

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

**BEFORE SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)  
AND  
MS. KAVITHA RAJAGOPAL (JUDICIAL MEMBER)**

**ITA No. 2767/MUM/2024  
Assessment Year: 2016-17**

Reliance Industries Ltd.,  
3<sup>rd</sup> floor, Maker Chamber IV 222  
Nariman Point,  
Mumbai-400021.  
**PAN NO. AAACR 5055 K**  
**Appellant**

Dy. CIT Circle 3(4),  
Room No. 559, Aayakar Bhavan,  
Maharshi Karve Road,  
Mumbai-400020.  
**Vs.**  
**Respondent**

**ITA No. 2898/MUM/2024  
Assessment Year: 2016-17**

ACIT-3(4),  
Room No. 481(2), 4<sup>th</sup> floor,  
Aayakar Bhavan, N.M. Road,  
New Marine Lines,  
Mumbai-400020.  
**Appellant**

Reliance Industries Ltd.,  
3<sup>rd</sup> floor, Maker Chamber IV  
Nariman Point,  
Mumbai-400021.  
**Vs.**  
**PAN NO. AAACR 5055 K**  
**Respondent**

Assessee by : Mr. Madhur Agrawal,  
Mr. Nimesh Vora  
Revenue by : Ms. Sanyogita Nagpal, CIT-DR

Date of Hearing : 19/09/2024  
Date of pronouncement : 22/11/2024



## **ORDER**

### **PER OM PRAKASH KANT, AM**

These cross-appeals by the Revenue and the assessee are directed against order dated 22.03.2024 passed by the Ld. Commissioner of Income-tax (Appeals) – 57, Mumbai [in short ‘the Ld. CIT(A)’] for assessment year 2016-17, in relation to penalty u/s 271(1)(c) of the Income-tax Act, 1961 (in short ‘the Act’) levied by the Assessing Officer.

2. The grounds raised by the Revenue in its appeal are reproduced as under:

1. *Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) is justified in deleting the penalty Penalty levied on disallowance of depreciation on KGD6 Block of Rs. 231,99,95,977/- ignoring the facts that the penalty was levied by ine AO on the quantum additions/ disallowance confirmed during the appellate stage and penalty u/s 271(1)(c) of the Act is leviable as per I.T. Act, 1961.*

2. *Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) failed to appreciate the fact that the penalty levied by the AO was on the quantum additions/ disallowance which were confirmed during the appellate stage, therefore, the action of the Assessing Officer to levy penalty u/s 271(1)(c) of the Act was appropriate and in consonance to the Act and also in view of the decision of Hon'ble Supreme Court in case of Dharmendra Textile Processors (306 ITR 277)*

3. *Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) is justified in deleting the penalty levied on disallowance u/s. 14A of the Act of Rs. 15,18,09,414/- ignoring the facts that the penalty was levied by the AO on the quantum additions/ disallowance confirmed during the appellate stage and penalty u/s 271(1)(c) of the Act is leviable as per I.T. Act, 1961.*

4. *Whether on the facts and circumstances of the case and in law, the La. CIT(A) is justified in deleting the penalty levied on disallowance of*



*deduction of investment u/s.32AC of Rs. 6,28,94,489/- ignoring the facts that the penalty was levied by the AO on the quantum disallowance confirmed during the appellate stage and penalty u/s 271(1)(c) of the Act is leviable as per I.T. Act, 1961.*

*5. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) is justified in deleting the penalty levied on disallowance of deduction of discount on bonds and debentures of Rs. 1,47,19,394/ ignoring the facts that the penalty was levied by the AO on the quantum disallowance confirmed during the appellate stage and penalty u/s 271(1)(c) of the Act is leviable as per I.T. Act, 1961.*

*6. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) is deleting the penalty levied on transfer pricing adjustment of Rs. 13,26,52,139/- ignoring the facts that the penalty was levied by the AO on the transfer pricing adjustment confirmed during the appellate stage and penalty u/S 271(1)(c) of the Act is leviable as per I.T. Act, 1961.*

2.1 The grounds raised by the assessee in its appeal are reproduced as under:

*On the facts and in the circumstances of the case and in law, the learned CIT(A);*

*General*

*1. erred in confirming the penalty u/s 271(1)(c) of the Act of Rs. 113,753 with respect to penalty levied on disallowance of depreciation on steel.*

*Defective penalty notice vitiates entire proceeding.*

*2. erred in upholding the penalty order despite the show cause notice dated 25.03.2019 did not strike off either of the limb as to whether penalty proceedings are initiated for concealment of income or for furnishing of inaccurate particulars of income.*

*Penalty order passed is bad in law and void ab initio*

*3. erred in confirming the levy of penalty, without appreciating that there was no satisfaction reached in the course of assessment proceeding about any concealment of income or furnishing of any inaccurate particulars of such income.*

*Assessed income is less than returned income*

*4. Erred in confirming the levy of penalty, even though the assessed income of Rs 17035,27,63,567 was much lower than the returned*



*income of Rs 18740,59,11,136 as per revised return filed on 30.03.2018 and hence, there is no question of concealment of income and consequent levy of penalty.*

*Penalty levied on disallowance of depreciation on steel which was purchased and capitalised in earlier year*

*5. erred in confirming the penalty levied by the learned AO with respect to disallowance of depreciation on WDV of steel purchased in AY 2003-04.*

*6. failed to appreciate that the Tribunal had deleted the penalty in AY 2003-04, when depreciation was claimed for the first time and thus, no penalty is leviable on consequent claim of depreciation.*

*Each of the above Grounds of Appeal are without prejudice to each other.*

3. Briefly stated, facts of the case are that the assessee filed return of income for the year under consideration on 25.11.2016 declaring total income at Rs. 18804,61,10,696/- under the normal provisions of the Act and book profit of Rs.36557,78,95,816/- u/s 115JB of Act. The return of income filed by the assessee was revised on 27.03.2016 wherein income under normal provisions of the Act was shown at Rs.18740,59,11,136/-, whereas book profit of Rs.36419,30,98,080/- was shown. The return of income was further revised on 30.03.2018. The assessment u/s 143(3) r.w.s. 144C of the Act was completed on 25.03.2019, wherein the total income was assessed at Rs.16797,17,09,934/- under normal provisions of the Act and book profit at Rs.37412,87,67,520/- u/s 115JB of the Act. Along with the assessment order, the Assessing Officer initiated penalty u/s 271(1)(c) of the Act in respect of various additions. The assessee filed appeal against the quantum additions before the Ld. CIT(A) who partly allowed the appeal of the assessee.



