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

BEFORE SHRI SAKTIJIT DEY, VICE PRESIDENT &
MS PADMAVATHY S, AM

I.T.A. No. 5411 to 5413/Mum/20S25
(Assessment Year: 2011-12 to 2013-14)

DCIT-2(2)(1) Aayakar Bhavan, Room No. 417, Mumbai 400020	Vs.	**YES Bank Limited** YES Bank House, Off Western Express, Santacruz East, S.O., Mumbai 400055 **PAN: AAACY2068D**
Appellant)	:	**Respondent**)

Assessee by	:	Shri Riken Shah
Revenue by	:	Shri. Swapnil Choudhary Sr. AR
Date of Hearing	:	30.10.2025
Date of Pronouncement	:	11.11.2025

O R D E R

Per Padmavathy S, AM:

These appeals by the revenue are against separate orders of the Commissioner of Income Tax Appeals/National Faceless Appeal Centre (NFAC), Delhi passed u/s. 250 of the Income Tax Act, 1961 (the 'Act') all dated 19.06.2025 for AY 2011-12 to AY 2013-14. The common issue contended by the revenue in all these appeals pertain to CIT(A) deleting the penalty u/s. 271(1)(c).

2. The assessee is a company and registered with Reserve Bank of India (RBI) under the banking regulation Act. The assessee filed the original return of income

on 30.09.2011 which was revised on 30.03.2013 declaring total income of Rs.1176,82,76,464/-. The AO completed the assessment u/s. 143(3) determining the income of the assessee at Rs. 1183,32,84,370/- after making certain additions/ disallowances. The AO subsequently initiated penalty proceedings u/s. 271(1)(c) with respect to the claim of expense u/s. 35D on the ground that the assessee has furnished inaccurate particulars of income. Against the penalty order the assessee preferred further appeal before the ld. CIT(A). The ld. CIT(A) deleted the penalty by holding that-

9. I have gone through the submission of the appellant.

9.1 The appellant claimed expenses incurred at the time of the issue of QIP as deduction u/s 35D. The same was disallowed by the A.O. holding that the same was not public issue and not entitled to deduction u/s 35D of the I. T. Act 1961. Consequently, the A.O. held that the impugned claim amounted to furnishing inaccurate particulars of income. Accordingly, the A.O. levied penalty u/s 271(1)(c) of the I. T. Act 1961. The present appeal is against this penalty.

9.2 It is seen that in A.Y. 2010-11, the Hon'ble ITAT allowed the claim u/s 35D vide order number ITA No. 3497/MUM/2018 dated 14.07.2020. The relevant portion of the order is as under: -

2. The grounds of appeal filed by the assessee read as under:

1st ground
On the facts and circumstances of the case and in law, the Id. CIT(A) erred in disallowing the deduction u/s. 35D of the Act on the assumption that the shares may have been allotted only to selected Qualified Institutional Buyers ("QIBs").

2nd ground
On the facts and circumstances of the case and in law, the Id. CIT(A) erred in disallowing deduction of Rs.2.82.80.291/ claimed u/s 35D in respect of expenses incurred in connection with the QIF on the alleged ground that the issue of shares to QIP does not tantamount to

public subscription and such capital expenses are not eligible for deduction u/s 35D of the Act

3rd ground
on the facts and circumstances of the care and in law. the ld. CIT(A) red m disallowing the expenses in connection with QIP on the ground that the expense may not be allowable in view of section 40(a)(i)/(a) of the Art

7. Facts being identical, we follow the order of the Tribunal in the case of Deccan Chronicle Holdings Limited (supra) and in view of the discussion hereinabove at para 6.2, hold that the appellant is eligible for deduction u/s 35D of the Act.

Thus we set aside the order of the Ld. CIT(A) and allow the 1 2 and 3 ground filed by the assessee.

9.3 The disallowance made u/s 35D on the impugned issue has been deleted by the Hon'ble ITAT in A.Y. 2010-11 as discussed above.

The similar issue is involved in AY 2011-12 to AY 2013-14 wherein Hon'ble ITAT set aside the issue to file of the A.O. for adjudication as to whether QIP issue is public issue or not.

Though, the A.O. again added the disallowance u/s 35D while giving effect to the order of the Hon'ble ITAT, it clearly indicates that the issue is debatable issue and does not amount to furnishing inaccurate particulars of income.

