure incurred this particular issue and hence, aforesaid expenses were inadvertently left out to be disallowed by the assessee while filing return of income. It was claimed that this inadvertent error was not covered during the course of assessment proceedings but no sooner the same was released during the appellate proceedings before CIT(A), the same was accepted and assessee was owned up.

12. As regards to the claim of depreciation disallowed amount to ₹ 2,51,46,050/-, it was stated that for the purpose of preparing its accounts under the Companies Act 1956, the assessee has debited a sum of ₹ 2,51,46,050/- as depreciation on the premises, which it owned and were let out during the year under consideration. However, while computing the income for the purpose of computation of tax assessee has suo moto disallowed the depreciation and the CIT(A) after looking at the relevant documents accepted that the depreciation was suo moto disallowed and no further disallowance in this respect thereof was called for.

13. In view of the above facts and circumstances of the case we find that the Tribunal in quantum order dated 21.04.2017 has categorically recorded finding of fact at Para 11 that, "……However, on 31st March 2016, the Government of Maharashtra in its Industries, Energy and Labour Department issued a notification amending the Maharashtra Electricity Reform Transfer Scheme, 2005 and as per clause (10B) of the said notification, the liabilities of the erstwhile MSEB were taken over by the State Government from 5th June 2005. Thus, as could be seen, as

per above notification dated 31st March 2016, the loan liabilities of erstwhile MSEB which was transferred to the assessee under the transfer scheme of 2005, was taken over by the State Government with retrospective effect from June, 2005. That being the case, the liability accruing to the assessee on account of State Government loan to MSEB which stood transferred to assessee no longer remains liability of the assessee with retrospective effect. As a consequence, the interest on such loan liability is also not payable by the assessee. Therefore, by virtue of changed scenario arising out of the taking over of the loan liability of erstwhile MSEB by the State Government, the assessee is not entitled to claim the deduction of interest expenditure. In fact, during the scrutiny assessment proceedings for assessment year 2014–15, on the basis of notification dated 31st March 2016, of the State Government taking over the loan liability the assessee voluntarily came forward and filed revised computation of income before the Assessing Officer withdrawing its claim of interest expenditure both under the normal provisions and the MAT. It is evident, the Assessing Officer completed the assessment by accepting the income declared under the revised computation of income. Thus, in view of the aforesaid facts and circumstances, without entering into the issue whether the interest expenditure was incurred wholly and exclusively for the purpose of assessee's business, hence, allowable under section 36(1)(iii), we hold that in view of the fact that the loan liability for which assessee has claimed deduction of the interest expenditure, since, was taken over by the State Government from June 2005, it no longer remains a liability of the assessee, therefore, the assessee is not entitled for deduction of the interest expenditure on such loan liability….". From this finding of Tribunal it is clear that there is every particular regarding the claim of deduction on account of interest expenditure was available before the AO and there is no concealment by the assessee of these particulars.

14. In view of the above facts and circumstances on all the three appellate issues, we are of the view that the case law relied on by the learned Counsel for the assessee of Hon'ble Supreme Court in the case of Price Waterhouse Coopers (P.) Ltd. vs. CIT (2012) 348 ITR 306 (SC), clearly shows that wherever bonafide mistakes and inadvertent error is discovered, whether assessee was not guilty either of furnishing of inaccurate particulars of income or admitting the concealment of its income. Hon'ble Supreme Court held as

under: -

> *"15. The assessee has filed an affidavit dated 14th September, 2012 in which it is stated that the assessee is engaged in Multidisciplinary Management Consulting Services and in the relevant year it employed around 1,000 employees. It has a separate accounts department which maintains day to day accounts, payrolls etc. It is stated in the affidavit that perhaps there was some confusion because the person preparing the return was unaware of the fact that the services of some employees had been taken over upon acquisition of a business, but they were not members of an approved gratuity fund unlike other employees of the assessee. Under these circumstances, the tax return was finalized and filled in by a named person who was not a Chartered Accountant and was a common resource.*
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> *16. It is further stated in the affidavit that the return was signed by a director of the assessee who proceeded on the basis that the return was correctly drawn up and so did not notice the discrepancy between the Tax Audit Report and the return of income.*
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> *17. Having heard learned counsel for the parties, we are of the view that the facts of the case are rather peculiar and somewhat unique. The assessee is undoubtedly a reputed firm and has great expertise available with it. Notwithstanding this, it is possible that even the assessee could make a "silly" mistake and, indeed this has been acknowledged both by the Tribunal as well as by the High Court*
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> *18. The fact that the Tax Audit Report was filed along with the return and that it unequivocally stated that the provision for payment was not allowable under section 40A(7) of the Act indicates that the assessee made a computation error in its return of income. Apart from the fact that the assessee did not notice the error, it was not even noticed even by the Assessing Officer who framed the assessment order. In that sense, even the Assessing Officer seems to have made a mistake in overlooking the contents of the Tax Audit Report.*
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> *19. The contents of the Tax Audit Report suggest that there is*