After receipt of the order of the Ld. CIT(A), the Assessing Officer issued show cause notice to the assessee as why the penalty might not be levied in respect of the addition sustained by the Ld. CIT(A). However, the assessee prayed that appeal against the said order of the Ld. CIT(A) was pending before the Income-tax Appellate Tribunal (in short 'the Tribunal') and therefore penalty might be kept in abeyance. In absence of any reply on merit of levy of penalty from the assessee, the Assessing Officer levied penalty amounting to Rs.268,21,85,166/- vide impugned order.

4. On further appeal, the Ld. CIT(A) sustained the penalty on the one issue, whereas deleted the penalty in respect of other additions.

5. Aggrieved, both the parties are before us by way of raising respective grounds.

6. Before us, the Ld. counsel for the assessee has filed a Paper Book containing pages 1 to 112.

7. The ground Nos. 1 and 2 of the appeal of the Revenue relate to penalty levied on disallowance of depreciation on 'KGD6' block of oil field amounting to Rs.230,99,95,977/- by the Assessing Officer, which has been deleted by the Ld. CIT(A). The relevant finding of the Ld. CIT(A) is reproduced as under:

***“7.3.3.1 Penalty levied on disallowance of depreciation on KGD6 Block:***

*The AO has discussed the disallowance of depreciation in respect of KGD6 block in para 5.1.3 of the assessment order. It has been stated*



by the AO in the assessment order that during the assessment proceedings, appellant had revised depreciation allowance in respect of KGD6 block based on the basis of production sharing contract (PSC) provisions. In the assessment order, the AO reproduced the submission of the appellant given for revising depreciation on KGD6 block based on PSC provisions. The AO considered the submission made by the appellant and thereafter, the difference in the depreciation claim made in the Return and the depreciation claim as per PSC provisions for KGD6 block, which amounted to Rs.670,36,40,710/- was disallowed by the AO and penalty proceedings were initiated u/s.271 (1)(c) for furnishing of inaccurate particulars of income. During the assessment proceedings, the appellant had submitted that the appellant claimed depreciation u/s.32 in respect of KGD6 block considering the assets acquired as intangible assets and the depreciation was claimed @ 25%. The appellant explained that that the appellant acquired participating interest in KGD6 block by executing production sharing contract (PSC) on 12.04.2002 with the President of India, acting through Jt. Secretary, Ministry of Petroleum and Natural Gas and Appellant and NiKo Resources Ltd. The cost incurred by the appellant in relation to exploration and drilling activity till 01.05.2009, i.e. date of commercial production, got accumulated year after year. The same was treated as intangible asset and the depreciation was claimed @ 25%. During the FY.2015-16, i.e. AY. 2016-17, depreciation on KGD6 block was computed at Rs.2164,84,04,612/- on the opening block of intangible assets and the additions made during the year. The reason for considering the assets of KGD6 as intangible asset was explained to the AO by the appellant that "participating interest in KGD6 block was commercial right acquired by the appellant under the licensing agreement with the Govt. of India. It was also explained to the AO that in the earlier assessment years, the AO rejected the claim of the appellant regarding assets in the block as intangible assets and computed depreciation as per the provisions contained in PSC by segregating various expenses under different heads. It was also explained to the AO that considering the cost benefit analysis, the claim of depreciation in respect of KGD6 block was revised as per provisions of PSC Article 17.2.4. It was also explained that the claim of depreciation on intangible assets of KGD6 block made in the Return of income was Rs.2164,84,04,612/- and as per the provisions of PSC revised the claim of depreciation on KGD6 assets was Rs.1494,47,63,902/-. Thus, the difference in the depreciation, claimed in the Return of income and that claimed in the revised working as per PSC provision, was explained to the AO during the assessment proceedings. Considering the submission made by the appellant, in para 12.9 of the assessment order, the AO re-worked the depreciation on entire assets of KGD6 as per Article 17.2.4 of PSC. From the assessment order, it is also seen that the AO allowed depreciation of Rs. 1494,47,63,902/- amortization being one tenth of development drilling cost amounting to Rs.54,26,98,176/- and allowed amortization of Rs.59,65,95,779/- being one tenth of drilling and exploration cost prior to commercial production. The AO also allowed the deduction u/s.42 amounting to Rs.3564,49,62,664/- in respect of KGD6 block.



Thus, it could be seen that the appellant provided all the information, documents, working related to depreciation claim considering the KGD6 block assets as intangible assets and also the depreciation as per PSC. After examining details/information/documents furnished by the appellant during the various assessment proceedings, the AO in fact allowed higher benefit to the appellant in respect of KGDG block by allowing depreciation on the plant and machinery, amortization of development drilling cost, amortization of drilling and acquisition cost prior to commercial production and deduction u/s.42 of the IT Act. The penalty was initiated by the AO in respect of disallowance on depreciation of KGD6 block assets merely on the basis of difference in the amount of depreciation as claimed in the Return of income considering the assets as intangible assets and that worked out as per provisions of PSC. The disallowance has been made by the AO in respect of claim of depreciation, therefore, penalty could only be levied in respect of furnishing of inaccurate particulars of income. As discussed above, during the assessment proceedings, the appellant furnished all the relevant information/documents/explanation to the AO, therefore, the AO had wrongly come to the conclusion that the appellant furnished inaccurate particulars of income in respect of claim of depreciation on assets of KGD6.

In addition to that, the appellant has submitted that as per Explanation (4) to section 271(1), the tax sought to be evaded means the difference between amount of tax on total income assessed under normal provisions minus amount of tax that would have been chargeable, had been total income assessed reduced by the amount of income in respect of which particulars were concealed, and inaccurate particulars were furnished. appellant submitted working of tax sought to be evaded and submitted that the assessed income under normal provisions of the Act was Rs. 16797,17,09,934/- and tax @ 34.61% was Rs.5813,50,08,808/-. The total assessed income after reducing the income for which particulars were concealed or inaccurate particulars were furnished was Rs. 19805,23,25,843/- (Rs. 16797,17,09,934 + Rs.3008,06,15,909) and tax on such income would be Rs.6854,59,09,974/-. Thus, the tax sought to be evaded would be Rs. (-) 1041,09,01,166/- (Rs.5813,50,08,808 - Rs.6854,59,09,974). Thus, the appellant submitted that the tax sought to be evaded was a negative figure, therefore, no penalty u/s.271(1)(c) should be levied. The working of tax sought to be evaded given by the appellant has been verified. The AO levied penalty u/s.271(1)(c) after giving effect to the order of the CIT(A). Therefore, the tax sought to be evaded has to be with reference to the total income assessed after giving effect to the order of the CIT(A). From perusal of the order of the AO dated 26.07.2021, giving effect to CIT(A) order, the total assessed income was Rs. 14820,75,17,015/- under normal provisions of the Act. The tax on total assessed income of Rs. 14820,75,17,015/- @ 34.61% would be Rs.5129,46,21,638/-. The AO levied penalty with respect to additions/disallowances upheld by the CIT(A), which came to Rs.775,01,88,298/-. As per Explanation (4) to section 271(1), the income to the extent of Rs.775,01,88,298/- have to be reduced from the total income as the income for which inaccurate particulars of income were furnished or particulars of income were



concealed. Thus, the total income assessed after reducing the amount for which inaccurate particulars were furnished or particulars were concealed would be Rs. 14045,73,28,717/- and tax on such assessed income would be Rs.4861,22,81,468/-.