9.4 Further reliance is placed on the decision of Hon'ble Supreme Court in the case of CIT v. Reliance Petro products Pvt. Ltd. (2010) (322ITR 158) wherein it was held that the argument of the revenue that "submitting an incorrect claim for expenditure would amount to giving inaccurate particulars of such income" is not correct. By no stretch of imagination can the making of an incorrect claim in law tantamount to furnishing inaccurate particulars. A mere making of the claim, which is not sustainable in law, by itself, will not amount to furnishing inaccurate particulars regarding the income of the assessee. If the contention of the revenue is accepted then in case of every Return where the claim made is not accepted by Assessing Officer for any reason, the assessee will invite penalty under section 271(1)(c). That is clearly not the intention of the Legislature.

9.5 Respectfully following the ratio of the decision of the Hon'ble Supreme Court in the case of CIT v. Reliance Petro products Pvt. Ltd. (2010) (322 ITR 158) and the fact that similar disallowance u/s 35D had been deleted by the Hon'ble ITAT in A.Y. 2010-11, similar disallowance in A.Y. 2011-12 does not amount to furnishing inaccurate particulars of income and the penalty u/s 271(1)(c) so levied stands deleted.

3. The revenue is in appeal before the Tribunal against the order of the ld. CIT(A).

4. The ld. AR submitted that AY 2010-11 is the first year in which the deduction u/s. 35D was claimed by the assessee towards the expenses incurred for issue of shares to Qualified Institutional Buyers (QIB). The ld AR further submitted that the revenue disallowed the said claim for AY 2010-11 that the issue when travelled to the Tribunal, the coordinate bench held that the assessee is eligible for the deduction u/s. 35D in respect of expenses incurred in connection with issue of shares to QIB. The ld. AR also submitted that for AY 2011-12 to 2013-14 the coordinate bench has remitted the issue back to the file of the AO to examined whether issue of shares to QIB is a public issue or not. The ld. AR submitted that the ld. CIT(A) has deleted the penalty for a reason that making an incorrect claim which in the opinion on the AO is not allowable cannot be held as furnishing of inaccurate particular and the reliance placed by the ld. CIT(A) in the case of Reliance Petro Products Private Limited (supra) is correct. The ld AR argued that the deduction u/s.35D once examined and allowed in the first year of claim, no disallowance can be made in the subsequent years. Therefore it is submitted that the penalty levied cannot be sustained since the issue on merits is an allowable claim.

5. The ld. DR on the other hand, vehemently argued that prima facie if the expenditure is not an allowable claim than the assessee has furnished inaccurate

particulars by claiming deduction. Accordingly, the ld. DR supported the order of the AO.

6. We heard the parties and perused the material on record. The AO in the given case has initiated the penalty proceedings with respect to the disallowance made u/s. 35D claimed in connection with the share issue expenses to QIB. It is relevant to mention here that AY 2010-11 is the first year of claim and the years under consideration are the subsequent years of the claim. We notice that in AY 2010-11 the coordinate bench of the Tribunal has allowed the claim u/s. 35D stating that-

> *6. We have heard the rival submissions and perused the relevant materials on record. The reasons for our decisions are given below.*
>
> *The appellant is a banking company. It filed its revised return of income for the AY 2010-11 on March 30, 2012 declaring total income at Rs. 7,90,10,18,157/-.*
>
> *As mentioned earlier, the question involved in this appeal is whether QIB can be regarded as "public" and whether the offer made to them can be regarded as "offer made to public" for the purpose of section 35D of the Act.*
>
> *In Deccan Chronicle Holdings Ltd. (supra), the Tribunal has held as under:*
>
> > *"6. With respect to ground No. 4 for the assessment year 2008-09, we find that the Assessing Officer has not disallowed for the assessment years 2006-07 and 2007-08. However, the Assessing Officer has disallowed the expenditure on the issue of qualified institutional buyers for the assessment year 2008-09 which has been allowed by the Commissioner of Income-tax (Appeals) holding as under:*
> >
> > > *5. I have gone through the factual and legal contentions of the appellant in support argument that the deduction was claimed under section 1512 read with section 37 Le section 35D is so plain and unambiguous that the only condition laid down in that section under sections 35D and 37. I agree with me argument of the appellant that the language that the issue should be offered for public subscription and the mode of placement immaterial. Thus, the only issue for*

