

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

**BEFORE SHRI ANIKESH BANERJEE, JUDICIAL MEMBER AND
SHRI OMKARESHWAR CHIDARA, ACCOUNTANT MEMBER**

ITA No.515/Mum/2025 - A.Y. 2017-18

ITA No.516/Mum/2025 - A.Y. 2018-19

Deputy Commissioner of Income-tax, Central Circle- 2(4), Mumbai, Room NO.802, 8 th Floor, Old CGO Annexe Building, M.K. Road, Marine Lines, Mumbai- 400 020	vs	Jyothy Labs Limited Ujala House, Ram Krishna Mandir Road, Kondivita, J.B. Nagar S.O. Mumbai-400 059 PAN : AAACJ3213B
APPELLANT		RESPONDENT

Assessee by : Ms.Priyanka Jain a/w
Shri Pankaj Soni
Respondent by : Shri Asif Karmali (SR DR)
Date of hearing : 11/04/2025
Date of pronouncement : 29/04/2025

ORDER

Per Bench:

The instant appeals were filed by the revenue against the orders of the Learned Commissioner of Income-tax (Appeals)-48, Mumbai [in short, 'Ld.CIT(A)'] passed under section 250 of the Income-tax Act, 1961 (in short, 'the

Act')date of order 27/11/2024 for A.Ys. 2017-18& 2018-19. The impugned orders were emanated from the orders of the National Faceless Assessment Centre, Delhi (in short, the "Ld.AO") date of orders dated 23/03/2022 passed under section 270A of the Act.

2. Both the appeals have same nature of facts and have a common issue. So both the appeals were taken together, heard together and disposed of together. **ITA No.515/Mum/2025** is taken as lead case.

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2.1 The revenue has taken the following grounds: -

"1. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the penalty of Rs. 2,49,34,501/- made u/s 270A of the Income Tax Act, 1961 for under reporting of income by overlooking the fact that the issue of deduction u/s 80-IC of the Act is already before the Hon'ble Bombay High Court for A. Ys. 2011-12, 2012-13, 2013-14 & 2014-15 and the issue has not reached to its finality?"

2. The appellant craves leave to add, delete, alter, modify, rectify, substitute or otherwise any or all of the grounds of appeal at or before the time of hearing of the appeal."

3. Let us examine the relevant material facts and the developments leading to the present litigation. The assessee is a public limited company engaged in the business of manufacturing and marketing products such as fabric whiteners, soaps, detergents, mosquito repellents, dishwashing liquids, liquid scrubs, and incense sticks. The assessee filed its return of income for the impugned assessment year declaring a gross total income of Rs.8,81,90,057/-. It claimed deductions under Chapter VI-A of the Act amounting to Rs.28,11,54,856/-, which

were, however, restricted to the extent of the gross total income of Rs.8,81,90,057/- in the return of income. The return was selected for scrutiny and the assessment was completed under section 143(3) of the Act, wherein the Ld. AO made an addition of Rs.16,62,30,011/- by disallowing the deduction claimed under section 80-IC of the Act. The assessee had claimed deduction in respect of its three units located in Gauhati (Units III, IV & V) under section 80-IE of the Act, which was erroneously reported as a claim under section 80-IC. However, the Ld. AO rejected the claim on the ground that it did not satisfy the conditions prescribed under either section 80-IC or 80-IE of the Act.

Since the issue involved was identical to that in preceding assessment years and was pending adjudication before the Hon'ble Bombay High Court as well as before the Coordinate Bench of the ITAT, Mumbai, the assessee carried the matter to the appellate forum in earlier years. In line with the additions made in preceding years, the Assessing Officer continued the same reasoning and confirmed the addition in the impugned assessment year. Subsequently, a notice under section 274 read with section 270A of the Act was issued, treating the claim as 'misreporting of income'. Tax on the misreported income was computed at Rs.4,98,69,003/- and penalty leviable at 50% thereof, amounting to Rs.2,49,34,501/-, was imposed under section 270A of the Act.

Aggrieved by the imposition of penalty, the assessee preferred an appeal before the Ld. CIT(A). The Ld. CIT(A), while noting that in respect of other assessment years involving identical facts, the Coordinate Bench of the ITAT, Mumbai had allowed the assessee's appeal on merits, deleted the penalty imposed for the impugned year. This was despite the fact that the assessee had not challenged

the disallowance under section 80-IC of the Act for the impugned assessment year.

Being aggrieved by the deletion of penalty, the revenue has preferred the present appeal before us.

4. The Ld.AR vehemently argued and filed a paper book containing pages 1 to 522. It is submitted that the issue has cropped up in earlier years from A.Y. 2009-10. Every year the same addition was made by the Ld.AO related to disallowance of deduction under section 80-IC. In respect of Uttaranchal undertaking, which is engaged in the manufacture / production of Ujala Supreme, the additions were duly deleted by the ITAT, Mumbai in the following decisions:-

S.No.	A.Y.	I.T.A No.	Bench	Date of order
1	2011-12	7281/Mum/2016 CO 80/Mum/2018	J	30/11/2018
2	2012-13	7280/Mum/2016 CO 114/Mum/2018	F	18/05/2022
3	2013-14 & 2014-15	3815/Mum/2018 3876/Mum/2018 Cos 149 & 150/Mum/2019	F	28/12/2022
4	2015-16	5774/Mum/2024	F	30/12/2024

In all the years, the assessee succeeded on merit. But only in this impugned assessment years, the assessee has not carried the dispute before the Ld.CIT(A) as the amount was duly adjusted and no tax liability was raised. So considering this fact and factual dispute, the impugned penalty was not to be levied. The Ld.AR further stated that the revenue has carried the issue before the Hon'ble Bombay High Court, but no stay order was issued nor the appeal decided yet.

5. The Ld.AR relied on the order of the co-ordinate bench of ITAT, Mumbai in the case of **Shirpur Gold Refinery Ltd vs ACIT, Circle 9(3), in ITA**

NO.2231/Mum/2011, date of order **31/05/2011**. The relevant para 6 is extracted below:-

“6. Under these circumstances, and in the light of the above observations of Hon’ble Delhi High Court, by no stretch of imagination, it can be said that making a claim of depreciation in respect of assets, which were ready for use but could not be used for want of particulars, is a false claim. We have also noted that the assessee did not carry the grievance against non grant of depreciation claimed in appeal but then as explained by learned counsel for the assessee, the assessee had huge carried forward losses which were unlikely to be recouped in foreseeable future feature. Under such circumstances, the action of non-carrying the grievance against declining the depreciation does not by itself put the assessee in its difficult so far as penalty proceedings are concerned. The claim made by the assessee may be legally tenable or untenable but that even its legal inadmissibility cannot render the claim so made as furnishing of inaccurate particulars – as has been held on the facts of this case. Hon’ble Supreme Court in the case of CIT v. Reliance Petroproducts Pvt Ltd., (2010) 322 ITR 158 (SC) has held that a mere making of legal claim, whether or not ultimately admissible, cannot be treated as furnishing of inaccurate particulars whereas in the present case, it is making a claim of depreciation which has not been visited with penalty under section 271(1)(c) of the Act for “furnishing of inaccurate particulars”. In this view of the matter and as also bearing in mind the entirety of the case, we deem it fit and proper to delete the impugned penalty. The assessee gets relief accordingly.”

The Ld.AR further argued and filed a written submission. The relevant part of the submission is reproduced as below:-

II. The disallowance of deduction under section 80-IC in respect of Uttaranchal Undertaking does not constitute under-reported income for the purpose of section 270A, since the claim of the assessee and the explanation furnished regarding such claim is bona fide:

As stated supra, the penalty proceedings have been initiated for alleged under-reporting of income on account of disallowance of assessee's claim for deduction of Rs. 16,62,30,011/- under section 80-IC of the Act in respect of Uttaranchal Undertaking, which is engaged in the manufacture/production of Ujala Supreme.

In the present case, the assessee submits that no penalty is imposable on grounds in that the aforesaid claim of deduction under Section 80IC of the Act was a bonafide claim made by the assessee company in the return of income.

Without prejudice to the contention that the assessee cannot be considered to have under-reported its income, it is submitted that as per clause (a) of section 270A(6), if the assessee offers a bona fide explanation in respect of any amount of income and discloses all the material facts to substantiate such explanation, then such income shall not be treated as under-reported income. Relevant extract of section 270A(6) is reproduced hereunder

"(6) The under-reported income, for the purposes of this section, shall not include the following, namely: -

(a) the amount of income in respect of which the assessee offers an explanation and the Assessing Officer or the Commissioner (Appeals) or the Commissioner or the Principal Commissioner, as the case may be, is satisfied that the explanation is bona fide and the assessee has disclosed all the material facts to substantiate the explanation offered"

*The word "bona fide" is not defined under the Act. However, the Delhi High Court, in the case of **CWT v. Santokh Singh: [2001] 252 ITR 707** has referred to the dictionary meaning of the word and observed as under:*

"Bona fide means something which is done in good faith, genuine, real. Per Bramwell LJ. in R. v. Holl [1881] 7 QBD 575 (CA), the equivalent of the phrase is "honestly..... According to Tomlin's Law Dictionary, the expression means in good faith, without fraud or deception;

honestly, as distinguished from bad faith, openly, sincerely. According to Black's Law Dictionary, it means in or with good faith; honestly, openly and sincerely, without deceit or fraud, truly, actually, without simulation or pretence, innocently, in the attitude of trust and confidence. According to Wharton's Law Lexicon, bona fide means good faith, implying the absence of all fraud, unfair dealing or acting, whether it consists in simulation or dissimulation."

It is submitted that the assessee's claim for deduction under section 80-IC of the Act in respect of the Uttaranchal Undertaking is bona fide, since in the earlier years, the issue of claim of deduction has been decided by the CIT(A) and the ITAT in favour of the assessee and the deduction under section 80-IC has been allowed in respect of the Uttaranchal Undertaking engaged in the manufacture of Ujala Supreme.

Thus, a claim made on the basis of similar claim being allowed by appellate authorities in earlier years, in assessee's own case, is undoubtedly in good faith, reasonable and bona fide. In this regard, it is submitted as under:

- ***Issue is squarely covered in favour of the assessee by the CIT(A) in the preceding assessment years:***

*In assessee's case for the AY 2011-12, the CIT(A) held that the process of manufacture of Ujala Supreme amounts to manufacture/production of an article or thing and hence eligible for deduction under section 80-IC. The CIT(A) relied on the decisions in the case of **CIT v. Vinbros& Co.: 177 Taxman 217 (Madras HC)** [against which, the department's SLP has been dismissed by the Supreme Court in the case of **CIT v. Vinbros& Co.: [2012] 25 taxmann.com 367 (SC)**] and **CIT v. Jalna Seeds Processing and Refrigeration Co. Ltd: 246 ITR 156 (Bombay HC)**,*

Following its own order for the assessment year 2011-12, the CIT(A) similarly allowed the deduction claimed under section 80-IC on the ground that the process of Ujala Supreme amounts to manufacture/production of a distinct article or thing for the assessment years 2009-10 to 2014-15."

6. The Ld. DR submitted that the factual issues involved in the present matter are pending adjudication before the Hon'ble Bombay High Court. The revenue has challenged the order passed by the ITAT; however, the Ld. DR candidly admitted that no stay has been granted by the Hon'ble High Court, nor has the appeal been admitted. The Ld. DR placed full reliance on the impugned penalty order.

7. The Ld. DR further placed reliance on the judgment of the Hon'ble Supreme Court in **CIT v. McDowell & Co. Ltd. (1985) 154 ITR 148 (SC)**, wherein it was held that tax planning within the boundaries of law is permissible, but the benefit of Section 80-IC cannot be extended beyond the legislative intent. Further reliance was placed on the decision in **Union of India v. Dharmendra Textile Processors (2008) 306 ITR 277 (SC)**, where the Hon'ble Supreme Court held that the levy of penalty for underreporting of income is mandatory once a wrongful claim is established, irrespective of the assessee's intent.

8. On the other hand, the Ld. AR contended that the imposition of penalty under Section 270A is discretionary in nature. The addition in question pertains solely to the disallowance of deduction under Section 80-IC. Accordingly, the determination as to whether the case falls under underreporting or misreporting of income is not applicable to the assessee. The Ld. AR relied upon the judgment of the Hon'ble Supreme Court in **CIT v. Reliance Petroproducts Pvt. Ltd. (2010) 322 ITR 158 (SC)**, wherein it was held that mere disallowance of a claim does not automatically attract penalty provisions, particularly where the nature of expenditure is merely reclassified or reinterpreted.

9. We have heard the rival submissions and perused the materials available on record. It is observed that the disallowance in question pertains to a recurring issue relating to deduction under Section 80-IC, which has been consistently raised by the Ld. AO since Assessment Year 2009–10. However, the ITAT, Mumbai Bench has, through detailed orders, deleted the corresponding additions for A.Ys. 2009–10 to 2015–16. Thus, the disallowance of deduction under Section 80-IC has already been adjudicated in favour of the assessee.

The addition in the present year appears to be made in a mechanical manner, merely following the pattern of earlier assessments. The assessee did not challenge the assessment order before a higher forum in the current year; based on this, the Ld. AO proceeded to impose the penalty.

In the present case, although the assessee has not pursued the matter before the higher appellate authority, the disallowance under Section 80-IC is essentially a matter of interpretational difference in the nature of expenditure claimed. The reliance placed by the Ld. DR on **McDowell & Co. Ltd.** (supra) and **Dharmendra Textile Processors** (supra) is misplaced, as the facts of those cases are clearly distinguishable.

The ITAT, Mumbai Bench has already settled the issue on merits in favour of the assessee. No contrary view has been brought on record. The penalty has been imposed solely because the assessee did not prefer an appeal in the current year, which, in our considered opinion, is not a valid ground.

We also respectfully rely on the judgment of the Hon'ble Supreme Court in **CIT v. Reliance Petroproducts Pvt. Ltd.** (supra), which was followed by the ITAT, Mumbai Bench in **Sirpur Gold Refinery Ltd.** (supra).

Accordingly, we find no infirmity in the impugned appellate order. The penalty of Rs.2,49,34,501/- imposed under Section 270A is hereby quashed.

ITA No.516/Mum/2025 – A.Y. 2018-19

10. The facts and circumstances in this appeal are identical to **ITA No.515/Mum/2025**, there, the decision arrived at therein shall apply *mutatis mutandis* to this appeal also.

11. In the result, both the appeals bearing **ITA Nos 515 & 516/Mum/2025** filed by the revenue are dismissed.

Order pronounced in the open court on 29th day of April, 2025.

Sd/-

(OMKARESHWAR CHIDARA)
ACCOUNTANT MEMBER
Mumbai, दिनांक/Dated: 29/04/2025
Pavanan

sd/-

(ANIKESH BANERJEE)
JUDICIAL MEMBER

Copy of the Order forwarded to:

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

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BY ORDER,

(Asstt. Registrar), ITAT, Mumbai