

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

**BEFORE SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)
AND
SHRI SUNIL KUMAR SINGH (JUDICIAL MEMBER)**

**ITA No. 5742/MUM/2024
Assessment Year: 2015-16**

Asst. CIT (International
Taxation)-3(2)(2),
R. No. 615, Sixth Floor,
Kautilya Bhavan, BKC,
Mumbai-400051.

Appellant

Vs. M/s Oxford University Press,
22 Workspace 2nd floor, 1/22 Asaf
Ali Road, Daryaganj Central, Delhi,
Delhi-110002.

**PAN NO. AAACO 3279 K
Respondent**

Assessee by : Mr. Rahul Charkha
Revenue by : Mr. Krishna Kumar, Sr. DR

Date of Hearing : 28/01/2025
Date of pronouncement : 31/01/2025

ORDER

PER OM PRAKASH KANT, AM

This appeal by the Revenue is directed against order dated 28.08.2024 passed by the Ld. Commissioner of Income-tax (Appeals) – 57, Mumbai [in short ‘the Ld. CIT(A)’] for AY 2015-16 , in relation to penalty u/s 271(1)(c) of the Income-tax Act, 1961 (in



short 'the Act') levied by the Assessing Officer. The grounds raised by the Revenue are reproduced as under:

1. *Whether on the facts and circumstances of the case and in law, Ld.CIT(A) has erred in deleting the penalty of INR 1,28,46,270 levied under Section 271(1)(c) of the Act for furnishing v inaccurate particulars of income as per the provision of Company Act 2013 effective from 01.04.2014.*
2. *Whether on the facts and circumstances of the case and in law, Ld.CIT(A) has erred in deleting the levying of penalty for furnishing inaccurate particulars when assessee himself submitted tax resident certificate (TRC) issued by the HM Revenue & Customs, UK confirmed that the assessee is Tax resident for the purpose of UK-India tax Treaty and thus nonresident for India*
3. *Whether on the facts and circumstances of the case and in law, Ld.CIT(A) has erred in deleting the levying of penalty for furnishing inaccurate particulars when assessee himself submitted annual accounts in which auditors remarked that pursuant to the commencement of Companies Act 2013, the branch is covered under the definition of a foreign company as defined under section 2(42) of the Act with effect from 01.04.2014. The Appellant craves leave to amend or alter any ground or add a new ground which may be necessary,*

2. Briefly stated, facts of the case are that the assessee filed return of income on 01.04.2016 declaring total income of Rs.12,84,62,680/-. The return of income filed by the assessee in the capacity of a domestic company (i.e. Resident status) and paid the tax at the rate of 30% of the total income. The assessee being branch office, of Oxford Press, UK according to the Assessing Officer the return should have been filed in the status of non-resident. Therefore, the case of the assessee was reopened by way of notice u/s 148 of the Act dated 07.03.2020. In response the assessee filed return of income and assessment u/s 147 of the Act was completed on 17.09.2021 wherein the penalty proceedings u/s 271(1)(c) of the



Act were initiated for furnishing inaccurate particulars of the income. The Assessing Officer levied penalty @ 100% of the tax sought to be evaded which was worked out to Rs.1,48,26,270/- by way of impugned penalty order.

3. On further appeal, the Ld. CIT(A) deleted the penalty observing as under:

“5.3 The facts recorded & finding of the AO in the penalty order and the submission made by the appellant has been considered.

The facts of the case of the appellant are that the Return of income was filed on 01.04.2016 declaring total income of Rs.12,84,62,680/- for AY.2015-16. The Return was filed in the capacity of domestic company and offered tax @ 30%. In the re- assessment order, the AO considered status of the appellant company as non- resident and taxed the income @ 40% instead of 30% offered by the appellant.

During the appellate proceedings, the appellant has filed a submission on various aspects of levy of penalty u/s.271(1)(c). The appellant has filed a lengthy submission covering all aspects of penalty u/s.271(1)(c). However, the submission of the appellant regarding (i) penalty in respect of inaccurate claim, (ii) penalty for misrepresentation or suppression of facts, (iii) penalty provisions not to be strictly construed, etc. are not relevant to the facts of the case of the appellant.

The AO has levied penalty u/ s.271(1)(c) of the Act. The AO has referred to explanation 1(A) to section 271(1)(c) of the Act. As per explanation 1(A), if a person fails to offer an explanation or explanation offered is found to be false by the AO or an explanation is not substantiated by the assessee and fails to prove that such explanation was bonafide and all the facts relating to the same are and material to computation of total income has been disclosed, then the amount added or disallowed in



computing total income of such person deemed to represent the income in respect of which particulars have been concealed. The fact remains that the AO has initiated penalty u/s.271(1)(c) in respect of furnishing of inaccurate particulars of income. The AO has also levied penalty u/s.271(1)(c) in respect of furnishing of inaccurate particulars of income. The issue regarding furnishing of inaccurate particulars of income is with respect to residential status of the appellant company; resident or non-resident. The AO has referred to explanation 1(A) to section 271(1)(c), it does not imply that the levy of penalty was in respect of concealment of particulars of that income. Mere reference to explanation 1(A) to section 271(1)(c) does not invalidate the penalty levied u/s.271(1)(c) for furnishing of inaccurate particulars of income.

