IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "C" MUMBAI

BEFORE SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)
AND
SHRI RAJ KUMAR CHAUHAN (JUDICIAL MEMBER)

ITA No. 3488/MUM/2024
Assessment Year: 2005-06

Asst. CIT-8(2)(1), Room No. 481, Aayakar Bhavan, Maharishi Karve Road, Mumbai-400020.	**Vs.**	Piramal Enterprises Ltd., Piramal Ananta, Agastya Corporate Park, Kamani JUNC, LBS Marg, Opp. Fire Bridge, Kurla S.O. Mumbai-400070. **PAN NO. AAACN 4538 P**
Appellant		**Respondent**

CO No. 156/MUM/2024
(Arising out of ITA No. 3488/MUM/2024)
Assessment Year: 2005-06

Piramal Enterprises Ltd., Piramal Ananta, Agastya Corporate Park, Kamani JUNC, LBS Marg, Opp. Fire Bridge, Kurla S.O. Mumbai-400070. **PAN NO. AAACN 4538 P**	**Vs.**	Asst. CIT-8(2)(1), Room No. 481, Aayakar Bhavan, Maharishi Karve Road, Mumbai-400020.
Appellant		**Respondent**

Assessee by	:	Mr. Ronak Doshi a/w Mr. Priyank Gala
Revenue by	:	Ms. Madhu Malati Ghosh, CIT-DR

Date of Hearing	:	21/08/2024
Date of pronouncement	:	30/08/2024

ORDER

PER OM PRAKASH KANT, AM

The captioned appeal and cross-objection filed by the Revenue and the assessee respectively are directed against order dated 15.05.2024 passed by the Ld. Commissioner of Income-tax (Appeals) – 57, Mumbai [in short 'the Ld. CIT(A)'] for assessment year 2005-06 in relation to penalty u/s 271(1)(c) of the Income-tax Act, 1961 (in short 'the Act').

2. The Revenue has raised following ground in its appeal:

> *1. Whether on the facts and circumstances of the case and in law the Ld. CIT(A) has erred in not appreciating the fact that while passing the assessment order u/s 143(3) of the I T Act dated 31.12.2008, the AO has covered both the limbs of initiating penalty i.e. I. furnishing inaccurate particulars*
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> *2. concealing the particulars of income And in addition to above, initiating penalties for excess claims / losses etc. Hence the penalty order passed by the AO is justified in each and every way.*

2.1 The assessee has raised cross-objections which are reproduced as under:

> ***CROSS-OBJECTION I:***
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> *1. On the facts and circumstances of the case and in law, the ld. Assessing Officer ("AO") erred in levying penalty amounting to Rs. 25,47,52,538/- u/s 271(1)(c) of the Income-tax Act, 1961 (*the Act®).*
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> *2. The Cross objector prays that the Id. AO be directed to delete the penalty levied u/s 271(1)(c) of the Act.*
>
> ***WITHOUT PREJUDICE TO THE ABOVE:***

CROSS-OBJECTION II:

1. On the facts and circumstances of the case and in law, the Id. AO erred in levying 100% penalty u/s 271(1)(c) of the Act on compensation received on termination of agency rights by treating it as business income.

2. The Cross objector prays that the ld. AO be directed to levy penalty u/s 271(1)(c) of the Act, if any, only on the differential tax rate between business income and long-term capital gains before setting off the brought forward capital loss.

3. The cross-objection has been filed by the assessee, three days after the prescribed period of limitation. The assessee has filed an affidavit from the taxation inchage of the company explaining the delay of 3 days. In view of short delay of three days and explanation on behalf of the assessee company, we condone the delay of three days in filing the cross objection and admit the same for adjudication.

4. Briefly stated, facts of the case are that the assessee had filed return of income on 31.10.2005 declaring total income at Rs.43,80,32,246/- under the normal provisions of the Act and Rs.1,98,56,14,437/- u/s 115JB of the Act. The return of income filed by the assessee was selected for scrutiny and the Assessing Officer passed assessment order u/s 143(3) of the Act on 27.12.2007 wherein he assessed the total income at Rs.1,07,32,57,650/- under normal provisions of the Act at Rs.1,98,56,14,437/- u/s 115JB of the Act after making certain disallowances/additions/adjustments and initiated penalty u/s 271(1)(c) of the Act by way of issue of notice u/s 274 r.w.s 271(1)© of the Act dated 27.12.2007.