no question of the assessee concealing its income. There is also no question of the assessee furnishing any inaccurate particulars. It appears to us that all that has happened in the present case is that through a bona fide and inadvertent error, the assessee while submitting its return, failed to add the provision for gratuity to its total income. This can only be described as a human error which we are all prone to make. The calibre and expertise of the assessee has little or nothing to do with the inadvertent error. That the assessee should have been careful cannot be doubted, but the absence of due care, in a case such as the present does not mean that the assessed is guilty of either furnishing inaccurate particulars or attempting to conceal its income.

20. We are of the opinion, given the peculiar facts of this case, that the imposition of penalty on the assessee is not justified. We are satisfied that the assessee had committed an inadvertent and bona fide error and had not intended to or attempted to either conceal its income or furnish inaccurate particulars."

15. Identical issue has been dealt with by Mumbai Bench of this Tribunal in the case of Tropical Clothing Co. Ltd. Vs. ACIT in ITA No. 787/Mum/2008 wherein it has been held that once the assessee himself disclose the particulars / details in their annual accounts the question of furnishing of inaccurate particulars of income does not arise. In the present case before us, complete disclosure regarding the expenditure claimed as allowable was given in the statement of accounts and in the return of income.

16. We also find that the Hon'ble supreme court in the case of CIT vs. Reliance Petroproducts Pvt. Ltd (2010) 322 ITR 158 (SC), held that the term inaccurate particulars of income means the details supplied in the return, which are not accurate, not exact or correct, not according to truth or erroneous. We find that honorable Supreme Court in Para 7 & 9 considered the issue as under: -

"7……However, the learned Counsel for revenue suggested that by making incorrect claim for the expenditure on interest, the assessee has furnished inaccurate

particulars of the income. As per Law Lexicon, the meaning of the word "particular" is a detail or details (in plural sense); the details of a claim, or the separate items of an account. Therefore, the word "particulars" used in the section 271(1)(c) would embrace the meaning of the details of the claim made. It is an admitted position in the present case that no information given in the Return was found to be incorrect or inaccurate. It is not as if any statement made or any detail supplied was found to be factually incorrect. Hence, at least, prima facie, the assessee cannot be held guilty of furnishing inaccurate particulars. The learned Counsel argued that "submitting an incorrect claim in law for the expenditure on interest would amount to giving inaccurate particulars of such income". We do not think that such can be the interpretation of the concerned words. The words are plain and simple. In order to expose the assessee to the penalty unless the case is strictly covered by the provision, the penalty provision cannot be invoked. By any stretch of imagination, making an incorrect claim in law cannot tantamount to furnishing inaccurate particulars……

9. We are not concerned in the present case with the mens rea. However, we have to only see as to whether in this case, as a matter of fact, the assessee has given inaccurate particulars. In Webster's Dictionary, the word "inaccurate" has been defined as :–

"not accurate, not exact or correct; not according to truth; erroneous; as an inaccurate statement, copy or transcript."

We have already seen the meaning of the word "particulars" in the earlier part of this judgment. Reading the words in conjunction, they must mean the details supplied in the Return, which are not accurate, not exact or correct, not according to truth or erroneous. We must hasten to add here that in this case, there is no finding that any details supplied by the assessee in its Return were found to be incorrect or erroneous or false. Such not being the case, there would be no question of inviting the penalty under section 271(1)(c) of the Act. A mere making of the claim, which is not sustainable in law, by itself, will not amount to furnishing inaccurate

