

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

**BEFORE SHRI ANIKESH BANERJEE, JUDICIAL MEMBER AND  
SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

**I.T.A No.1993/Mum/2024  
(Assessment Year: 2014-15)**

<b>Kanan Knitwear,</b> 204/205, Amir Industrial Estate, Sun Mill Compound, Lower Parel, Mumbai-400 013 <b>PAN : AAAFK3695B</b>	<b>vs</b>	<b>DCIT, Circle 23(1),</b> Piramal Chambers, Lalbaug, Mumbai-400 012
<b>APPELLANT</b>		<b>RESPONDENT</b>

Assessee by : Shri Anil J Sathe, CA  
Respondent by : Shri P.D. Chougule (Addl.CIT) SR DR  
  
Date of hearing : 26/08/2024  
Date of pronouncement : 28/08/2024

**ORDER**

**PER ANIKESH BANERJEE, J.M:**

Instant appeal of the assessee was filed against the order of the Learned National Faceless Appeal Centre (NFAC), Delhi [for brevity, 'Ld.CIT(A)'] passed under section 250 of the Income-tax Act, 1961 (in short, 'the Act'), for Assessment Year 2014-15, date of order 19.02.2024. The impugned order was emanated from the order of the National e-Assessment Centre, Delhi (hereinafter, 'the Ld. AO') passed under section 271(1)(c) of the Act, date of order 02/01/2022.

2. The assessee has taken the following grounds:-

- “1. The learned CIT(A) erred in not appreciating that the mere denial or non-acceptance of a claim could not result in a | penalty under section 271(1)(c).
2. The learned CIT(A) erred in not appreciating that a difference in opinion on the nature of the loss whether capital or revenue would not in itself result in the levy of penalty.
3. The Learned CIT(A) erred in not appreciating that the assessing officer himself was totally unsure about the \ nature of the charge whether it was furnishing of | inaccurate 'particulars or concealment, and on that account I in view of the judicial pronouncements on the issue the j penalty order deserved to be quashed
4. The learned CIT(A) failed to appreciate that a mere making 1 of a claim which is not sustainable in law by itself would not amount to concealing particulars of income or furnishing inaccurate particulars of income.
5. The learned CIT(A) erred in upholding the penalty order i wherein the charge for levying penalty was distinct from the charge for levy of penalty in notice.
6. The appellant craves leave to add, alter or amend any of the grounds of the appeal, at any time before or at the time of hearing.”

3. The brief facts of the case are that the assessee during the impugned assessment year filed the return under section 139 of the Act. The assessee debited to P&L Account, amount to Rs. 42,49,475/- expenditure under 'sundry debit balances.' It is found that out of Rs. 42,49,475/- amount to Rs. 20,00,000/- was debited due to forfeited amount of booking in MIDC at Patalganga. The assessee booked a plot in Patalganga Industrial Area of MIDC. But due to a failure of the business, the assessee was unable to pay the balance amount. So, the

MIDC confiscated the amount deposited by the assessee. The said amount was booked as revenue expenditure in the P&L Account during the impugned assessment year. During the assessment proceedings, the Ld.AO rejected the assessee's claim and added back the total amount of Rs.20 lakhs with the total income of the assessee for rejecting revenue expenditure and treated it as capital expenditure. But the assessee has not contested the quantum appeal before the higher authority. The Id.AO has initiated penalty proceedings under section 271(1)(c) of the Act against the addition made in the order under section 143(3) of the Act and the penalty was levied on addition amount to Rs. 20,00,000/- @100% of the tax sought to be evaded, amount to Rs.6,48,900/-. The assessee filed an appeal before the Id. CIT(A). The Ld.CIT(A) upheld the penalty order. Being aggrieved, the assessee filed an appeal before us.

4. We heard the rival submission and considered the documents available in the record. The assessee claimed Rs.20 lakhs which was forfeited by the MIDC for failure to pay the balance consideration on allotted plot. The assessee has treated the expense as revenue expenditure. The addition was made due to the change of account head from revenue expenditure to capital expenditure. The assessee has not contested the quantum addition.

Considering the nature of addition, we respectfully relied on the order of the Hon'ble **Supreme Court of India** in **Commissioner of Income-tax, Ahmedabad vs Reliance Petroproducts (P.) Ltd, [2010] 189 Taxman 322 (SC)**. Held, whether merely because the assessee had claimed expenditure, which claim was not accepted or was not acceptable to revenue, that by itself would not attract penalty under section 271(1)(c) of the Act.

We find that there is a mere change of account head from revenue expenditure to capital expenditure which was claimed in the P&L Account. We respectfully consider the judgement of the Hon'ble Apex Court in **Reliance Petroproducts (P.) Ltd** (supra). The Id. DR argued and unable to submit any contrary judgment against the submission of the Id. AR. Accordingly, both the impugned orders are set aside and the penalty amount to Rs.6,48,900/- is hereby quashed.

5. In the result, the appeal of the assessee bearing **ITA No.1993/Mum/2023** is allowed.

Order pronounced in the open court on 28<sup>th</sup> day of August, 2024.

Sd/-

sd/-

(GIRISH AGRAWAL)  
ACCOUNTANT MEMBER  
Mumbai, दिनांक/Dated: 28/08/2024  
Pavanan

(ANIKESH BANERJEE)  
JUDICIAL MEMBER

**Copy of the Order forwarded to:**

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त CIT
4. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT,  
Mumbai
5. गार्डफाइल/Guard file.

BY ORDER,

//True Copy//

(Asstt. Registrar), **ITAT, Mumbai**