

**IN THE INCOME TAX APPELLATE TRIBUNAL “B” BENCH, MUMBAI**  
**BEFORE SHRI SAKTIJIT DEY, VP AND SHRI B R BASKARAN, AM**

ITA No. 5574/Mum/2011  
(Assessment Year: 2005-06)

DCIT, Range 9(2) Aayakar Bhavan, R. No. 218, 2 <sup>nd</sup> Floor, M. K. Road, Mumbai-400 020	Vs.	M/s. Marico Ltd. Rang Sharda, K. C. Marg, Bandra Reclamation, Bandra (W), Mumbai-400 050
PAN/GIR No. AAACM 7493 G		
<b>(Appellant)</b>	:	<b>(Respondent)</b>

<b>Appellant by</b>	:	Shri Milin Bakhai
<b>Respondent by</b>	:	Ms. Monika H Pande

<b>Date of Hearing</b>	:	27.01.2025
<b>Date of Pronouncement</b>	:	05.02.2025

ORDER

Per Saktijit Dey, VP:

This is an appeal by the Revenue, against order dated 16.03.2011, passed by the learned Commissioner of Income Tax (Appeals)-20, Mumbai ('ld.CIT(A) for short), deleting penalty imposed of Rs.65,78,002/- u/s. 271(1)(c) of the Income Tax Act, 1961 ('the Act' for shor) for the assessment year (A.Y.) 2005-06.

2. The Registry has notified delay of 53 days in filing the appeal. The Assessing Officer (AO) through letter dated 28.07.2011, copy on record, has prayed for condonation of delay, stating that the delay occurred due to misplacement of the record on account of renovation work. Considering the explanation for delay, we are inclined to condone the delay and admit the appeal for adjudication.

3. Briefly, the facts are, the assessee is a resident corporate entity. For the assessment year under dispute, the assessee filed its return of income on 31.10.2005, declaring income of Rs.4,74,81,856/-. Subsequently, the assessee filed a revised return of income on 29.11.2006, declaring Nil income under the normal provisions and book profits of Rs.77,16,00,744/-.

4. In course of assessment proceeding, the Assessing Officer (AO), while verifying the deductions claimed u/s. 80IB/80-IC of the Act, was of the view that allocation of various expenses between the eligible and non-eligible units are disproportionate. Therefore, he interfered with the accounts of the assessee, insofar as, the allocation of expenses are concerned and recomputed the deduction u/s.80-IB/80-IC of the Act. As a result of such re-computation, there was variation in income. Based on such variation in income, the A.O. initiated proceedings for imposition of penalty u/s. 271(1)(c) of the act. Ultimately, the A.O. passed an order imposing penalty of Rs.65,78,002/- u/s.271(1)(c) of the Act, alleging furnishing of inaccurate particulars of income leading to concealment of income.

5. Contesting the imposition of penalty, the assessee preferred an appeal before learned first appellate authority.

6. Learned first appellate authority, deleted the penalty with the following observations :

*4.2 In the instance case the appellant had 4 claimed deduction u/s 80IB/80IC. It had allocated certain expenses in a particular manner. The AO reallocated them in a different manner. There was no dispute on the genuineness of the expenses allocated. The AO made allocation relying on the same particulars of expenses which were furnished by the appellant and was the basis of claim of deduction by the appellant. There is no finding in the Assessment Order that such particulars*

*were found to be inaccurate, untrue or false. The AO has misconstrued the ruling of the Apex Court. The appellant claimed deduction of a particular amount which in the opinion of the AO was excessive. The claim as such was not inaccurate, untrue or false but the AO only doubted the correctness of the quantum of claim. It was a case of mere change of opinion based on same particulars of expenditure filed with the return or in course of the assessment proceedings. The appellant did not file inaccurate particulars of income or expenditure nor did it conceal the particulars of such income or expenditure. The conditions prescribed in section 271(1)(c) do not exist, therefore, cancel the penalty levied of Rs.65,78,002/-.*

7. Having taken note of the factual position concerning the issue, we do not find any infirmity in the decision of learned first appellate authority. As rightly observed by him, there is no dispute regarding assessee's eligibility to claim deduction u/s. 80IB/80IC of the Act. There is also no dispute regarding the genuineness of the expenditure claimed by the assessee. The point of difference between the assessee and the A.O. is only with regard to allocation of expenses between the eligible and non-eligible units. While, the assessee has allocated the expenses between the units adopting a particular method consistently followed, the A.O. has made the allocation in a different manner. However, the fact remains that the assessee has furnished all particulars of its income and expenditure. Therefore, the assessee cannot be accused of furnishing of inaccurate particulars of income. Thus, in our view, this is not a fit case for imposition of penalty u/s. 271(1)(c) of the Act. Accordingly, we uphold the decision of learned first appellate authority, by dismissing the grounds raised.

8. In the result, the appeal is dismissed.

*Order pronounced in the open court on 05.02.2025*

Sd/-

(B R Baskaran)  
Accountant Member

Mumbai; Dated : 05.02.2025

Roshani, Sr. PS

Sd/-

(Saktijit Dey)  
Vice President

**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT - concerned
5. DR, ITAT, Mumbai
6. Guard File

BY ORDER,

(Dy./Asstt. Registrar)  
ITAT, Mumbai