Thus, the tax sought to be evaded would have been Rs.268,23,40,170/-

(Rs.5129,46,21,638 - Rs.4861,22,81,468). Thus, there was tax sought to be evaded as per Explanation (4) to section 271(1) of the Act. The working of tax sought to be evaded by the appellant is thus, found wrong and it cannot be accepted.

The appellant further submitted that by claiming depreciation on assets of KGD6 block considering it as intangible asset, the appellant did not get any benefit or gain from claim of such depreciation. In fact, by disallowing the depreciation of KGD6 block assets amounting to Rs.670,36,40,710/-, the AO allowed more benefit to the appellant in the assessment order by allowing depreciation on plant and machinery, amortization of development drilling, amortization of drilling and exploration cost prior to commercial production and deduction u/s.42 of the IT Act as per provisions of Article 17.2.4 of the production sharing contract (PSC). The argument of the appellant is strengthened by the decision of Hon'ble Delhi High Court in the case of PCIT vs. National Textile Corporation (supra). For ready reference the decision of Hon'ble Delhi High Court in the case of PCIT vs. National Textile Corporation Ltd. 151 Taxmann.com 512 (Delhi) is produced as under:

In the case of Principal Commissioner of, Income-tax v. National Textiles Corporation Ltd. [2023] 151-taxmann.com 512 (Delhi), the Hon'ble High Court of Delhi has held as under:

“...Clearly, the record shows that the assessee could not have claimed the loss on account of foreign currency as deductible expenditure, in view of the provisions of section 43A.[Para 17]

This provision, broadly, mandates adjustment in the cost of an asset, depending on whether there was an increase or a reduction in the liability of the assessee at the time of making payment, on account of changes in the rate of exchange.[Para 17.1]

It appears that this aspect emerged during scrutiny. [Para 17.2]

The assessee, as rightly pointed out accepted this position, without demur, even before the assessment order was passed, and accordingly, claimed depreciation on the increased cost of plant and machinery, qua which foreign currency fluctuation loss had been incurred. [Para 17.3]

The record shows that the assessee had preferred the appeal with the Commissioner (Appeals) only vis-a-vis that aspect of the assessment order whereby depreciation had not been granted by the Assessing Officer. [Para 19]



Furthermore, as noted by the Commissioner (Appeals) while dealing with the penalty order passed by the Dy. Commissioner, there was in fact no advantage accruing to the assessee in claiming foreign currency fluctuation loss as deductible expenditure, given the fact that it had unobserved losses amounting to Rs. 12,218.52 crores.[Para 20]

Clearly, the assessee, as noted even by the Commissioner (Appeals), could not have anything by claiming foreign currency fluctuation loss as deductible expenditure, as it would have only added to the existing burgeoning losses.[Para 21] At worst, in the instant case, the assessee's action could be construed as one where it sought to make a claim which was unsustainable in law. That by itself, in the given circumstance, would not call for imposition of penalty, as once the error was pointed out by the Assessing Officer, the assessee made a course correction before the assessment order was passed.[Para 22]

Therefore, there was no substantial question of law arising for consideration which would merit interference with the order of the Tribunal. [Para 24]....

In the case of Commissioner of Income-tax v. Krishnan Thyagarajan Sivarama [2008] 172 Taxman 334 (Delhi), the Hon'ble High Court of Delhi has taken similar view.

The relevant paras of the decision of the Hon'ble High Court of Delhi are reproduced as

"... 5. After imposition of penalty as mentioned above, the Commissioner of Income-tax (Appeals) was of the view that the assessee had furnished all the necessary and relevant particulars and that there was no question of furnishing any inaccurate particulars which led to an erroneous computation of tax. This view of the CIT(A) was upheld by the Tribunal.

6. Apart from the fact that there are concurrent findings of two authorities below, we are of the view that the case of the assessee merits acceptance. We find on a perusal of the records of the case that the assessee had made a full disclosure of all the facts as required by the revenue and there was no question of any inaccurate particulars having been furnished by the assessee with a view to gaining any advantage. Consequently, we are of the opinion that no substantial question of law arises..."

In the case of Granite Gate Properties (P.) Ltd. v. Principal Commissioner of Income-tax [2019] 102 taxmann.com 236 (Delhi), taking same view the Hon'ble High Court of Delhi has held as under:

"... In the present case the assessee had given an explanation justifying the claim for 'indirect expenses though it had not accounted for the revenue from the two projects. The explanation was rejected during the course of the assessment proceedings and accordingly addition in the form of disallowance of the 'indirect' expenditure was made.



*Disallowance made having attained finality is not to be directly examined and decided in these appeals, albeit the nature and quality of the explanation offered can be examined to consider and decide bona fides of the assessee in making the claim.*

*Assessment proceedings which relate to computation of taxable income are in this manner different and distinct from penalty proceedings. [Para 10]*

*It is accepted and admitted position that the expenses were claimed under the head 'selling administrative and other expenses commission/finance cost'. In case of construction contracts, difference is made between direct and indirect costs. Question would arise whether such difference should be accepted in the case of a real-estate developer. At times the Assessing Officer reject claims on the ground of prior period expenditure. In hindsight the claim made by the appellant-assessee may not look as justified, but the plea of lack of bona fides would not be rejected for this reason alone without reference to other factors including the disclosures made. [Para 13]*

*Disallowance made in the assessment year 2010-11 in respect of LB project was allowed in the next assessment year 2011-12. Similarly, the disallowance made in the assessment year 2011-12 in the case of LP project was allowed in the assessment year 2012-13. Factually this position is accepted. Thus, the issue was relating to the year of allowability in view of the accounting method applied, as the revenue does not dispute that the quantum and the nature of expenditure, and would qualify in the relevant year for deduction under section 37 [para 14]*