consideration is whether OIB can be called 'public or not relevant provisions of the Law, Securities Contract Regulation) Rules, SEBI Guidelines/Instruction made by the considered opinion that QIBs constitute 'public' and accordingly, the subscription made by the amount to public subscription. In this view of the matter and also considering the facts with regard to the utility of funds raised through QIB issue, I hold that the issue expenditure, to the extent attributable to the funds utilized for extension of the appellant's undertakings, is eligible for deduction under section 35D. So far as the remaining funds, utilized for modernization and working capital requirements of the appellant's business are concerned, I have considered both factual and legal submissions of the applicant, in support of its contention that the expenditure was in the nature of revenue expenditure since the primary object and intent of raising these funds was to meet the operational requirements, in order to run the business more efficiently and profitably. The Hon'ble High Court of Delhi, after analyzing plethora of case law on this subject, had laid down certain broad guidelines, in the case of CIT v. J.K. Synthetics Lad. [2009] 309 II'R 371 (Delhi), to decide whether a particular expenditure is capital or revenue in nature. Tested against these broad legal principles, I am of the opinion that there is considerable force in the arguments of the appellant-company that the expenditure claimed by it clearly falls in the revenue field. These guidelines were impliedly approved by the Hon'ble Supreme Court, in view of the fact that the special leave petition filed against this decision was dismissed. There is also merit in the argument of the appellant-company that the facts of its case are distinguishable from those in the case of Brooke Bond, for the detailed reasons submitted by it, and therefore its claim cannot be denied by relying on that decision. It was further claimed that though the entire expenditure was allowable in one year under section 37, the same was treated as deferred revenue expenditure and claimed over five years, starting from the assessment year 2007-08. The concept of deferred revenue expenditure is now legally recognized by various judicial authorities and in fact, this was upheld even in the case of the appellant by my predecessor, while deciding the appeal for assessment year 2006-07. In view of the above facts, I hold that the expenditure of Rs. 2,07,00,112 claimed for assessment year 2008-09 is allowable under sections 35D and 37. As the claim of this expenditure under section 35D read with section 37 is in order, the disallowance on this account is deleted."

7. We find that during the year 2007-08, the company incurred debenture expenses of Rs. 2.07 crores and QIB issue expenditure of Rs. 8.28 crores, both totalling to Rs. 10.35 crores. The expenditure referred to above of Rs. 10.35 crores was adjusted against the share premium account as per the provision of the Companies Act. However, the expenditure being deferred revenue expenditure falls within the ambit of section 35D read with section 37 of the Income-tax Act which is eligible to be charged to profit and loss account. Accordingly as per the provisions of section 35D of the Income-tax Act, one-fifth of the QIB issue expenditure ie Rs. 207 lakhs was written off. Qualified Institutional Buyers (QIBs) are a class of investors as a part of the large investor community and the companies sought for QIB issues because the funds can be raised within a short span. This is an extremely important investment for larger investors and since the buyers are only a class of investors, the issue of shares to QIB have been considered as public issue. The expenses in connection with public issue of shares or debentures of the company are allowable. Reliance is placed on CIT v. Shree Synthetics Ltd. [1986] 162 ITR 819 (MP). Hence on the merits of the issue, the QIB expenditure can be treated as revenue expenditure and eligible for deduction under section 35D of the Income-tax Act is confirmed. Hence on merits of the issue as well as the fact that the same issue has been allowed in the earlier years and the Department cannot come upon in appeals in the subsequent years would be the reason to dismissed the Departmental appeal. We confirm the order of the commissioner of income tax (Appeals) with respect to qualified institutional buyers expenses and dismiss the Departmental appeal on this issue. In the result, the Departmental appeal for the assessment year 2007-08 and 09 ate dismissed.

5.1. A perusal of the above order of the Tribunal clearly indicates that the present issue is directly covered in favour of the appellant.

6.2 Further, we find that the appellant being a listed company is bound by "Lining Agreement" which provides for the disclosure requirements for the share holding pattern of a listed company. A can be seen there from, there are only two categories of shareholders "promoter/ promoter group and "public". For the definition of these terms in clause 35, reference is made to clause 40% of the Listing Agreement. As can be seen therefrom, Mutual Fund/Financial institutions which are QBIs are classified under "public shareholding". The terms are defined in clause 40A of the SERI Listing Agreement. Further, the listing agreement takes us to Securities Contracts (Regulation) Rules, 1957 (in short "SCRR"). Also