5. On further appeal, the Ld. First Appellate Authority granted partial relief in respect of quantum of disallowance/additions made by the Assessing Officer.

6. Aggrieved, the assessee filed appeal filed before the Income-tax Appellate Tribunal (ITAT) in respect of quantum of disallowance/addition. During the pendency of the said appeal before the ITAT, the Assessing Officer issued show cause notice for levy of the penalty on the ground of furnishing inaccurate particulars of the income by the assessee with regard to following disallowance/additions:

> *"1. Compensation received on Termination of Distributor agreement being assessed as Business Income amounting to Rs.92,76,62,688/- instead of Capital Gain as returned by the assessee.*
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> *2. Addition on account of Insurance Claim received during the year amounting to Rs.2,75,00,000/-.*
>
> *3. Disallowance of Research and Development Expenditure u/s. 35(2AB) & 35(i)(iv) of the Act amounting to Rs.3,19,78,297/-.*
>
> *4. Disallowance of Depreciation on Excess Capital Expenditure of R&D Unit amounting to Rs.38,62,993/-."*

7. The Assessing Officer after considering submission of the assessee levied penalty of Rs.25,47,52,538/- i.e. equivalent 100% of the tax sought to be evaded. On further appeal by the assessee, the Ld. CIT(A) deleted the penalty on the additional ground raised by the assessee that the notice u/s 274 r.w.s. 271(1)(c) dated 27.12.2007 of the Act issued was defective as particular limb i.e. concealment of income or furnishing of inaccurate particulars of the

income was not stricken off by the Assessing Officer while issuing notice for initiation of penalty, relying on the decision of the Hon'ble Bombay High Court in the case of **Mohd. Farhan Shaikh v. DCIT (2021) 125 taxmann.com 253 (Bombay)**.

8. Aggrieved, the assessee is in cross-objection submitting that even otherwise on merit also penalty is not leviable in the case of the assessee.

9. We have heard rival submission of the parties and perused the relevant material on record. Before us, the Ld. counsel for the assessee referred to the Paper Book which is running from page 1 to 294. The Ld. counsel submitted that subsequent to the impugned order of the Ld. CIT(A), the ITAT in order dated 11/01/2024 in ITA No. 3706/Mum/2010 and ITA No. 5091/Mum/2024, has decided the additions/disallowances made in quantum proceedings. He submitted a chart of the finding of ITAT (supra) qua each issue on which AO had levied penalty, which is extracted as under:

Sr. No.	Ground of Appeal	Held by ITAT
1.	**Compensation received on termination of agreement** - Rs.92,76,62,688/-	Compensation received by the Assessee from RDG to the tune of Rs. 92,76.62,688/- in out of court settlement is a business income and not capital gains. Thus, provisions of S. 28(ii)(c) and 28(va)(a) of the Act are attracted. Consequently, this ground determined against the Assessee [Para 38]
2.	Addition on account of **Insurance claim** received during the year Rs. 2,75,00,000/-	Remitted back to the file of AO to decide afresh on verifying the actual loss incurred by the Assessee due to accidental fire. Thus, decided in favour of the Assessee for statistical purposes [Para 65]
3.	Disallowance of **deduction**	Restored to AO to decide after providing

	u/s 35(2AB) and u/s 35(1)(iv) respect of Chennai unit - Rs. 3,19,78,297/-	opportunity of being heard to the Assessee to furnish the approval of competent authority in Form 3CM: Thus, allowed for statistical purposes [Para 58]
4.	Disallowance of **depreciation on capital expenses of R&D unit** - Rs. 38,62,993/-	Restored to AO

9.1 The Ld. counsel for the assessee submitted that as far as issue of penalty for addition on account of **insurance claimed** is concerned, the ITAT(supra) has restored the issue back to the file of the Assessing Officer. The relevant finding of the ITAT is reproduced as under:

> *"64. During the year under consideration the assessee has made a claim of Rs. 12.22 crore with the insurance company on the basis of insurance cover purchased by it in respect of its corporate office where fire took place. The assessee company has received interim claim of Rs. 2.75 crores on adhoc basis. The assessee has incurred a loss of Rs. 7.95 crores approximately due to the fire accident. The AO has treated the payment of Rs. 2.75 crores received by the assessee as insurance claim on adhoc basis and taxed the same under the head business or profession. The Ld. CIT(A) observed that the amount received by the assessee was windfall and as such the same is the revenue receipt taxable under the head business or profession.*
>
> *65. The Ld. A.R. for the assessee contended that since the assessee has ultimately incurred a loss it cannot be taxed in its hand as revenue receipt. During the course of argument the assessee was called upon to produce the evidence regarding loss incurred by it due to accidental fire which the assessee has not brought on record. Moreover all the four policies purchased by the assessee was for plant & machinery. The Ld. A.R.s for the parties to the appeals unanimously contended that the issue be remitted back to the AO to decide afresh on verifying the actual loss incurred by the assessee due to accidental fire. In view of the matter for cause of substantive justice the issue is remitted back to the AO to decide afresh within six months from the date of receipt of the order on filing actual loss suffered due to accidental fire. So ground No. 11 is decided in favour of the assessee for statistical purposes."*

9.2 Regarding the penalty for disallowance of **deduction u/s 35(2AB) and section 35(1)(iv) of the Act** in respect of Mulund

Unit and Ennore Unit, Chennai, also the ITAT(supra) has restored the issue back to the file of the Assessing Officer, observing as under:

> *"54. The assessee has claimed research and development expenses incurred during the year under consideration for Mulund unit, Mumbai and Ennore unit, Chennai as under:*
>
> | | *(in Lakhs)* |
> |---|---|
> | *"(i) R&D - revenue exp. u/s 0.35(2AB)* | *Rs.4140.62* |
> | *(ii) R&D - capital exp. (building) u/s 0.35(1)(iv)* | *Rs.3196.96* |
> | *(iii) R&D - capital exp. (Plant & machinery, computers, etc) u/s 0.35(1)(iv)* | *Rs.2350.13* |
> | | *Rs.9687.71* |
>
> *55. We have perused the impugned order passed by the Ld. CIT(A) who has directed the AO to verify the actual figures/expenses to work out the disallowance by returning following findings:*
>
> > *"*The AO should verify the actual figures/expenses. The disallowance to be accordingly worked out.*
> >
> > **As per AO, the approval in respect of R&D unit at Chennai has been given by Ministry of Science and Tech. letter dated 23-2-05 upto 31-3-07 (no period mentioned). Besides, no approval in prescribed Form No. 3CM has been enclosed before AO/before this office also. The said statutory Form No. 3CM is a mandatory Form and as such, the AO has rightly held that R & D expenditure incurred at Ennore only after approval given by Ministry i.e. 23-2-2005 can be allowed that too if given in Form No. 3CM which is a. mandatory requirement. Besides, no breakup of expenditure in respect of R & D facility at Ennore between 23-2-05 and 31-3-05 has been given. The disallowance made by AO is upheld."*
>
> *56. The assessee has failed to bring on record approval in prescribed form No. 3CM before the AO as well as the Ld. CIT(A). It is fact on record that only R&D expenditure incurred at Ennore for which approval has been given by the Ministry on 29-3-2005 can be allowed only if form No. 3CM is brought on record. The Ld. A.R. for the assessee contended that despite filing form 3CL by the assessee with DSIR it has not received form 3CL, since it is an old data even copy of reminders filed by the assessee are not readily available with the assessee and it cannot be penalized for inaction on the part of the DSIR and pressed for deduction under section 35(2AB) to at least from the date of application i.e. June 25, 2004. It is also contended that identical issue in 2008-09 was restored to the AO to allow at least weighted deduction till form 3CM is given.*

57. We have perused the order for A.Y. 2008-09 which is qua the identical issue of the co-ordinate Bench of the Tribunal restored the issue back to AO by returning following findings:

> *"27. We have considered rival submissions and perused materials on record. It is an undisputed fact that there is no approval by the competent authority in Form no. 3CM in respect of the expenditure incurred towards the R&D facility. Section 35(2AB) of the Act mandates furnishing of approval in Form no. 3CM for the purpose of availing deduction. It is the contention of the assessee that though, it has made application seeking approval in Form no. 3CM, however, it is still awaited. As held by the Tribunal, Mumbai Bench, in case of PCP Chemicals Pvt. Ltd. (supra), approval by the competent authority in Form no. 3CM is mandatory for claiming deduction under section 35(2AB) of the Act. The same view has also been expressed in Vivimed Labs Ltd. (supra). However, considering the contention of the learned Sr. Counsel that the assessee has applied for approval in Form no. 3CM which is still pending, we are inclined to restore the issue to the Assessing Officer for providing an opportunity to the assessee to furnish the approval of the competent authority in the prescribed manner for claiming deduction under section 35(2AB) of the Act. This ground is allowed for statistical purposes."*

58. Since the issue is identical the same is restored to the AO to decide after providing opportunity of being heard to the assessee in view of the directions given by the Tribunal extracted above. Consequently ground No. 6 is allowed for statistical purposes."

9.3 As far as penalty related to **disallowance of depreciation of capital expenditure of R&D unit,** also the ITAT (supra) restored the issue back to the file of the Assessing Officer observing as under:

> *"59. Ground No. 7 is interconnected with ground No. 6 being claim of depreciation on capital expenses and it is to be decided by the AO accordingly in the light of the findings returned on issue in ground No. 6."*

9.4 We find that the issues in dispute related to the penalty in respect of above three issues, have already been restored back to the file of the Assessing Officer. Since, the basis on which the penalty was levied itself has been restored, then no such penalty

could survive. The Hon'ble Supreme Court in the case of **KC Builders (2004) 265 ITR 562** has observed that where alternation is made to the assessment order on the basis of which penalty was levied for levying penalty for concealment and no such penalty can survive and mere as liable to be cancelled. The relevant para of the Hon'ble Supreme Court is reproduced as under:

> *"14... Ordinarily, penalty cannot stand if the assessment itself is set aside. Where an order of assessment or reassessment on the basis of which penalty has been levied on the assessee has itself been finally set aside or cancelled by the Tribunal or otherwise, the penalty cannot stand by itself and the same is liable to be cancelled as in the instant case ordered by the Tribunal and later cancellation of penalty by the authorities.*
>
> *30. It is a well-established principle that the matter which has been adjudicated and settled by the Tribunal need not be dragged into the criminal courts unless and until the act of the appellants could have been described as culpable."*

9.5 Respectfully following the above decision, we set aside the finding of the Ld. CIT(A), however, the Assessing Officer is it liberty to initiate penalty proceedings in the order , which will be passed consequent to the direction of the ITAT. Accordingly, the penalty in respect of three additions i.e. (i) Addition on account of Insurance claim received during the year Rs. 2,75,00,000/-; (ii) Disallowance of deduction u/s 35(2AB) and u/s 35(1)(iv) of the Act respect of Chennai unit and (iii) Disallowance of depreciation on capital expenses of R&D unit - Rs. 38,62,993/-, is hereby deleted.

10. Now, the only issue where the quantum addition has been upheld by the ITAT (supra) is in relation to compensation

amounting to Rs.92,76,62,688/- received from Roche Diagnostics Gmbh (RDG) on termination of agreement of agency, distribution and manufacturing rights.

10.1 We have heard rival submissions and perused the relevant material on record. The assessee company was granted exclusive rights to distribute market and sale various products in India and also to manufacture certain products under the agreement with Boehringer Mannheim GMBH (Roche Diagnostics GMBH) agreement dated 03.06.1997. This agreement was subsequently, terminated vide Settlement Agreement dated 20.10.2004. The assessee submitted that it had received a sum of Rs.92,76,62,688/- from Roche Diagnostics GMBH (RDG) of Germany towards termination of the agency, distribution and manufacturing rights granted to it by RDG vide agreement dated 03.06.1997. According to the assessee, it lost its rights of carrying out business of distributing, marketing and selling due to extinguishment of those rights, which were a capital asset. The Ld. counsel for the assessee submitted that relinquishment of asset and extinguishment of right thereon is in relation to capital asset under the provision of section 2(47) of the Act and therefore, the settlement payment received on account of such transfer was held to be a capital gain. The contentions of the assessee have not been accepted by the ITAT (supra), in quantum proceedings. The relevant finding of the ITAT (supra) is reproduced as under:

"32. *Hon'ble Supreme Court in case of Kettlewell Bullen & Co. Ltd. (supra) held that where payment is made to compensate a person from cancellation of contract, as in the instant case qua agency distribution agreement dated 3-6-1997 terminated vide settlement agreement dated 20-10-2004 and such cancellation has left the assessee free to carry on his trade the receipt is revenue receipt.*

33. Similarly, Hon'ble Supreme Court in case of Chari and Chari Ltd. (supra) has also held that when the termination of an agency did not impair the profit-making structure of the assessee, but was within the framework of the business, the receipt for termination of agency would be a revenue receipt. Hon'ble Madras High Court in case of Indo Foreign Traders (P) Ltd. (supra) held that when an assessee was appointed as a sales organizer of a drug company on commission basis and on termination of the said agreement compensation for termination of the agreement was income assessable to tax under section 10(va) of the Income-tax Act, 1922, which is akin to section 28(ii) of the Act. Ratio of the case law discussed by the Ld. CIT(A) is : any compensation received by a party on termination of the earlier agency agreement is a revenue receipt to be assessed as business income.

34. The contention raised by the Ld. A.R. for the assessee that agreement between the parties is to be read as intended by the parties and it is not open to AO to give another interpretation is also not sustainable because agreement in ADMA (supra) is categoric in all respects which has been further clarified by the settlement agreement (supra) and as such reliance placed on the decision rendered by Hon'ble Calcutta High Court in case of CIT v. Arun Dua [1989] 45 Taxman 246/[1990] 186 ITR 494 is misplaced.

35. Furthermore, the provisions contained under section 28(ii)(c) are very categoric in giving the treatment of compensation received from the termination of any agency business which has been further clarified from the new provisions contained under section 28(va)(a) w.e.f. 1-4-2003, wherein it is specifically included within the purview of profit and gains of business "any sum whatever received or receivable in cash or kind under any agreement for guarantee any activity in relation to any business".

36. The contentions raised by the Ld. A.R. for the assessee inter-alia qua the provisions contained under section 28(va) that the existing provisions of clause (ii) of section 28(a) is restrictive in its scope as far as taxation of compensation is concerned; a large segment of compensation received in connection with business and employment is within the purview of taxation, is not sustainable because it is nowhere case of the assessee before the AO or the Ld. CIT(A) that because of settlement agreement qua the termination of agency and distribution business the compensation is in respect of business loss and employment. Rather in the preceding para it is discussed that after termination of the agency and distribution assessee's business has been increased considerably.

37. Moreover, when the assessee and the RDG were entered into agreement to do business and any settlement arrived at between them

for termination of the business would be business income. The assessee has also raised one additional ground to supplement ground No. 1 to the effect that compensation received on termination of agreement is a capital receipt. When it is nowhere case of the assessee that it has lost its livelihood on account of termination of the business agreement compensation received by it by virtue of the termination agreement is business income.

38. So in view of what has been discussed above, we are of the considered view that answer to questions framed in para 11 & 17 of the order is "compensation received by the assessee from RDG to the tune of Rs. 92,76,62,688/- in out of court settlement is a business income and not an income assessed to capital gains as claimed by the assessee" and as such provisions contained under section 28(ii)(c) read with section 28(va)(a) of the Act are attracted. Hence, the Ld. CIT(A) has rightly confirmed the addition of Rs. 92,76,62,688/- as business income. Consequently ground No. 1 is determined against the assessee.

10.2 Before us, the ld Counsel for the assessee, however submitted that although the ITAT upheld the addition made by the AO but same does not attract penalty proceedings for the reason that mere disallowance of legal claim does not attract penalty as held by the Hon'ble Supreme Court in the case of **CIT v. Reliance Petroproudcts Pvt. Ltd. (SC) 322 ITR 158 (SC).** Further, the Ld. counsel for the assessee submitted that all information in respect of the compensation for termination of agreement were duly filed before the Assessing Officer. He referred to computation of the total income available on paper book page 39. He further referred to note-7, which is part of notes to computation of income available on page 48 of the Paper Book. The relevant note is reproduced as under:

"7. During the previous year, the assessee company had to discontinue its marketing and distribution arrangement with Roche Diagnostics Gmbh vide the Settlement Agreement dated 20.10.2004. Under the said Settlement Agreement the assessee company has received an amount of Rs.98,45,50,688/-consisting of Rs.5,68,88,000/- being amount received

for instruments and Rs.92,76,62,688/- for termination of the agreement. Accordingly, Rs.5,68,88,000/- has been reduced from the block of plant & machinery for the purpose of calculating Depreciation as per IT Act / Rules. As regards Rs.92,76,62,688/-, received in lieu of termination of right to carry-on a business, the same is subject to Long Term Capital Gains u/s. 45, (refer Schedule 3). Cost of acquisition for the same is adopted as Nil in accordance with Section 55(2).”

10.3 Further, the assessee referred to paper book page 186, which is note No. 5 to Schedule 22 of the balance sheet. The assessee also explained the nature of the payment received during the course of the assessment proceedings, therefore, in our opinion, the assessee has filed all particulars material to the issue in dispute. Therefore, no penalty could be levied merely for the reason that claim of the assessee has not been accepted, as held by the Hon’ble Supreme Court in the case of Reliance Petroproducts Ltd. (supra). The relevant part of the decision of Hon’ble Supreme Court is reproduced as under:

“7. As against this, learned Counsel appearing on behalf of the respondent pointed out that the language of section 271(1)(c) had to be strictly construed, this being a taxing statute and more particularly the one providing for penalty. It was pointed out that unless the wording directly covered the assessee and the fact situation herein, there could not be any penalty under the Act. It was pointed out that there was no concealment or any inaccurate particulars regarding the income were submitted in the Return. Section 271(1)(c) is as under :—

"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—

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

A glance at this provision would suggest that in order to be covered, there has to be concealment of the particulars of the income of the assessee. Secondly, the assessee must have furnished inaccurate particulars of his income. Present is not the case of concealment of the income. That is not the case of the Revenue either. 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. In CIT v. Atul Mohan Bindal [2009] 9 SCC 589, where this Court was considering the same provision, the Court observed that the Assessing Officer has to be satisfied that a person has concealed the particulars of his income or furnished inaccurate particulars of such income. This Court referred to another decision of this Court in Union of India v. Dharamendra Textile Processors [2008] 13 SCC 369, as also, the decision in Union of India v. Rajasthan Spg. & Wvg. Mills [2009] 13 SCC 448 and reiterated in para 13 that :—

"13. It goes without saying that for applicability of section 271(1)(c), conditions stated therein must exist."

8. Therefore, it is obvious that it must be shown that the conditions under section 271(1)(c) must exist before the penalty is imposed. There can be no dispute that everything would depend upon the Return filed because that is the only document, where the assessee can furnish the particulars of his income. When such particulars are found to be inaccurate, the liability would arise. In Dilip N. Shroff v. Jt. CIT [2007] 6 SCC 329, this Court explained the terms "concealment of income" and "furnishing inaccurate particulars". The Court went on to hold therein that in order to attract the penalty under section 271(1)(c), mens rea was necessary, as according to the Court, the word "inaccurate" signified a deliberate act or omission on behalf of the assessee. It went on to hold that Clause (iii) of section 271(1) provided for a discretionary jurisdiction upon the Assessing Authority, inasmuch as the amount of penalty could not be less than the amount of tax sought to be evaded by reason of such concealment of particulars of income, but it may not exceed three times thereof. It was pointed out that the term "inaccurate particulars" was not defined anywhere in the Act and, therefore, it was held that furnishing of an assessment of the value of the property may not by itself be furnishing inaccurate particulars. It was further held that the assessee must be found to have failed to prove that his explanation is not only not bona fide but all the facts relating to the same and material to the computation of his income were not disclosed by him. It was then held that the explanation must be preceded by a finding

as to how and in what manner, the assessee had furnished the particulars of his income. The Court ultimately went on to hold that the element of mens rea was essential. It was only on the point of mens rea that the judgment in Dilip N. Shroff's case (supra) was upset. In Dharamendra Textile Processors' case (supra), after quoting from section 271 extensively and also considering section 271(1)(c), the Court came to the conclusion that since section 271(1)(c) indicated the element of strict liability on the assessee for the concealment or for giving inaccurate particulars while filing Return, there was no necessity of mens rea. The Court went on to hold that the objective behind enactment of section 271(1)(c) read with Explanations indicated with the said section was for providing remedy for loss of revenue and such a penalty was a civil liability and, therefore, wilful concealment is not an essential ingredient for attracting civil liability as was the case in the matter of prosecution under section 276C of the Act. The basic reason why decision in Dilip N. Shroff's case (supra) was overruled by this Court in Dharamendra Textile Processors' case (supra), was that according to this Court the effect and difference between section 271(1)(c) and section 276C of the Act was lost sight of in case of Dilip N. Shroff (supra). However, it must be pointed out that in Dharamendra Textile Processors' case (supra), no fault was found with the reasoning in the decision in Dilip N. Shroff's case (supra), where the Court explained the meaning of the terms "conceal" and "inaccurate". It was only the ultimate inference in Dilip N. Shroff's case (supra) to the effect that mens rea was an essential ingredient for the penalty under section 271(1)(c) that the decision in Dilip N. Shroff's case (supra) was overruled."

10.4 Further, the Hon'ble jurisdictional High Court in the case of **Bennett Coleman & Co ltd in (2013) 33 taxmann.com 227(Bombay)** have deleted the penalty on account of change of head of income by the assessing officer particularly when he could not establish concealment of income or furnishing of inaccurate particulars of income by stating incorrect facts by the assessee. The relevant finding of Hon'ble Bombay high Court is reproduced as under:

"3. So far as question (ii) is concerned, the respondent-assessee had claimed premium on redemption of debentures as income from capital gains. Whereas the assessing officer held that the redemption of debentures is revenue receipt assessable to tax under the head income from other sources. The CIT(A) confirmed the order of the assessing officer. The respondent-assessee did not file any further appeal on the quantum proceedings. Thereafter, the assessing officer levied penalty under Section

271(1)(c) of the Act on the respondent-assessee. The CIT(A) also confirmed the levy of penalty upon the respondent-assessee. On further appeal, the Tribunal held that there is no dispute with regard to the fact that the respondent-assessee had disclosed that the amount received as premium on redemption of debentures in its computation of income. Further, the Tribunal records that it is not the case of the department that the respondent-assessee had concealed any particulars of income or furnished inaccurate particulars of income by stating incorrect facts. The assessing officer considered the said premium received on redemption of debentures to be taxable under the head income from other sources while the respondent-assessee considered the same to be taxable under the head capital gains. In view of the fact that there is only a change of head of income and in the absence of any facts that the claim of the assessee was not bonafide, the Tribunal deleted the penalty imposed under Section 271(1)(c) of the Act. The revenue has not been able to point out that the finding of the Tribunal is perverse. In these circumstances, we see no reason to entertain the proposed question (ii).”

10.5 Similarly, Hon’ble Bombay High Court in the case of **CIT Vs Procter & Gamble Hygiene and Healthcare Ltd in ITA No. 946 of 2012** deleted the penalty for change of head of income from “ Income from House property” to “Business income”. Therefore, respectfully relying on the decisions of the Hon’ble Supreme Court and jurisdictional high court referred above, in our opinion no penalty could be sustained in respect of addition of compensation received on termination of the agreement. Thus, the penalty in respect of this issue is hereby deleted.

10.6 The grounds raised in the cross-objection of the assessee are accordingly allowed.

10.7 Since, the penalty levied is deleted on the merit therefore, determination of the legal issue raised in the appeal of the Revenue is rendered academic, which we are not adjudicating upon at this

stage and left open. Accordingly, the appeal of the Revenue is dismissed as infructuous.

11. In the result, the cross-objection of the assessee is allowed whereas appeal of the Revenue is dismissed.

Order pronounced in the open Court on 30/08/2024.

Sd/-	**Sd/-**
(RAJ KUMAR CHAUHAN)	**(OM PRAKASH KANT)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Mumbai;
Dated: 30/08/2024
Rahul Sharma, Sr. P.S.

Copy of the Order forwarded to :

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

BY ORDER,

//True Copy//

(Assistant Registrar)
ITAT, Mumbai