*The assessee has pointed out with merit that the tax effect was minimal as taxable income as assessed even after the additions/disallowance were Rs. 3.55 lakhs and Rs. 5.67 lakhs for the assessment years 2010-11 and 2011-12, respectively. The assessee did not deem it appropriate to file appeals and get involved in litigation and incur legal costs specially when the additions/disallowances made were revenue neutral and had been allowed as expenses reducing the income in the subsequent assessment years. The assessee was not to gain any substantial benefit and advantage by shifting profits or loss from one year to another. [Para 15]*

*These facts and aspects have been completely ignored by the Tribunal in their reasoning. These aspects were relevant and had required due consideration when examining the issue of bona fides in making the claim. [Para 16]*

*On the question of full and true disclosure, one would like to refer the accounts of the assessee that were audited. The audit report placed on record had stated that the appellant-assessee had recognized revenue from the projects based on PoC Method in relation to sold areas on the basis of percentage of actual construction and other related costs incurred thereon excluding land cost as against the total estimated cost*



*of the project under execution subject to such actual cost being 30 per cent or more of the total estimated cost. Similarly, there were disclosures under the heading "inventory and cost of construction/development' to the effect that work in progress' was valued at lower of the cost than net realizable value, cost of pricing of land including development rights, material services and other overheads. construction/development incurred would be discharged to the profit and loss accounts proportionate to the project area sold, in cases where threshold of 30 per cent had been exceeded. Full details with regard to the expenses claimed under selling, administrative and another expenses had been disclosed and figures given in columns and heads have not been disturbed by the Assessing Officer and no addition has been made by doubting and disturbing figures and amounts mentioned. The Tribunal has also not stated that full and complete disclosure of material facts was not made by the assessee. [Para 17]*

*Given the aforesaid facts, i.e., the relevant clauses of AS-7, applicable Guidance Notes, the fact that the accounts were duly audited and the disclosures made in the audit notes, the loss income as declared, small taxable income as assessed even after the additions were made and that the expenses as claimed were otherwise eligible and allowed in the next assessment year, it is to be accepted that the assessee had shown that they had acted bona fidely. Thus, the assessee should not have been burdened with penalty for concealment of income under section 271(1)(c). [Para 18]..."*

*Thus, respectfully following the decision of Hon'ble Delhi High Court in the case of PCIT vs. National Textile Corporation Ltd. (supra), Krishnan Thyagarajan Sivarama(supra) and Granite Gate Properties (P) Ltd. vs, PCIT(supra) the appellant did not get any benefit or gain by claiming depreciation on assets of KGD6 block considering them as intangible assets. Thus, on this account also, penalty u/s.271 (1)(c) could not be levied for claim of such depreciation on KGD6 block assets.*

*Accordingly, penalty levied u/s.271(1)(c) in respect of depreciation on KGD6 block assets for furnishing of inaccurate particulars of income is deleted."*

7.1 We have heard rival submission of the parties and perused the relevant material on record. We find that the Ld. CIT(A) has deleted the penalty mainly for the reason that assessee has revised the claim of the depreciation on the 'KGD6 Block' in view of finding of the Assessing Officer in earlier years wherein the Assessing Officer has allowed depreciation on the various assets of the KDG6 Block



and allowed amortization of certain parts of said expenditure as well as allowed deduction u/s 42 of the Act for exploration expenses. In this manner, assessee has got more benefit and thus on one hand, the claim of the depreciation has been reduced, but over all deduction in respect of expenses has increased. Thus the Ld. CIT(A) has held that there is no furnishing of any inaccurate particulars in this process and therefore he has deleted the penalty. The assessee had made full disclosure of facts in respect of the issue in audited financial statements and issue was only as how the expenses incurred in respect of oil field are eligible for deduction under the Act. There was difference of opinion between the assessee and the AO on the issue of allowability of expenses and ultimately, the assessee has accepted the version of the AO as same was more beneficial to the assessee. In our opinion, the finding of the Ld. CIT(A) on the issue in dispute is well reasoned and no interference is required on our part. Accordingly, we uphold the same. The ground Nos. 1 and 2 of the appeal of the Revenue are accordingly dismissed.

8. The ground No. 3 of the appeal of the Revenue relates to penalty Rs.15,18,99,414/- levied by the AO on disallowance u/s 14A of the Act , which has been deleted by the Ld. CIT(A), observing as under:

**“7.3.3.2 Penalty levied on disallowance u/s.14A of the Act:**

*The AO levied penalty in respect of disallowance made u/s.14A of the Act. In the assessment order, the AO made disallowance of*



Rs.711,99,54, 110/- u/s.14A, which was reduced by the CIT(A) to Rs.43,86,54, 110/- and it was upheld by the ITAT. The AO levied penalty u/s.271(1)(c) in respect of disallowance u/s.14A for furnishing of inaccurate particulars of income.

For penalty levied u/s.271(1)(c) on disallowance u/s.14A for furnishing of inaccurate particulars of income, following decisions are relevant:

*In the case of Commissioner of Income-tax, Ahmedabad v. Reliance Petroproducts (P.) Ltd. [2010] 189 Taxman 322 (SC), the Assessing Officer disallowed said expenditure under section 14A and simultaneously levied penalty under section 271(1)(c) on account of concealment of income/furnishing of inaccurate particulars of income. The Hon'ble Supreme Court of India held that merely because 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).*

*In this case the Hon'ble Supreme Court has held as under:*

*"... A glance of provision of section 271(1)(c) 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 The instant case was not the case of concealment of the income. That was not the case of the revenue either. It was an admitted position in the instant case that no information given in the return was found to be incorrect or inaccurate. It was not as if any statement made or any detail supplied was found to be factually incorrect. Hence, at least, prima facie, the assessee could not be held guilty of furnishing inaccurate particulars. The revenue argued that submitting an incorrect claim in law for the expenditure on interest would amount to giving inaccurate particulars of such income. Such cannot 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 of inaccurate particulars. [Para 7]*

*Therefore, it must be shown that the conditions under section 271(1)(c) 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. [Para 8]*

*The word 'particulars' must mean the details supplied in the return, which are not accurate, not exact or correct, not according to truth or erroneous. In the instant case there was 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). A mere making of the claim, which is not sustainable in law by itself will not amount to furnishing of inaccurate particulars regarding the income of the assessee. Such claim made in the return cannot amount to the inaccurate particulars. [Para 9]*