Rule 19(2)(b) and Rule 19A of the SCRR provide that companies are required to maintain minimum public shareholding of 25% in case of find time listing and in case of continuous listing agreement respectively. In this context, we may refer to section 2(d) of SCRE defining the term "public". It (public) is defined to mean any person other than the promoter, promoter group, subsidiaries and associates of the company. Thus any person other than these four qualify to be considered as public. As can be seen from the list of QIBs to whom shares are issued, the shares are not issued to any of the aforesaid category. Thus QIBs, not being promoters promoter group, subsidiaries and associates of the company would qualify as "public"

As specified in clause 40A(i) of the listing agreement, public shareholding can be increased by any of the modes specified therein to comply with Rule 19(2) and 19A of SCRR. One such note is the issue of IIP in accordance with Chapter VIIIA of the SEBI-ICDR. Chapter VIIIA has been included to provide for fresh issue of shares to comply with minimum shareholding requirement in Rule 19(2) and 19A of SCRR. Reg. 91B defines IPP as a further public offer made only to QIBs. These regulations provide that when a company has a public shareholding lower than the requirements specified, then the company may issue IPP to QIBs and raise the public shareholding to the required levels. It thus implies that QIBs form part of public. Further, even Reg. 82 which gives conditions for QIP, provides that the same must be in compliance with the requirements of public. shareholding.

That "a section of public qualifies as public" has been clarified in Nitta Gelatine India Lid. (supra) and Andhra Chamber of Commerce (supra).

7. Facts being identical, we follow the order of the Tribunal in the case of Deccan Chronicle Holdings Ltd. (supra) and in view of the discussion hereinabove at para 6.2, hold that the appellant is eligible for deduction u/s 35D of the Act.

Thus we set aside the order of the Ld. CTT(A) and allow the 1st, 2nd and 3rd ground filed by the assessee.

7. From the above it is clear that the coordinate bench in the first year of claim of deduction u/s.35D has allowed the claim. We notice that the Hon'ble Supreme

Court in the case of M/s Shashun Chemical & Drugs Ltd (388 ITR 1) has considered the issue of denying deduction u/s.35D in subsequent years while it was allowed in the first year and held that that deduction claimed u/s. 35D of the Act towards share issue expenses, which had been accepted in the initial years after verification of expansion of its industrial undertaking and allowed then the benefit could not be denied in subsequent years. When the said ratio is applied to the present case, then we see merit in the claim of the assessee that the deduction u/s.35D cannot be denied during the years under consideration being the subsequent years of claiming the deduction. Be that as may, the AO has levied the penalty under section 271(1)(c) stating that the assessee has filed inaccurate particulars. In this regard it is relevant to consider the following observations of the Hon'ble Supreme Court in the case of Reliance Petro Products (P.) Ltd (supra) –

> ***9.*** *We are not concerned in the present case with the mens rea. However, we have to only see as to whether in this case, as a matter of fact, the assessee has given inaccurate particulars. In Webster's Dictionary, the word "inaccurate" has been defined as :—*
>
> *"not accurate, not exact or correct; not according to truth; erroneous; as an inaccurate statement, copy or transcript."*
>
> *We have already seen the meaning of the word "particulars" in the earlier part of this judgment. Reading the words in conjunction, they must mean the details supplied in the Return, which are not accurate, not exact or correct, not according to truth or erroneous. We must hasten to add here that in this case, there is 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) of the Act.* ***A mere making of the claim, which is not sustainable in law, by itself, will not amount to furnishing inaccurate particulars regarding the income of the assessee. Such claim made in the Return cannot amount to the inaccurate particulars.***
>
> *(emphasis supplied)*

8. In the present case, we notice that the assessee has made a claim u/s.35D which according to the revenue is unsustainable. When we apply the ratio laid down by the Hon'ble Supreme Court the issue under consideration here, then we don't have any hesitation to hold that even assuming that the deduction claimed u/s. 35D is unsustainable the same would not amount to filing of inaccurate particulars warranting levy of penalty u/s.271(1)(c). Accordingly we are of the considered view that that there is no infirmity in the decision of the CIT(A) in deleting the penalty levied by the AO.

9. In the result, appeals of the revenue for AY 2011-12 to 2013-14 are dismissed.

Order pronounced in the open court on 11-11-2025.

Sd/-	***Sd/-***
(SAKTIJIT DEY)	**(PADMAVATHY S)**
Vice President	**Accountant Member**

Divya R. Nandgaonkar
Stenographer

Copy of the Order forwarded to:

1. The Appellant
2. The Respondent
3. DR, ITAT, Mumbai
4. Guard File
5. CIT

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai