

**आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**INDORE BENCH, INDORE**  
**BEFORE SHRI B.M. BIYANI, ACCOUNTANT MEMBER,**  
**AND**  
**SHRI PARESH M. JOSHI, JUDICIAL MEMBER**

**ITA Nos. 772 to 774/Ind/2024**  
**Assessment Years: 2012-13 to 2014-15**

DCIT, Circle 5(1) Bhopal	<b><u>बनाम/</u></b> Vs.	M.P. State Tourism Development Corporation Limited, 1 Paryatan Bhavan, Bhadbhada Road, Bhopal
(Appellant/Revenue)		(Respondent/Assessee)
<b>PAN: AABCM0086A</b>		
Revenue by	Shri Anoop Singh, CIT-DR	
Assessee by	Shri CA Surya Jain, AR	
Date of Hearing	25.06.2025	
Date of Pronouncement	26.06.2025	

**आदेश / O R D E R**

**Per Bench:**

Feeling aggrieved by three separate orders of first-appeal, all dated 22.08.2024 and all passed by learned Commissioner of Income-tax (Appeals), NFAC, Delhi ["CIT(A)"], which in turn arise out of respective penalty-orders, all dated 30.03.2019 and all passed by learned ACIT-2(1), Bhopal ["AO"] u/s 271(1)(c) of the Income-tax Act, 1961 ["the Act"], for assessment-years ["AY"] 2012-13 to 2014-15, the revenue has filed these appeals.

2. In these appeals, the revenue is having identical grievance that the CIT(A) has erred in deleting the penalty imposed by AO u/s 271(1)(c). Learned Representatives agree that the underlying facts are identical in all three cases, therefore we have heard these appeals analogously and are going to dispose of by this common order for the sake of clarity, convenience and brevity. Both sides argued the facts of first appeal being *ITA No. 772/Ind/2024 of AY 2012-13* citing the same as a lead case and agreed that the adjudication made therein shall apply *mutatis mutandis* to all other appeals.

3. Brief facts of AY 2012-13 are such that the AO made assessment by way of scrutiny u/s 143(3) through order dated 27.03.2015 wherein he made a disallowance of Rs. 2,00,00,000/- out of Repairs and Maintenance Expenses (incurred for Building Rs. 3,12,25,675/- + Others Rs. 1,50,73,533/- + Garden Rs. 20,88,183/-). We re-produce below the entire assessment-order passed by AO, out of which Para 4 is related to the impugned disallowance:



भारत सरकार

Government Of India

वित्त मंत्रालय (राजस्व विभाग)

Ministry Of Finance (Department of Revenue)

कार्यालय उपायुक्त आयकर-2(1), भोपाल

OFFICE OF THE DEPUTY COMMISSIONER OF INCOME TAX-2(1), BHOPAL

कमरा नं 213, आयकर भवन, होशंगाबाद रोड, भोपाल-462011 ☎ : (0755) 2525379

Room No. 213, Aayakar Bhawan, Hoshangabad Road, Bhopal - 462011 ☎: (0755) 2525379

Dy. Commissioner of Income Tax Circle-5(1)  
Bhopal

1.	NAME OF THE ASSESSEE	::	M/s MP State Tourism Development Corporation Limited
2.	ADDRESS	::	Paryatan Bhawan
3.	PAN	::	AABCM0086A
4.	STATUS	::	Company
5.	ASSESSMENT YEAR	::	2012-13
6.	NATURE OF BUSINESS	::	Development of tourism & hotel running business
7.	CIRCLE / RANGE	::	CIRCLE - 2(1), BHOPAL
8.	DATE (S) OF HEARING	::	As Per Order Sheet
9.	ORDER UNDER SECTION	::	143(3) OF INCOME TAX ACT 1961
10.	DATE OF ORDER	::	27-03-2015