*The revenue contended that since the assessee had claimed excessive deductions knowing that they were incorrect, it amounted to concealment of income. It was argued that the falsehood in accounts can take either of the two forms: (i) an item of receipt may be suppressed fraudulently; ii) an item of expenditure may be falsely (or in an exaggerated amount) claimed, and both types attempt to reduce the taxable income and, therefore, both types amount to concealment of particulars of one's income as well as furnishing of inaccurate particulars of income. Such contention could not be accepted as the assessee had furnished all the details of its expenditure as well as income in its return, which details, in themselves, were not found to be inaccurate nor could be viewed as the concealment of income on its part. It was up to the authorities to accept its claim in the return or not. Merely because the assessee had claimed the expenditure, which claim was not accepted or was not acceptable to the revenue, that, by itself, would not attract the penalty under section 271(1)(c). If the contention of the revenue was accepted, then in case of every return where the claim made was not accepted by the Assessing Officer for any reason, the assessee would invite penalty under section 271(1)(c). That is clearly not the intendment of the Legislature. [Para 10]*

*Therefore, the appeal filed by the revenue had no merits and was to be dismissed..." case of Principal Commissioner of Income Tax-2 v. Gruh Finance Ltd. [2018] 100 taxmann.com 103 (Guj.), the Hon'ble High Court of Gujarat upheld the order of the ITAT deleting penalty u/s 271(1)(c) levied by the assessing officer on disallowance u/s 14A.*

*The relevant paras of the decision of the Hon'ble High Court of Gujarat are reproduced as under:*

*"...2. As can be seen, the issue pertains to penalty under Section 271 [1J(c) of the Income-tax Act, 1961 which the Tribunal had deleted. The quantum additions pertain to disallowance of interest expenditure under Section 14A of the Act read with Rule 8D of the Income-tax Rules, 1962.:*

*3. We do not find any evidence of assessee not disclosing the income or source of income which would give rise to penalty proceedings under Section 271[1J(c) of the Act. The Tribunal, of course, has proceeded on somewhat different reasons, nevertheless, we see no reason to pursue further the penalty proceedings..."*



*An SLP filed by the Revenue against the order of the Hon'ble High Court of Gujarat has been dismissed by the Hon'ble Supreme Court, which is reported in Principal Commissioner of Income Tax 2 v. Gruh Finance Ltd. [2018] 100 taxmann.com 104 (SC).*

*Thus, no penalty u/s.271(1)(c) is leviable in respect of disallowance u/s.14A of the Act.*

*Accordingly, penalty levied u/s.271(1)(c) on disallowance u/s.14A for furnishing of inaccurate particulars of income by the AO is deleted.”*

8.1 We have heard rival submission of the parties and perused the relevant material on record. The assessee had *sou-motu* disallowed certain expenditure in terms of section 14A of the Act. However, the Assessing Officer invoked the Rule 8D of the Income-tax Rules 1962 and computed the disallowance accordingly. The Ld. CIT(A) following the finding of Hon'ble Supreme Court in the case of Reliance Petroproducts Ltd. (*supra*) held that the assessee had merely claimed certain expenditure, which claim was not accepted or was not acceptable to the Revenue that by itself would not make the assessee liable for penalty u/s 271(1)(c) of the Act. We find that under Rule 8D particular method of computation has been prescribed for computation of the disallowance which itself does not make assessee liable for filing inaccurate particulars of the income. All the facts in respect of claim of disallowance u/s 14A were duly available on record and AO has not pointed out that any particular in relation to disallowance u/s 14A was filed inaccurately by the assessee. Accordingly, we do not find any infirmity in the order of the Ld. CIT(A) on the issue in dispute and we uphold the same. The ground No. 3 of the appeal of the Revenue is dismissed.



9. In ground No. 4 the Revenue has challenged penalty levied by the AO on disallowance of deduction for u/s 32AC of Rs.6,28,94,089/-, which has been deleted by the Ld. CIT(A) observing as under:

**“7.3.3.4 Penalty levied on disallowance of deduction of investment allowance u/s.32AC:**

*Facts related to the investment allowance u/s.32AC are that during the year, the assessee had made investment in new assets amounting to Rs.7324,42,28,447/-on which the investment allowance @ 15% amounting to Rs. 1085,16,34,261/- was claimed. During the assessment proceedings, the appellant submitted a revised working of deduction u/s.32AC after revising the claim of investment allowance in respect of KGD6 block and also excluded foreign exchange difference and abandonment provision aggregating to Rs. 185,00,00,000/-. Thus, the claim was revised to Rs. 1066,98,99,306/- from the original claim of Rs.7113,26,62,041/-. The withdrawal of investment allowance u/s.32AC related to exchange difference and abandonment provision was made voluntarily by the appellant during the assessment proceedings. All the relevant information/explanation was provided to the AO during the assessment proceedings, therefore, it could not be a case of furnishing of inaccurate particulars of income. The AO merely disallowed part of the investment allowance u/s.32AC, it does not automatically result into furnishing of inaccurate particulars of income. In this regard, the decision in the case of Price Waterhouse Coopers (P.) Ltd. vs. CIT (25 taxmann.com 400), CIT vs. Bennett Coleman & Co. Ltd (259 CTR 383 (Bom HC), PCIT vs. Gujarat State Electricity Corporation Ltd. (290 Taxman 77 (Guj HC) and Deepi Rupindersingh Arora vs. ACIT (52 ITRT) 285 (Mumbai - Trib.) are relevant.*

*Accordingly, the penalty u/s.271(1)(c) levied by the AO on part disallowance of deduction u/s.32AC is deleted.”*

9.1 We have heard rival submission of the parties and perused the relevant material on record. We find that the assessee has revised the claim in view of the foreign exchange difference. As far as amount of claim in dollar there was no change and all the relevant information/explanation was provided to the AO during assessment



proceedings, therefore, this cannot be case of filing inaccurate particulars of the income. The Ld. CIT(A) has relied on the decision of the Price Waterhouse Coopers (P.) Ltd. (supra) and other decisions cited. In view of above, we do not find any infirmity in the order of the Ld. CIT(A) on the issue in dispute and accordingly, we uphold the same. The ground No. 4 of the appeal of the Revenue is accordingly dismissed.

