

IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH, KOLKATA

**BEFORE SHRI RAJESH KUMAR, AM
AND
SHRI PRADIP KUMAR CHOUBEY, JM**

**ITA Nos. 2585, 2586 & 2587/KOL/2025
(Assessment Years: 2012-13, 2015-16 & 2016-17)**

BMW Industries Limited
3rd Floor, White House, 119, Park
Street, Kolkata-700016,
West Bengal

(Appellant)

DCIT, Central Circle 4(1)
Aaykar Bhawan Poorva,
110, Shantipally, Em Bypass,
Kolkata-700107, West Bengal

Vs.

(Respondent)

PAN No. AABCB0986G

Assessee by : Shri SK Tulsiyan &
Shri Puja Somani, ARs
Revenue by : Shri Ms. Archana Gupta, DR

Date of hearing: 14.01.2026
Date of pronouncement: 20.01.2026

ORDER

Per Rajesh Kumar, AM:

These are appeals preferred by the assessee against the orders of the Commissioner of Income-tax (Appeals), Kolkata-27 (hereinafter referred to as the "Ld. CIT(A)") dated 24.09.2025, 26.09.2025, 27.09.2025 for the AYs 2012-13, 2015-16 & 2016-17.

A.Y. 2012-13

ITA No. 2585/KOL/2025

2. The issue raised in ground no.1 is against the confirmation of penalty of ₹3,68,938/- by the Id. CIT (A) as levied by the Id. AO u/s 271(1)(c) of the Income-tax Act, 1961 (the Act). The other grounds raised are in support of ground no.1.

3. The facts in brief are that the assessee filed the return of income on 29.09.2012, declaring total income at ₹20,62,50,250/- and the assessment was framed u/s 143(3) of the Act vide order dated 31.03.2015, at ₹21,71,80,550/-. The case of the assessee was reopened u/s 147 of the Act by issuing notice u/s 148 of the Act on 31.03.2019, and assessment was accordingly completed by the Id. AO by making addition of ₹11,31,000/- u/s 68 of the Act by treating the sales made to SR Trading as bogus sales. The penalty proceedings were initiated for furnishing the inaccurate particulars of income and consequently, penalty was imposed of ₹3,68,938/- vide order dated 01.02.2022.
4. The Id. CIT (A) confirmed the penalty levied by the Id. AO by upholding the penalty order passed u/s 271(1)(c) of the Act.
5. After hearing the rival contentions and perusing the materials available on record, we find that the penalty was imposed by the Id. AO by treating the sales made by the assessee to SR Trading of ₹11,31,000/- as bogus. We note that the sales were duly recorded in the books of account by the company and were also shown in the profit and loss account under the head revenue from operation. Consequently, the income was offered to tax in the return of income. The Id. AO during the course of assessment proceedings again added the said amount u/s 68 of the Act, meaning thereby that the same income has been subject to tax twice (1) when the assessee suo moto declared the said sales in the books of account and (ii) when the Id. AO made the addition u/s 68 of the Act for the second time. In our opinion, the same is against the ratio laid down by the Hon'ble Apex Court in the case of Mahaveer Kumar Jain vs. Commissioner of Income Tax, Jaipur [2018] 92 taxmann.com 340 (SC)/[2018] 255 Taxman 161 (SC)/[2018] 404

ITR 738 (SC)/[2018] 302 CTR 1 (SC)[19-04-2018], wherein the Hon'ble court has held as under:-

11. *In the above backdrop, it would be appropriate to refer the decision of this Court in the case of Laxmipat Singhania v. CIT [1969] 72 ITR 291 wherein this Court has observed that "It is a fundamental rule of law of taxation that, unless otherwise expressly provided, income cannot be taxed twice".*

12. *Further, in a decision of this Court in Jain Brothers v. Union of India and Others [1970] 77 ITR 107 (SC), it has been held as under:—*

"6 It is not disputed that there can be double taxation if the legislature has distinctly enacted it. It is only when there are general words of taxation and they have to be interpreted, they cannot be so interpreted as to tax the subject twice over to the same tax..... If any double taxation is involved, the Legislature itself has, in express words, sanctioned it. It is not open to any one thereafter to invoke the general principles that the subject cannot be taxed twice over."