ASSESSMENT ORDER

1. The revised return of income for A.Y. 2012-13 was filed on 30.03.2014 declaring total income of Rs. 2,16,24800/-. This case was selected for scrutiny and notice u/s 143(2) was issued on 08.08.2013 and 01.09.2014 which were served upon the assessee well within time allowed and notice u/s 142(1) along with a detailed questionnaire was issued on 01.09.2014. Due to change of incumbent, the notice of fresh opportunity was issued on 09-01-2015
2. In response to the above notices, Shri Gulam Mustafa, Accounts Officer and Shri R.C.Baheti, CA & AR of the assessee, attended on behalf of the assessee from time to time and filed written submissions. The submissions given by the assessee were examined and placed on record. Various aspects



Page 1 of 3

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Dy. Commissioner of Income Tax Circle-5(1)  
Bhopal

96/20

of the case were discussed with the authorized representative during the hearings.

3. The assessee co-operation is a Government Undertaking and engaged in carrying on business of tourism, lodging and boarding at various places of M.P.

4. On perusal of the audited accounts of the assessee, it is seen that the assessee has debited a sum of Rs. 4,83,87,411/- under the head Repairs and Maintenance to buildings of Rs. 3,12,25,675/-, Repairs and Maintenance (others) Rs.1,50,73,533/- and Repairs and Maintenance to Garden of Rs. 20,88,183/-. In the earlier assessment years, the department has observed that the assessee had been also debiting capital expenses under the head "Repairs and Maintenance" in the P & L account. A part amount of the expenses under the same head were disallowed by the assessing officer and also sustained by the appellate authorities i. by the Id CIT(A) and the Hon'ble ITAT. In view of this, vide order sheet entry dated 13-03-2015, the assessee was required to explain/justify the expenses claimed under the head "Repair and Maintenance" and to show cause as to why a part of the total expenses under the head "Repair and Maintenance" should not be disallowed in this year also. The assessee vide its reply dated 16-03-2015 submitted that this year none of the expenses relating to capital nature debited under the head "Repairs and Maintenance". All the expenses are of revenue nature and incurred for business purposes. The assessee also produced bills and vouchers for the same expenses.

The bills and vouchers produced by the assessee were examined on test check basis. On verification of the bills and vouchers produced by the assessee, it is found that certain bills/vouchers are relating to the expenses which are of capital nature. Therefore, the contention of the assessee that all the expenses incurred under the head "Repairs and Maintenance" are of revenue nature is not found acceptable. Therefore, an amount of 2,00,000,00/- is hereby added to the total income of assessee for the year under consideration.



Page 2 of 3

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Bhopal

5. In view of the discussion made above and considering the totality of facts and in the circumstances of the case and material available on record, the returned income of the assessee is computed as under:-

Income as per return	Rs.	2,16,24,800/-
Add:- As per para-4	Rs.	2,00,00,000/-
<b>Income Assessed</b>	<b>Rs.</b>	<b>4,16,24,800/-</b>

Assessed u/s 143(3) of the Income-tax Act, 1961 as above. Issue demand notice and challan. Charge interest u/s 234A, 234B, 234C & 234D as per rules if any. Give credit to prepaid taxes, if any, after necessary verification.

Copy to the Assessee



(K.N. SONKAR)  
Assistant Commissioner of Income Tax - 2(1),  
Bhopal

(K.N. SONKAR)  
Assistant Commissioner of Income Tax - 2(1),  
Bhopal

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Dy. Commissioner of Income Tax Circle-5(1)  
Bhopal

4. Thereafter, the AO passed penalty order u/s 271(1)(c) on 30.03.2019 imposing a penalty of Rs. 98,00,000/- qua the impugned disallowance of Rs. 2,00,00,000/- made in assessment-order. Aggrieved by penalty so imposed, the assessee carried matter in first-appeal and made a detailed submission which is re-produced by CIT(A) in para 4.5 / Pages 4 to 9 of impugned order. After being satisfied with assessee's submission, the CIT(A) passed following order reversing the action of AO and deleting the penalty:

**"7. DECISION**

*I have carefully considered the facts on record and the applicable law in this regard.*

*7.1 Ground No. 1 to 3 are related to levy of penalty of Rs. 98,00,000/- under section 271(1)(c) of the Income Tax Act 1961 when the assessee has not committed any such default.*

*The appellant is a PSU of Madhya Pradesh government and in the business of running hotels and resorts. The case of the appellant was selected for scrutiny and an addition of Rs. 2 crore on account of disallowance in respect of repair and maintenance was made by treating the expenditure as capital in nature which was claimed as revenue expenditure by the appellant. During the penalty proceedings, the appellant made the submissions and pleaded that it is not liable for penalty for concealment as all the details were disclosed to the department and it has genuine belief that these expenses are revenue in nature. The AO did not agree with the contention of the appellant and levied penalty @100% on the addition made of Rs. 2 crore by holding that the assessee had furnished inaccurate particulars of income by wrongly debiting capital expenses to profit and loss account.*

*During the appeal proceedings, the appellant has filed statement of facts which are reproduced above. The appellant is contending that this year none of the expenses relating to capital nature has been debited under the head repairs and maintenance and all the expenses are revenue in nature incurred for business purpose. The appellant has further pleaded that no penalty u/s 271(1)(c) of the Act is leviable if basis of addition is adhoc disallowance. In this regard, the appellant has relied on various decisions of Hon'ble Supreme Court, High Courts and Tribunals wherein it was categorically held that the penalty cannot be imposed in respect of additions made on the basis of estimation. It has been held in the case of **CIT Vs. Reliance Petroproducts** that no penalty can be levied upon rejection of a bonafide claim of a tax payer if such claim is highly debatable. In the case of **DCIT Vs. Rural Electrical Coop Society Ltd.** Hon'ble Madhya Pradesh High Court has held that every concealment does not attract penalty u/s 271(1)(c) of the Act until and unless it is deliberate and intentional being in the knowledge of the assessee. The appellant has relied on the decision of Hon'ble ITAT Mumbai in the case of **Aristo Pharmaceuticals Pvt. Ltd. V/s. ACIT** in which it was held that the claim of revenue expenditure may not be justified and disallowance can be made but when the assessee had made a complete disclosure of details of expenditure and claimed it as revenue expenditure in the return of income, thus no penalty u/s. 271(1)(c) could have been levied. The appellant has further relied on the case of **M/s. Bhatia Corporation Pvt. Ltd. V/s. ACIT of ITAT Jaipur** in which it was held that merely because expenditure claimed is disallowed and treated as capital expenditure the same cannot be basis of levy of penalty for furnishing inaccurate particulars of income u/s 271(1)(c) of the Act.*

*The appellant has incurred certain expenses which were treated as revenue expenditure incurred wholly and exclusively for the purpose of the business by the assessee and claimed as revenue expenses. However, the AO did not agree with the contention of the assessee and a part of the expenses were treated as revenue and balance amount was treated as capital expenditure. Whether any expenditure is a capital expenditure or revenue expenditure is a matter of debate and always subjective. The disallowance in such cases is always adhoc and on estimation basis. Same is the case in the case of the appellant where the AO did not agree with the claim of the appellant regarding revenue expenses and disallowed part of the expenses as capital. Considering the case laws relied upon by the appellant and facts it is held that the case of the appellant does not attract penalty u/s 271(1)(c) of the Act for furnishing inaccurate particulars of income. Respectfully, following the decisions of Hon'ble Apex Court, High Courts and Tribunals it is held that the appellant is not liable for penalty u/s 271(1)(c) of the Act. Accordingly, the penalty levied of Rs. 98,00,000/- u/s 271(1)(c) of the Act is hereby deleted.*

*These grounds are allowed."*

5. Before us, Ld. DR for revenue/appellant submitted that the AO has imposed penalty qua the disallowance of Repairs & Maintenance expenses made by him in Para No. 4 of assessment-order (reproduced earlier). Referring to the notings made by AO therein, Ld. DR submitted that the AO has made disallowance following the same tune of earlier assessment-years wherein a similar disallowance was made by AO and the same was also upheld by CIT(A)/ITAT. He submitted that the AO has clearly noted his objection that on verification of bills and vouchers produced by assessee, it was found that certain bills/vouchers were relating to expenses of capital nature but the assessee had claimed deduction as revenue expenditure which was not acceptable. He submitted that the assessee has not contested the disallowance of Rs. 2,00,00,000/- made by AO before higher appellate forums and thereby accepted AO's action of disallowance. He submitted that by claiming capital expenses as revenue, the assessee has furnished

inaccurate particulars of income and therefore the AO was justified in imposing penalty u/s 271(1)(c). He strongly supported the penalty-order passed by AO.