10. The ground No. 5 of the appeal of the Revenue relates to penalty levied by the AO on disallowance of deduction of discount on bonds and debenture of Rs.1,47,19,394/- which has been deleted by the Ld. CIT(A) observing as under :

*“7.3.3.5 Penalty levied on disallowance of deduction of discount on bonds and debentures:*

*The appellant explained that no deduction in respect to discount on Yankee bond and debenture was claimed in the Return of income for AY. 2016-17. When the details of discount/interest on bond was provided to the AO during the assessment proceedings, the claim of deduction of Rs.28,53,806/- was made and it was allowed by the AO. Such claim of deduction was made on pro rata basis on the discount on Yankee bond amounting to Rs.4,53,85,572/- in view of the decision of Supreme Court in the case of Madras Industrials Investment Corporation Ltd. (supra). However, the AO wrongly reduced the claim of pro rata discount on bonds from the total discount of Rs.4,53.85,572/- and the difference of Rs.4,25,31,766/- was disallowed. The facts indicated that pro rata discount on Yankee bond was allowed by the AO and further disallowance made in the assessment was made by the AO on wrong presumption. Thus, in the case of deduction of discount on bonds and debentures, the assessee did not furnish any inaccurate particulars of income.*

*Accordingly, the penalty levied on disallowance of deduction of discount on bonds and debentures is deleted.”*



10.1 We have heard rival submission of the parties and perused the relevant material on record. We find that addition was made in the case of the assessee on this issue for the reason that assessee claimed deduction for the discount/interest on the bond during the assessment year whereas the Assessing Officer allowed the claim on the *pro-rata* basis discount on bonds for the entire period of the bonds. The assessee has filed all the details and information in bonafide manner and there is difference of opinion between the assessee and AO , which is evident from the fact that appeal against the quantum addition has already been admitted before the Hon'ble High Court. In view of the above, we uphold the finding of the Ld. CIT(A) on the issue in dispute. The ground raised by the Revenue is accordingly dismissed.

11. The ground No. 6 of the appeal of Revenue relates to penalty levied by the AO in respect of transfer pricing adjustment of Rs.13,26,52,139/-, which has been deleted by the Ld. CIT(A) observing as under:

***“7.3.3.6 Penalty levied on addition of transfer pricing adjustment:***

*The facts leading to levy of penalty u/s.271(1)(c) are that the appellant had subscribed to Non-cumulative Compulsorily Convertible Preference Shares ('NCCPS') of Reliance Industries (Middle-east) DMCC ('RIME') and also Class A shares of Reliance Global Business BV (RGBV), both AEs. The TPO characterized both the transactions as loan transaction and proposed adjustment of interest on NCCPS amounting to Rs.38,32,99,062/-, which the AO added in the assessment order. The CIT(A) deleted the adjustment of Rs.38,03,09,823/- in respect of investment in NCCPS, however, upheld the adjustment of Rs.29,89,239/- being interest on share*





levied, are deleted, there remains no basis at all for levying penalty for concealment.

The relevant paras of the decision of the Hon'ble High Court of Calcutta in this case are reproduced as under:

"... 6. The order passed by the learned Tribunal has to be confirmed for two reasons, firstly, the order of assessment, which was subject matter of challenge before this Court at the instance of the revenue in the case of *Pr. CIT v. Jayashree Jayakar Mohankar* [ITAT 75 of 2022], was dismissed by judgment dated 25th July, 2022. If that be the case, whether it would automatically result in setting aside the order of penalty imposed on the assessee. This issue was considered and answered by the Hon'ble Supreme Court in the case of *K.C. Builders v. Asstt. CIT*, [2004] 135 Taxman 461/265 ITR 562, wherein the Hon'ble Supreme Court held that where additions made in the assessment order on the basis of which penalty for concealment was levied, are deleted, there remains no basis at all for levying the penalty for concealment and therefore in such a case no penalty can survive and the same is liable to be cancelled. The additions made in the assessment order have not been set aside and the order having been confirmed by this Court in *Jayashree Jayakar*, case (supra) penalty proceedings cannot survive. That apart, the Hon'ble Supreme Court had examined the factual position and found that the notice issued under section 274 of the Act was defective and in this regard also noted the decision in the case of *CIT v. Manjunatha Cotton Ginning Factory* [2013] 35 taxmann.com 250/218 Taxman 423/359 ITR 565 (Kar.) and allowed the assessee's appeal and dismissed the revenue's appeal.

7. Thus, we find that there is no question of law, much less substantial question of law, arising for consideration in this appeal.

8. Accordingly, the appeal is dismissed....

In the case of *ACIT v. Srei Infrastructure Finance Ltd.* [2013] 36 taxmann.com 361 (Delhi - Trib.), the ITAT Delhi has also taken a similar view and held as under:

... In the case of *ACIT v. Srei Infrastructure Finance Ltd.* [2013] 36 taxmann.com 361 (Delhi-Trib.), the ITAT Delhi has also taken a similar view and held as under:

".....it was noticed from records that even though the disallowance under the normal provisions were upheld by the Commissioner (Appeals), the Tribunal had restored the issues to the file of the Assessing Officer. [Para 8.2]



*Since the very basis upon which the penalty has been imposed on the amount disallowed on account of excess claim of depreciation and interest on loan to subsidiaries, does not exist in view of the order of the Tribunal in quantum appeal, it is opined that penalty levied in relation to the said amount does not survive. [Para 8.2.1]*

*As regards additions in terms of provisions of section 115JB, the issues in quantum appeal have been admitted for adjudication by the High Court. [Para 9]*

*It is well settled that when the dispute between the revenue and the assessee is on a legal issue and question of law is admitted by the High Court, then there cannot be an allegation of furnishing of inaccurate particulars and concealment and therefore, normally in such cases penalty cannot be justified.*

*A plea or claim which is held by the High Court to give rise to a substantial question of law, cannot be treated to be frivolous or mala fide so as to attract levy of penalty under section 271(1)(c). [Para 9.1]*

*In view of aforesaid, impugned order of the Commissioner (Appeals) deleting penalty was to be upheld..'*

*Thus, respectfully following the decision of Hon'ble Supreme Court in the case of K C Builders (supra), the penalty u/s.271(1)(c) levied by the AO on transfer pricing adjustment is deleted.*

*7.3.3.7 The levy of penalty u/s.271(1)(c) by the AO in respect of various addition/disallowance is summarized as under:*

*(i) Penalty levied on disallowance of depreciation on KGD6 Block: deleted ii) Penalty levied on disallowance u/s. 14A of the Act: deleted*

*(i) Penalty levied on disallowance of depreciation on purchase of steel: Upheld (iv) Penalty levied on disallowance of deduction of investment allowance u/s.32AC: deleted*

*(v) Penalty levied on deduction of discount on bonds and debentures: deleted*

*(vi) Penalty levied on transfer pricing adjustment deleted*

*Accordingly, the ground of appeal nos.3, 6 & 7 and 8, 11, 12, 13 14 & 15 are Allowed and ground of appeal nos. 9 & 10 are Dismissed.”*



11.1 We have heard rival submission of the parties and perused the relevant material on record. We find that the transfer pricing adjustment has been deleted by the Tribunal in quantum proceedings and therefore, in view of no addition sustained, the penalty levied cannot survive. Accordingly, we uphold the finding of the Ld. CIT(A) on the issue in dispute. The ground No. 6 of the appeal of the Revenue is accordingly dismissed.

12. The assessee in its appeal has raised various grounds. The ground No. 1 of the appeal being general in nature, same is dismissed as infructuous. In ground Nos. 5 and 6, the assessee has raised the issue of penalty confirmed by the Ld. CIT(A) in respect of disallowance of depreciation on steel purchased in assessment year 2003-04.

12.1 We have heard rival submission of the parties and perused the relevant material on record.

12.2 Briefly stated facts of the case are that in assessment year 2003-04 disallowance for depreciation claimed for purchase of steel was made. The said disallowance of depreciation for assessment year 2003-04 and assessment year 2009-10 has been upheld by the Co-ordinate Bench of the Tribunal and appeal filed against the same is pending before the Hon'ble High Court. The claim of the depreciation was sustained by the Ld. CIT(A) observing as under:

*"7.3.3.3 Penalty levied on disallowance of depreciation on purchase of steel In the assessment order, the AO made disallowance on*



*depreciation claimed on purchase of steel made in the AY. 2003-04. The disallowance of depreciation of steel purchase made in AY. 2003-04 to AY. 2009-10 has been upheld by the ITAT. The appellant has filed an appeal before the Hon'ble Bombay High Court against the order of the ITAT. The facts of the claim of depreciation on steel purchases are that the appellant made purchases amounting to Rs.2,56,29,005/- in AY. 2003-04 from M/s. Durga Iron & Steel Pvt. Ltd. (Durga), M/s. Surajbhan Rajkumar Pvt. Ltd. (Surajbhan) and M/s. Singhal Brothers for setting up refinery at Jamnagar. The purchases were capitalized in the books of account and depreciation was claimed. Those three concerns had purchased the steel from M/s. Laxmi Exporters (Laxmi), whose proprietor was Mr. Vinay M Kokate. On enquiry conducted by the Department, Mr. Vinay M Kokate was found involved in providing accommodation entries in the name of his concern to various customers. Thus, the facts on record indicated that the purchase of steel amounting to Rs.2,56,29,005/- from M/s. Durga Iron & Steel Pvt. Ltd. (Durga), M/s. Surajbhan Rajkumar Pvt. Ltd. (Surajbhan) and M/s. Singhal Brothers was not genuine. Therefore, the depreciation claimed on purchase of steel capitalized in the books of account was also not genuine. The appellant continued to furnish inaccurate particulars of income in respect of steel purchased from those three concerns. Thus, the AO was correct in levy of penalty u/s.271(1)(c) in respect of depreciation claimed on steel purchase. Accordingly, the penalty levied by the AO u/s.271(1)(c) on disallowance of depreciation. on steel purchase in AY. 2003-04 is upheld.”*

12.2 However, before us, the Ld. counsel for the assessee referred to order of the Tribunal in ITA No. 7219, 7221/Mum/2011 for assessment year 2003-04 and 2006-07, where the penalty levied in respect of disallowance of purchase of steel has been deleted. The relevant finding of the Tribunal (supra) is reproduced as under:

*10.2 We observe, on perusal of assessment orders as well as orders of appellate authorities that the assessee stated that it made purchases of the steel for setting up its refinery at Jamnagar from the concerns of Shri P.K.Agarwal and Shri Agarwal confirmed in his statement recorded u/s 131 of the Act that he supplied steel to the assessee and received the payment by account payee cheques. The assessee also stated that it furnished requisite invoices evidencing the receipt of material he had supplied. The ld. AR at the time of hearing of the appeals reiterated the fact that Shri P.K.Agarwal in his statement stated that he dealt with one Shri Hiten Desai and was not concerned with Shri Kokate for purchase of steel which was supplied to the assessee. It is a fact that in spite of the fact that name of Shri Hiten Desai was stated by Shri P.K.Agarwal that he*



*was dealing with only Shri Hiten Desai in respect of purchases under consideration, the department for the reasons best known to it did not consider I.T.A. No.1641/Mum/2010 And to examine Shri Hiten Desai in spite of the fact that his telephone numbers and / his particulars were made available to the AO. We also observe that the assessee filed details of the assets for which material had been utilized, its quantum and its value forming part of plant and machinery, on which depreciation has been claimed, at the time of quantum proceedings. Not only this, the ld. DR has also not disputed the fact that the entire addition has been made on the basis of circumstantial evidences and the statement of Shri Kokate that he was proprietor of M/s Laxmi Exports, M/s Swati International and M/s Rashi International and they were involved only in giving accommodation entries without supplying any material to the customers but the department did not allow opportunity to the assessee to confront Shri Kokate. This fact becomes important when the ld. AR argued that neither Shri P.K.Agarwal nor the assessee were having any dealing with Shri Kokate. In this regard, it is relevant to state that the Hon'ble Allahabad High Court in the case of Rawalpindi Floor Mills (P) Ltd (supra) has held that statement recorded of a person could not be used against assessee in assessment proceedings, much less in penalty proceedings, if no opportunity was given to the assessee to cross-examine witnesses. Accordingly, the order of the Tribunal was justified in cancelling the penalty levied u/s 271(1)( c ) of the Act on the basis of findings arrived at on the basis of material collected and the statement recorded of some of the creditors who had accepted that they were mere name-lenders and, secondly, that the assessee could not prove the genuineness of loans in assessment proceedings. We are of the considered view that the above decision of Hon'ble Allahabad High Court squarely apply to the facts of the case of the assessee before us that the statement of a person which was relied upon against assessee by the department but no opportunity to cross-examine was given to the assessee; the statement of said person could not be made the basis for levy of penalty u/s 271(1) (c) of the Act.*

*10.3 We have already observed that there cannot be a straight jacket formula to apply that the assessee has furnished any inaccurate particulars of income but it depends on the facts of each case. We observe that in the quantum proceedings, it has been observed that the assessee was not able to substantiate the purchase of material from Shri P.K.Agarwal but it is a fact that the assessee has set up its refinery at Jamnager. Therefore it cannot be said that the assessee has not purchased material. Further, it was pointed out that there were purchases and recorded in the books of accounts of the assessee and correctness of the books of accounts of the assessee have not been rejected by department on the ground that the assessee has made I.T.A. No.1641/Mum/2010 And bogus purchases. Therefore, it could be a case that concerns of Shri P.K.Agarwal might not have made purchases from concerns of Shri Kokate of the steels but from somewhere else and thereafter would have supplied to the assessee. It is also a fact that Shri P.K.Agarwal*



could not give details satisfactorily of purchases made by his concerns in the statements recorded by the department u/s 133A on 6.1.2005 and u/s 131 of the Act on 23.12.2005 and 27.12.2005. In the light of the above, the evidence produced by assessee that it purchased steels from the concerns of Shri P.K.Agarwal could not be considered sufficient evidence and the Tribunal while deciding this issue in the quantum proceedings had stated in para 13.7 of its order that the findings of the AO validly raised doubt and creates suspicion that the invoices/bills relied upon for transporting the goods at the assessee's premises are not genuine. The Tribunal also observed that the entire addition had been made on the basis of statement of Shri Kokate and no opportunity was given by the department to cross-examine Shri Kokate to the assessee in spite of the fact that it was contended before the AO as well as appellate authority that Shri P.K.Agarwal, who was supplier to the assessee, was not dealing with Shri Kokate.

10.4. The Hon'ble Delhi High Court in the case of Rampur Engg.Ltd (supra) has held that if the assessee furnishes the evidence in support of claim made by it but the same are not believed and not treated as sufficient evidence to discharge the obligation placed upon the assessee as to the genuineness of the transaction it could not be said that there is a prima facie satisfaction regarding furnishing of inaccurate particulars of the claim of expenditure. Accordingly penalty levied u/s 271(1)(c) was cancelled. The Hon'ble Madras High Court in the case of CIT V/s S. Sankaran (2000) 241 ITR 825(Mad) has held that mere addition of income by disallowing expenses would not be regarded as concealment of income and therefore levy of penalty u/s 271(1)(c) of the Act was held not to be justified. In the case of CIT V/s Hari Machines Limited (311 ITR

285) (Del) the claim of loss made by assessee, was negated by Revenue authorities as well as by the Tribunal. On the basis of addition made and confirmed by higher authorities, AO imposed penalty for furnished inaccurate particulars. Appellate authority cancelled the penalty. The Delhi High Court while dismissing the appeal filed by the department, held that just because some additions have been made to the total income of the assessee during assessment proceedings, penalty could not be imposed.

10.5 In short, if penalty is imposed on the basis of decision taken during assessment or re-assessment proceedings, it has been held that penalty is imposed for insufficient and unreasonable cause. A similar case came before the Hon'ble Punjab and Haryana I.T.A. No.1641/Mum/2010 And High Court of CIT V/s Mehta Engineers Limited (2008) 300 ITR 308 (P&H). Assessee made a claim about the expenditure and the return mentioned, based on which such claim was made. AO after disallowing the claim, imposed penalty u/s 271(1)(c) of the Act for concealing particulars of income. The First Appellate Authority cancelled the penalty and Tribunal upheld his order. In the appeal filed by the department, the Hon'ble Punjab and



*Haryana High Court held that the assessee had claimed certain expenditures incurred on the basis of a written agreement. The Court was of the view that in such cases penalty could not be imposed u/s 271(1)(c) of the Act and to impose the penalty on the basis of disallowance of an item of expenditure was improper.*

*10.6 Since penalty proceedings are separate from assessment proceedings, merely because the additions or adjustment have been made in assessment order, do not tantamount, automatic levy of penalty. Consideration that arise in penalty proceedings are different those in assessment proceedings. We may state that if the assessee had made an explanation and if the explanation of the assessee is not accepted by AO, the explanation given by assessee per se does not become to be a false explanation. In the facts of the case before us, as mentioned hereinabove that the assessee gave an explanation which is only unproved but not disproved i.e. it is not accepted but circumstances do not lead to the reasonable and positive inference that the assessee's case is false. Therefore, on the facts and in the circumstances, we are of the considered view that levy of penalty u/s 271(1)(c) of the Act is not justified. In this regard we are supported by the decision of Hon'ble Jurisdictional High Court in the case of Upenda V Mithani (supra), wherein the Hon'ble High Court dismissed the appeal of the department and confirmed the order of the Tribunal vide which the Tribunal confirmed the order of ld. CIT(A) in cancelling the penalty imposed u/s 271(1)(c) of the Act .*

*10.7 The cases relied upon by the ld. DR in the cases of Steel Infots Ltd. (supra) and Kuttookaran Machine Tools (supra) are not applicable to the facts of the present case as in that case the assessee made bogus claim to evade tax and claim was also proved to be bogus. Accordingly, levy of penalty was held to be justified. However, in the case before us, as mentioned hereinabove the addition(s) made in respect of claim of the assessee for depreciation on the capitalized value of steel was disallowed because genuineness of the purchase of steel was doubted and created suspicion on the basis of facts and circumstances. Hence, it was held that supply of material to the assessee company remained unsubstantiated as the documents produced were not treated as sufficient evidence. Hence claim of assessee to purchase steel through concerns of Shri I.T.A. No.1641/Mum/2010 And P.K.Agarwal is unproved and not accepted but facts do not give positive inference that it was a false claim. In view of above, cases cited by ld. DR (supra) are not applicable to the facts of the case of the assessee to levy penalty u/s 271(1)(c) of the Act.*

12.3 In subsequent assessment years from 2009-10, 2008-09 and 2007-08 also the penalty on this issue has been deleted by the Tribunal. The relevant finding of the Tribunal in ITA no. 6267 to



6269/Mum/2018 & CO No. 243 to 245/Mum/2019 is reproduced as under:

*“10. We have heard both the parties, perused the material available on record and gone through orders of the authorities below. We find that, as regards, penalty levied on disallowance of depreciation on steel purchases, the issue has been considered by the Coordinate Bench of the ITAT in assessee's own case for the A.Y 2003-04 to 2006-07 in ITA No. 7219 to 7221/Mum/2011, where under identical set of facts the penalty levied on additions towards depreciation on steel purchases has been deleted. This fact has not been disputed by the Ld. DR. Therefore, by following the decision of Coordinate Bench, in assessee's own case for earlier years, we are of the considered view that the Ld. CIT(A) was right in deleting penalty on additions towards disallowance of depreciation on steel purchases and hence, we are inclined to uphold the finding and reject the ground taken by the Revenue.”*

12.4 Respectfully, following the finding of the Tribunal (supra) in assessee's own case, we delete the penalty levied by the Assessing Officer in respect of disallowance of depreciation on purchase of steel. The ground Nos. 5 and 6 of the appeal of the assessee are accordingly allowed.

12.5 Since, we have already allowed the claim of the assessee on merit, therefore, the issues raised in ground Nos. 3 and 4 of the appeal are rendered merely academic and therefore same are not adjudicating upon at this stage and are left open.



13. In the result, the appeal of the Revenue is dismissed whereas the appeal of the assessee is allowed.

**Order pronounced in the open Court on 22/11/2024.**

**Sd/-  
(KAVITHA RAJAGOPAL)  
JUDICIAL MEMBER**

**Sd/-  
(OM PRAKASH KANT)  
ACCOUNTANT MEMBER**

Mumbai;  
Dated: 22/11/2024  
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.

//True Copy//

BY ORDER,  
  
(Assistant Registrar)  
**ITAT, Mumbai**