> *particulars regarding the income of the assessee. Such claim made in the Return cannot amount to the inaccurate particulars."*
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> *17. In view of the above facts and circumstances of the present case and the case laws of Hon'ble Supreme Court in Price Waterhouse Coopers (P.) Ltd. (supra) and Reliance Petroproducts Pvt. Ltd (supra), we are of the view that* ***there is a complete disclosure in the present regarding all the facts relating to expenditure on repairs and maintenance, depreciation and expenditure on interest and financials and hence, there is no question of concealment of particulars of income by the assessee. Hence, we delete the penalty.*** *The facts being identical in AY 2009-10 also, we delete the penalty in this year also.*
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> *18. In the Result, both the appeals of the assessee are allowed."*

8.8 The Hon'ble Co-ordinate Bench of the Tribunal in the aforesaid cases dealt with the identical issues in detail and ultimately deleted the penalty. The Ld. Commissioner not only analyzed the factual aspect of the case but by respectfully following the judgments of the Co-ordinate Bench of the Tribunal deleted the penalty. Even otherwise we do not find any material and/or reason to contradict the findings of the Ld. Commissioner in deletion of the penalty and perversity or impropriety or illegality in the impugned order, and hence, the impugned order is sustained and **ITA no. 2039/Mum/2023** is dismissed.

9. Coming to **ITA No. 2040/Mum/2023 AY 2008-09**, we observe that the following disallowances were in consideration for levy of penalty by the AO:

(i) Disallowance of interest & finance charges	*Rs. 369,04,40,324/-*
(ii) Disallowance of Administrative & General Expenses	*Rs. 2,70,93,343/-*
(iii) Civil Expenses (prior period expenses)	*Rs. 21,40,273/-*

9.1 In our judgment in ITA No. 2039/Mum/2023, we have also considered the levy of penalty on the basis of disallowances on account of Interest & Finance Charges and Administrative & General Expenses and therefore, in view of our decision in ITA No. 2039/Mum/2023, levy of penalty on the basis of said disallowances, is un-sustainable.

9.2 Coming to the disallowance of Rs. **21,40,273/-**, which pertains to the Civil Expenses (prior period expenses), which has also been considered for levy of penalty, infact is a component "Administrative Expenses of the previous year" aggregating to Rs. 23,46,012/- debited under the head "Prior Period Expenses" in Schedule "O",. The Assessee claimed and not refuted by the ld. DR that entire Prior Period Expenses, which includes the Civil Expenditure incurred during the year under consideration were Rs. 87,31,688/- as it appears in Schedule "O" of the Annual Accounts. The Hon'ble Co-ordinate Bench of the Tribunal vide order dated 21.04.2017 in ITA No. 7831/Mum/2011 allowed the said claim of Prior Period Expenses of Rs. 87,31,688/- entirely in favour of the Assessee and deleted the addition/disallowances made on this count, hence no penalty is sustainable on the basis of disallowance of Civil Expenses (Prior Period Expenses) to the tune of Rs. **21,40,273/-**. Thus considering the peculiar facts and circumstances of the case, as the addition / disallowance itself is deleted and not in existence, hence, on this count penalty does not survive. Therefore the penalty imposed in ITA No. 2040/Mum/2023 has rightly been deleted by the Ld. Commissioner, hence, no interference is warranted. Consequently **ITA No. 2040/Mum/2023** filed by the Revenue/Department also stands dismissed.

10. Coming to **ITA No. 2038/Mum/2023 AY 2010-11**, we observe

that in this case, the penalty has been levied on the basis of disallowance of Interest & Finance Charges to the tune of Rs. 288,41,95,617/- which was made by the AO and affirmed by Ld. Commissioner as well as by the Hon'ble Co-ordinate Bench of the Tribunal in ITA No. 6178/Mum/2013 decided on 21.04.2017. As we have already dealt with the identical disallowance/addition qua Interest & Finance Charges on the basis of which penalty has been levied by the AO but deleted by the ld. Commissioner and the action of the Ld. Commissioner has been sustained by us in ITA No. 2039/Mum/2023, hence, in view of our judgment, this appeal i.e. **ITA No. 2038/Mum/2023 AY 2010-11** also stands dismissed.

11. In the result, all the appeals filed by the Revenue/Department are dismissed.

Order pronounced in the open court on 30 -10-2023.

Sd	*Sd/-*
(**B.R. BASKARAN**)	**(N. K. CHOUDHRY)**
Accountant Member	**Judicial Member**

Dated: /10/2023
SK, Sr.PS.

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. DR, ITAT, Mumbai
4. Guard File
5. CIT

BY ORDER,

(Dy./Asstt.Registrar)
ITAT, Mumbai