The facts of the case of the appellant for AYs.1994-95 to 2015-16 are that from AY.1994-95, the AO relying upon CBDT's order dated 31.07.1994 held the company as Non-resident in India. From AY.1995-96, the AO in the assessment order mentioned the status of the company as Resident. The position continued till AY.2003-04. For AY.2004-05, the appellant filed the Return of income in the capacity of non-resident, however, in the assessment order, the AO considered the status as Resident and initiated penalty proceedings. Penalty proceedings were dropped by the AO. On 19.07.2006, the appellant company accepted the status of company as resident in India, under protest, w.e.f. 1995-96. For AYs.2012-13 and 2013-14, the AO considered the appellant company as resident. However, for AY.2015-16, the appellant filed Return of income in the capacity of resident in India, which was accepted in order u/s.143(3). However, in the order u/s.143(3) r.w.s. 147 r.w.s. 144C(3), the status was considered as non-resident by the AO and hence the AO levied penalty u/s.271(1)(c) of the Act.

The facts show that the appellant has been consistently filing Return of income in the capacity of non-resident. From AY.1995-96 onwards, the AO has been considering the status of the appellant as resident instead of non-resident. For AY.2004-05, the appellant filed Return of income as non-resident. The AO in the assessment order



considered the status of the appellant as resident and initiated penalty proceedings. However, the penalty proceedings were dropped by the AO. On 19.07.2006, the appellant, under protest, filed a letter to the AO accepting its status as resident in India w.e.f. 1995-96. The AO has not rejected the letter filed by the appellant. For AY.2015-16, the appellant filed status of the company as resident, which was accepted by the AO in the order u/s.143(3) of the Act, however, in the order u/s.147 of the Act, the AO changed the status of the company from resident to non-resident and taxed the income @ 40% instead of 30% offered by the appellant. Penalty for AY.2015-16 has been levied for furnishing of inaccurate particulars of income in respect of residential status of the company. The appellant has submitted that during the re-assessment proceedings, the AO was informed about the letter dated 19.07.2016 that under protest, the appellant has accepted the status of the company as resident in India and filed Return of income in the capacity of resident in India. Thus, from the chronology of events and the evidences/documents furnished to the AO during the penalty proceedings, it is seen that all the material facts relevant to computation of total income, i.e. the status of the company as resident, were furnished to the AO during the re-assessment proceedings as well as penalty proceedings. Mere change of residential status of the company from resident to non-resident could not lead to a case of furnishing of inaccurate particulars of income. The appellant has offered an explanation, which was substantiated by relevant documents and the explanation offered by the appellant was bonafide, therefore, penalty could not be levied u/s.271(1)(c) in respect of change of status of appellant company from resident to non-resident.

Further, the AO has been considering the status of appellant company as resident from AYs.1995-96 till 2004-05. The CIT(A) for AYs.1995-96 and 1996-97 has also upheld the status of the company as resident. The appellant company vide letter dated 19.07.2006 accepted the status taken by the AO and considered it as resident in India and filed the Return of income, accordingly. Thus, the appellant has been consistently filing the Return of income in the capacity of resident in



India and the AO has been accepting that position from AYs.1995-96 onwards. For AYs.1995- 96 and 1996-97, CIT(A) has also upheld the status of the appellant as resident company. Thus, following the rule of consistency, no penalty u/s.271(1)(c) is leviable.

Further, the argument of the appellant that when two views are possible, then no penalty could be levied is also acceptable in the case of the appellant.

Considering the above facts, the appellant company has not furnished inaccurate particulars of income in respect of status of the company as resident. Therefore, the penalty of Rs.1,28,46,270/- levied by the AO u/s.271(1)(c) is deleted.

Accordingly, the ground of appeal nos. 1 to 4 are Allowed.”

4. We have heard rival submissions of the parties and perused the relevant materials on record. We find that the Ld. CIT(A) has deleted the penalty, firstly, for the reason that in the earlier year the assessee was filing return of income in the capacity of the non-resident however, the Assessing Officer turned the status into resident and thereafter the assessee started filing return in the status of resident under protest. The assessee fully explained to the Assessing Officer in respect of residential status, therefore, the Ld CIT(A) concluded that no inaccurate particulars have been filed. Secondly, the issue that status of the assessee should be resident or non-resident has been debated in preceding years and no penalty is leviable on the debatable issue. Thirdly, before us the Ld. counsel for the assessee submitted that in the return of income filed in response to notice u/s 148 of the Act, the assessee filed return of income in status of non-resident and paid the tax @ 40% liable to



non-residents and therefore there is no furnishing of inaccurate particulars on the part of the assessee. In view of the above, we do not find any infirmity in the order of the Ld. CIT(A) in deleting the penalty and we accordingly uphold the same. The grounds of appeal of the Revenue are dismissed.

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

Order pronounced in the open Court on 31/01/2025.

**Sd/-
(SUNIL KUMAR SINGH)
JUDICIAL MEMBER**

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

Mumbai;
Dated: 31/01/2025
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