6. Per contra, Ld. AR for assessee/respondent submitted that the assessee is a state-owned corporation. He submitted that the assessee has maintained regular books of account and the books so maintained were audited by statutory auditors. He submitted that during assessment-proceedings, the assessee produced bills and vouchers of repairs and maintenance expenses to AO and this fact is clearly acknowledged by AO himself. He submitted that the AO has mentioned two reasons for making impugned disallowance, namely (i) similar disallowance made in earlier years was upheld by CIT(A)/ITAT and (ii) on verification of the bills and vouchers, it is found that certain bills/vouchers relating to expenses were of capital nature. He submitted that these observations made by AO very clearly show that the AO has made disallowance in a routine manner. He submitted that the AO has himself noted assessee's stand *"The assessee vide its reply dated 16-03-2015 submitted that this year, none of the expenses relating to capital nature debited under the head 'Repairs and Maintenance'. All the expenses are of revenue nature and incurred for business purpose. The assessee also produced bills and vouchers for the same expenses"*. He submitted that the AO has made a casual remark that "certain bills/vouchers" were of capital nature but not cited a single

instance of such incident. He submitted that the AO has made a disallowance of Rs. 2,00,00,000/- which is just an adhoc/lump sum figure. He submitted that it is a settled law that the no penalty can be imposed for adhoc/lump sum addition made on pure estimation. Further, it is also a settled law that the assessment-proceedings and penalty-proceedings are two distinct and independent proceedings. He submitted that an adhoc/lump sum disallowance made by AO in assessment-order, even if not contested by assessee before higher forum in appeal for any reason, does not mean that it would necessarily follow the penalty u/s 271(1)(c). He submitted that the CIT(A) has passed a very reasoned order holding that penalty is not imposable in such a case of adhoc/lump sum disallowance. He submitted that in coming to such a conclusion, the CIT(A) has very rightly placed reliance on judicial rulings as mentioned in his order. He submitted that the order of CIT(A) does not suffer from any error, perversity or adversity, his order must be preserved.

7. We have considered rival submissions of both sides and carefully perused the orders of lower-authorities. In present case, the AO initially made a disallowance of Rs. 2,00,00,000/- in assessment-order and thereafter imposed penalty of Rs. 98,00,000/- u/s 271(1)(c) by penalty-order. In first-appeal against penalty-order, the CIT(A) has reversed AO's action and deleted penalty. Now, the revenue has come in appeal before us assailing the order of CIT(A) and claiming that the penalty imposed by AO

was in order. Thus, we are required to adjudicate as to whether the section 271(1)(c) was applicable in the facts of present case or not.

8. At first, we re-produce the legal provision of section 271(1)(c) which reads as under:

***“271. Failure to furnish returns, comply with notices, concealment of income, etc.***

***(1) If the Assessing Officer ..... in the course of any proceedings under this Act, is satisfied that any person –***

***XX***

***(c) has concealed the particulars of his income or furnished inaccurate particulars of such income,***

***XX***

***he may direct that such person shall pay by way of penalty ...***

Thus, the penalty u/s 271(1)(c) is imposable only if a person ‘has concealed the particulars of his income’ or ‘furnished inaccurate particulars of income’. In present case, Ld. DR for revenue is claiming that the assessee has ‘furnished inaccurate particulars of income’ and hence the AO has imposed penalty. On perusal of assessment-order, we find that the AO has made a disallowance of Rs. 2,00,00,000/- out of Repairs and Maintenance Expenses. The AO has cited two-fold reasons for making such a disallowance, namely (i) similar disallowance made in earlier years was upheld by CIT(A)/ITAT and (ii) on verification of the bills and vouchers, it is found that “certain bills/vouchers” relating to expenses were of capital nature. Thus, in the first instance, the AO has merely followed the tune of earlier year but it is

noteworthy that the assessee categorically submitted to AO (such submission of assessee is recorded by AO in assessment-order itself) that during this year none of the expenses relating to capital nature was debited under Repairs and Maintenance; all expenses were revenue; and the assessee also produced bills and vouchers of expenses. Secondly, the AO has made a generalized remark that "certain bills/vouchers" were of capital nature but he has not given a single instance of such adverse observation. That apart, the AO has made an adhoc/lump sum disallowance of Rs. 2,00,00,000/-. Therefore, the Ld. AR is very much correct in claiming that this is a case of pure estimation by AO, there is no case of 'furnishing inaccurate particulars by assessee' as being claimed by Ld. DR. The Ld. DR, though dutifully supported the penalty-order passed by AO, could not convince us as to how it would be a case of 'furnishing inaccurate particulars'? Therefore, we agree in line with numerous judicial rulings available in public domain (a few of which have been mentioned by Ld. CIT(A) in impugned order. Since we have already re-produced CIT(A)'s order in earlier part of this order, we do not wish to repeat those rulings for the sake of brevity) that the penalty u/s 271(1)(c) cannot be levied where addition/disallowance is based on estimation.

9. We may also add here one more important aspect which though has not been argued by either side but is certainly noteworthy. In assessment-order of AY 2012-13 (already re-produced above in earlier para), the AO has

made only impugned disallowance of Rs. 2,00,00,000/- but nowhere the AO has whispered that the said disallowance represented 'inaccurate particulars of income' submitted by assessee or that the proceeding u/s 271(1)(c) shall be initiated. Although in AY 2013-14 & 2014-15, vide Para 1.5 of assessment-orders, the AO has mentioned thus:

*"1.5 I am also satisfied that the assessee has furnished inaccurate particulars of income by claiming expenses on account of capital expenditure. Therefore, penalty proceedings u/s 271(1)(c) are being initiated separately for furnishing inaccurate particulars of income."*

Therefore, the penalty-order of AY 2012-13 is unsustainable for this very reason also that there is no satisfaction recorded by AO in assessment-order *qua* any default having been committed by assessee attracting penalty proceedings of section 271(1)(c). In fact, one can say that the AO was considerably aware that the estimated adhoc/lump sum disallowance cannot attract penalty. Furthermore, it can also be gainfully said that the AO cannot treat the assessee as defaulter of section 271(1)(c) in AY 2013-14 & 2014-15 when the situation is just same as in AY 2012-13.

10. At this stage, we would also like to address one more plea taken by Ld. DR for revenue that the assessee has not contested the issue of disallowance made in assessment-order by way of appeals in higher appellate forums. This argument of Ld. DR does not have substance because in the scheme of Income-tax Act, 1961 the assessment-proceedings and penalty-proceedings are two separate and distinct proceedings and the assessee is not precluded

from contesting penalties even while accepting assessment-orders. There are numerous decisions holding this proposition.

11. In view of above discussions, we agree with the view taken by Ld. CIT(A) that the penalty was not imposable in present case. Accordingly, we approve the order passed by CIT(A) and the appeal of revenue is dismissed being devoid of merit. This conclusion, as stated earlier, shall apply to all three appeals.

**12. Resultantly, all these appeals are dismissed.**

Order pronounced in open court on 26/06/2025

Sd/-

(PARESH M. JOSHI)  
JUDICIAL MEMBER

Sd/-

(B.M. BIYANI)  
ACCOUNTANT MEMBER

**Indore**

**दिनांक /Dated : 26/06/2025**

**Patel/Sr. PS**

Copies to: (1) The appellant  
(2) The respondent  
(3) CIT  
(4) CIT(A)  
(5) Departmental Representative  
(6) Guard File

By order  
Sr. Private Secretary  
Income Tax Appellate Tribunal  
Indore Bench, Indore