13. *The above referred cases make it clear that there is no prohibition as such on double taxation provided that the legislature contains a special provision in this regard. Now, the only question remains to be decided is whether in fact there is a specific provision for including the income earned from the Sikkim lottery ticket prior to 01.04.1990 and after 1975, in the income-tax return or not. We have gone through the relevant provisions but there seems to be no such provision in the IT Act wherein a specific provision has been made by the legislature for including such an income by an assessee from lottery ticket. In the absence of any such provision, the assessee in the present case cannot be subjected to double taxation. Furthermore, a taxing Statute should not be interpreted in such a manner that its effect will be to cast a burden twice over for the payment of tax on the taxpayer unless the language of the Statute is so compelling that the court has no alternative than to accept it. In a case of reasonable doubt, the construction most beneficial to the taxpayer is to be adopted. So, it is clear enough that the income in the present case is taxable only under one law. By virtue of clause (k) to Article 371F of the Constitution which starts with a non-obstante clause, it would be clear that only the Sikkim Regulations on Income-tax would be applicable in the present case. Therefore, the income cannot be brought to tax any further by applying the rates of the IT Act.*

14. *In view of the aforementioned discussions, we are of the considered view that once the assessee has paid the income tax at source in the State of Sikkim as per the law applicable at the relevant time in Sikkim, the same income was not taxable under the IT Act, 1961. Having decided so, the other issue whether the income that is to be allowed deduction under section 80 TT of the IT Act is on 'Net Income' or 'Gross Income', becomes academic."*

5.1. Besides, we have perused the explanation 4 to Section 271(1)(c) of the Act and observed that sub clause (c) of explanation 4 specifically provides that for the purpose of clause (iii) of this sub-section, the3

expression "sought to be evaded" means "the difference between the tax on the total income assessed and the tax that would have been chargeable had such total income been reduced by the amount of income in respect of which particulars have been concealed or inaccurate particulars have been furnished." Therefore, if the addition made by the Id. AR for the second time u/s 68 of the Act is reduced from the total income then there was no difference between the returned income and assessed income and the tax sought to be evaded would be nil. Thus, the penalty is not leviable under section 271(1)(c) of the Act by virtue of Explanation 4 to Section 271(1)(c) of the Act. Besides, we have noted that the assessee has not furnished inaccurate particulars of income as the sales were fully disclosed in the audited books of account, which was not in dispute and therefore in such scenario no penalty is leviable as has been levied by the Hon'ble Apex Court in the case of CIT vs. Reliance Petroproducts (P.) Ltd. [2010] 189 Taxman 322 (SC)/[2010] 322 ITR 158 (SC)/[2010] 230 CTR 320 (SC)[17-03-2010], wherein it has been held as under:-

"7. As against this, learned Counsel appearing on behalf of the respondent pointed out that the language of section 271(1)(c) had to be strictly construed, this being a taxing statute and more particularly the one providing for penalty. It was pointed out that unless the wording directly covered the assessee and the fact situation herein, there could not be any penalty under the Act. It was pointed out that there was no concealment or any inaccurate particulars regarding the income were submitted in the Return. Section 271(1)(c) is as under :-

"271. (1) If the Assessing Officer or the Commissioner (Appeals) or the Commissioner in the course of any proceedings under this Act, is satisfied that any person—

(c) has concealed the particulars of his income or furnished inaccurate particulars of such income."

A glance at this provision would suggest that in order to be covered, there has to be concealment of the particulars of the income of the assessee. Secondly, the assessee must have furnished inaccurate particulars of his income. Present is not the case of concealment of the income. That is not the case of the Revenue either. However, the learned Counsel for revenue suggested that by making incorrect claim for the

expenditure on interest, the assessee has furnished inaccurate particulars of the income. As per Law Lexicon, the meaning of the word "particular" is a detail or details (in plural sense); the details of a claim, or the separate items of an account. Therefore, the word "particulars" used in the section 271(1)(c) would embrace the meaning of the details of the claim made. It is an admitted position in the present case that no information given in the Return was found to be incorrect or inaccurate. It is not as if any statement made or any detail supplied was found to be factually incorrect. Hence, at least, prima facie, the assessee cannot be held guilty of furnishing inaccurate particulars. The learned Counsel argued that "submitting an incorrect claim in law for the expenditure on interest would amount to giving inaccurate particulars of such income". We do not think that such can be the interpretation of the concerned words. The words are plain and simple. In order to expose the assessee to the penalty unless the case is strictly covered by the provision, the penalty provision cannot be invoked. By any stretch of imagination, making an incorrect claim in law cannot tantamount to furnishing inaccurate particulars. In *CIT v. Atul Mohan Bindal* [2009] 9 SCC 589, where this Court was considering the same provision, the Court observed that the Assessing Officer has to be satisfied that a person has concealed the particulars of his income or furnished inaccurate particulars of such income. This Court referred to another decision of this Court in *Union of India v. Dharamendra Textile Processors* [2008] 13 SCC 369, as also, the decision in *Union of India v. Rajasthan Spg. & Wvg. Mills* [2009] 13 SCC 448 and reiterated in para 13 that :—

"13. It goes without saying that for applicability of section 271(1)(c), conditions stated therein must exist."

8. Therefore, it is obvious that it must be shown that the conditions under section 271(1)(c) must exist before the penalty is imposed. There can be no dispute that everything would depend upon the Return filed because that is the only document, where the assessee can furnish the particulars of his income. When such particulars are found to be inaccurate, the liability would arise. In *Dilip N. Shroff v. Jt. CIT* [2007] 6 SCC 329, this Court explained the terms "concealment of income" and "furnishing inaccurate particulars". The Court went on to hold therein that in order to attract the penalty under section 271(1)(c), mens rea was necessary, as according to the Court, the word "inaccurate" signified a deliberate act or omission on behalf of the assessee. It went on to hold that Clause (iii) of section 271(1) provided for a discretionary jurisdiction upon the Assessing Authority, inasmuch as the amount of penalty could not be less than the amount of tax sought to be evaded by reason of such concealment of particulars of income, but it may not exceed three times thereof. It was pointed out that the term "inaccurate particulars" was not defined anywhere in the Act and, therefore, it was held that furnishing of an assessment of the value of the property may not by itself be furnishing inaccurate particulars. It was further held that the assessee must be found to have failed to prove that his explanation is not only not bona fide but all the facts relating to the same and material to the computation of his income were not disclosed by him. It was then held that the explanation must be preceded by a finding as to how and in what manner, the assessee had furnished the particulars of his income. The Court ultimately went on to hold that the element of mens rea was essential. It was only on the point of mens rea that the judgment in *Dilip N. Shroff's* case (*supra*) was upset. In *Dharamendra Textile Processors' case* (*supra*), after quoting from section 271 extensively and also considering section 271(1)(c), the Court came to the conclusion that since section 271(1)(c) indicated the element of strict liability on the assessee for

the concealment or for giving inaccurate particulars while filing Return, there was no necessity of mens rea. The Court went on to hold that the objective behind enactment of section 271(1)(c) read with Explanations indicated with the said section was for providing remedy for loss of revenue and such a penalty was a civil liability and, therefore, wilful concealment is not an essential ingredient for attracting civil liability as was the case in the matter of prosecution under section 276C of the Act. The basic reason why decision in Dilip N. Shroff's case (supra) was overruled by this Court in Dharamendra Textile Processors' case (supra), was that according to this Court the effect and difference between section 271(1)(c) and section 276C of the Act was lost sight of in case of Dilip N. Shroff (supra). However, it must be pointed out that in Dharamendra Textile Processors' case (supra), no fault was found with the reasoning in the decision in Dilip N. Shroff's case (supra), where the Court explained the meaning of the terms "conceal" and "inaccurate". It was only the ultimate inference in Dilip N. Shroff's case (supra) to the effect that mens rea was an essential ingredient for the penalty under section 271(1)(c) that the decision in Dilip N. Shroff's case (supra) was overruled.

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.

10. It was tried to be suggested that section 14A of the Act specifically excluded the deductions in respect of the expenditure incurred by the assessee in relation to income which does not form part of the total income under the Act. It was further pointed out that the dividends from the shares did not form the part of the total income. It was, therefore, reiterated before us that the Assessing Officer had correctly reached the conclusion that since the assessee had claimed excessive deductions knowing that they are incorrect; it amounted to concealment of income. It was tried to be argued that the falsehood in accounts can take either of the two forms; (i) an item of receipt may be suppressed fraudulently; (ii) an item of expenditure may be falsely (or in an exaggerated amount) claimed, and both types attempt to reduce the taxable income and, therefore, both types amount to concealment of particulars of one's income as well as furnishing of inaccurate particulars of income. We do not agree, as the assessee had furnished all the details of its expenditure as well as income in its Return, which details, in themselves, were not found to be inaccurate nor could be viewed as the concealment of income on its part. It was up to the authorities to accept its claim in the Return or not. Merely because the assessee had claimed the expenditure, which claim was not accepted or was

not acceptable to the revenue, that by itself would not, in our opinion, attract the penalty under section 271(1)(c). If we accept the contention of the revenue 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 intendment of the Legislature.

11. In this behalf the observations of this Court made in *Sree Krishna Electricals v. State of Tamil Nadu*[2009] 23 VST 249 as regards the penalty are apposite. In the aforementioned decision which pertained to the penalty proceedings in Tamil Nadu General Sales Tax Act, the Court had found that the authorities below had found that there were some incorrect statements made in the Return. However, the said transactions were reflected in the accounts of the assessee. This Court, therefore, observed :

"So far as the question of penalty is concerned the items which were not included in the turnover were found incorporated in the appellant's account books. Where certain items which are not included in the turnover are disclosed in the dealer's own account books and the assessing authorities include these items in the dealer's turnover disallowing the exemption, penalty cannot be imposed. The penalty levied stands set aside."

The situation in the present case is still better as no fault has been found with the particulars submitted by the assessee in its Return.

12. *The Tribunal, as well as, the Commissioner of Income-tax (Appeals) and the High Court have correctly reached this conclusion and, therefore, the appeal filed by the revenue has no merits and is dismissed."*

5.2. Consequently, we set aside the order of Id. CIT (A) and direct the Id. AO to delete the penalty.

A.Y. 2015-16

ITA No. 2586/KOL/2025

6. In this appeal, the assessee has raised additional ground which is extracted below:-

"Additional Ground 1:

"That, the Ld. A.O. erred in levying penalty was 271(1)(c) of the Act of Rs. 10,81,787/- consequent to disallowance of Rs. 33,33,704/- being PF and ESI contributions paid beyond the stipulated period when such a disallowance does not lead to any concealment of income or furnishing of inaccurate particulars of income to warrant any penalty."

6.1. After hearing the rival contentions and perusing the material on record, we find that the assessee has raised the above additional

ground of appeal challenging the jurisdiction of the AO to make addition. In our opinion the issued raised in the additional ground is a purely a legal issue qua which all the facts are available in the appeal folder and no further verification of facts are required from any quarter whatsoever. In our considered view the assessee is at liberty to raise any legal issue before any appellate authority for the first time even when the same has not been raised before the lower authorities. The case of the assessee is squarely covered by the decisions of the Apex court in the case of i) Jute Corporation of India Ltd. Vs CIT in 187 ITR 688 , ii) National Thermal Power Co. Ltd v. CIT [1998] 229 ITR 383 and also by the decision of Hon'ble Calcutta High Court in PCIT vs. Britannia Industries Ltd. [2017] 396 ITR 677 (Cal). Therefore, we are inclined to admit the same for adjudication.

7. The facts in brief are that during the year the assessee had made sales to M/s Jagmata Traders Pvt. Ltd. of ₹40,04,181/-, M/s Historic Dealtrade Pvt. Ltd. of ₹20,05,118 and M/s Sparkle Vincom Pvt. Ltd. of ₹3,62,51,955/-. The said sales were fully recorded in the books of account and shown in the profit and loss account as revenue from operation. Thus, fully offered to tax and the same is not in dispute. During the course of assessment proceedings, the Id. AO treated the sales as bogus and held the same as unexplained cash credit u/s 68 of the Act. A search action u/s 132(1) of the Act was conducted on 28.04.2022 on the group. The assessee filed the return of income u/s 148 of the Act declaring total income at ₹3,91,45,340/-. The assessment was completed at ₹4,24,79,134/- as under:-

Particulars	Amount (Rs.)
Income as per ITR dated 18.02.2023	3,91,45,430/-
Less: Bogus Sales	(4,22,61,254)
Add: Unexplained cash credit u/s 68 of the Act	4,22,61,254/-
Add: Addition on account of delayed payment of PF and ESI	33,33,704/-

Assessed Income	4,24,79,134/-
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7.1. Thus, the Id. AO made two additions (i) in respect of sales made to three parties treated as bogus amounting to ₹4,22,61,454/- by reducing the same from the head (income from business and profession) and adding the same under the head "income from other sources" u/s 68 of the Act and the penalty proceedings were initiated for inaccurate particulars of income. The second addition was made u/s 36(1)(va) of the Act of ₹33,33,704/- on account of delayed payment of PF and ESI and the penalty was initiated for concealment of income. The Id. AO accordingly imposed penalty of ₹1,47,93,284/- being 100% of the tax sought to be evaded.

8. The Id. CIT (A) in the appellate proceedings affirmed the order of the Id. AO.
9. After hearing the rival contentions and perusing the materials available on record, we find that the penalty was imposed on two additions; namely i) in respect of sales recorded by the assessee in the books of accounts and offered to tax which was treated by the Id. AO as bogus sales and added u/s 68 of the Act. The income from business or profession was reduced and addition was made under the head income from other sources. Thus, there was no change in the returned income and assessed income. Therefore, in our opinion, the penalty is not leviable on this amount which was treated as unexplained cash credit u/s 68 of the Act, for the reason that the explanation 4 to Section 271(1)(c) of the Act, there is no difference between the tax on total income assessed and tax that would have been chargeable if the total income reduced by the amount of income in respect of which inaccurate particulars have been filed. Moreover, we have decide the

similar issue in ITA No.2585/KOL/2025 (supra) which would, mutatis mutandis, apply to this part of the penalty.

9.1.1. So far as the penalty on the second addition is concerned, which is qua the delayed payment of PF and ESI of ₹33,33,704/- , we find that the assessee has fully disclosed the facts qua this item of expenses in the books of account. Therefore, we are of the view that the assessee has not concealed the income as has been decided in the case of CIT vs. Reliance Petroproducts (P.) Ltd. (*supra*).

9.1.2. Considering the facts in the light judicial pronouncements, we are inclined to set aside the order of Id. CIT (A) and direct the Id. AO to delete the addition.

A.Y. 2016-17

ITA No. 2587/KOL/2025

10. In this appeal, the assessee has raised additional ground which is extracted below:-

"That, the Ed. A.O. erred in levying penalty u/s 271(1)(c) of the Act consequent to disallowance of Rs.28,30,401/- being PF and ESI contributions paid beyond the stipulated period when such a disallowance does not lead to any concealment of income or furnishing of inaccurate particulars of income to warrant any penalty."

10.1. After hearing the rival contentions and perusing the material on record, we find that the assessee has raised the above additional ground of appeal challenging the jurisdiction of the AO to make addition. In our opinion the issued raised in the additional ground is a purely a legal issue qua which all the facts are available in the appeal folder and no further verification of facts are required from any quarter whatsoever. In our considered view the assessee is at liberty to raise any legal issue before any appellate authority for the first time even when the same has not been raised before the lower authorities. The

case of the assessee is squarely covered by the decisions of the Apex court in the case of i) Jute Corporation of India Ltd. Vs CIT in 187 ITR 688 , ii) National Thermal Power Co. Ltd v. CIT [1998] 229 ITR 383 and also by the decision of Hon'ble Calcutta High Court in PCIT vs. Britannia Industries Ltd. [2017] 396 ITR 677 (Cal). Therefore, we are inclined to admit the same for adjudication

11. The assessee filed the return of income u/s 139 of the Act, declaring total income at ₹8,66,68,360/-. After that a search u/s 132(1) of the Act was conducted on 24.08.2022. The assessment was completed u/s 147 of the Act by making three additions;
- i. Disallowance of ₹28,30,401/- u/s 36(1)(va) of the Act in respect of delayed payment of PF and ESI Fund.
 - ii. Disallowance u/s 40A(7) of the Act, being provision for payment of gratuity.
 - iii. Addition u/s 68 of the Act in respect of loan of ₹30,00,000/- treated as unexplained cash credit and interest thereon of ₹71,013/-.

11.1. So far as the first two additions are concerned the assessee has fully disclosed all the particulars in the books of accounts. So far as the third addition in respect of unsecured loan is concerned of ₹30,00,000/-, the assessee furnished before the Id. AO all the particulars explaining three limbs of Section 68 of the Act. We note that the Id. AO issued notice u/s 133(6) of the Act to the lenders, however, same was not responded. In our opinion, the same cannot be a valid ground for addition as has been held in the case of CIT vs. Orissa Corpn, (P.) Ltd. [1986] 25 Taxman 80F (SC)/[1986] 159 ITR 78 (SC)/[1986] 52 CTR 138 (SC)[19-03-1986].

12. Since, we have already decided the issue above in ITA No.2586/KOL/2025 (*supra*), wherein it has been held that since the assessee has fully disclosed all the facts qua these additions in the books of account and audited financial statements, therefore, there is no furnishing of inaccurate particulars of income on the part of the assessee and hence, the case is squarely covered by the decision in ITA No. 2586/KOL/2025 (*supra*).
13. In the result, all the three appeals of the assessee are allowed.

Order pronounced in the open court on 20.01.2026.

Sd/-
(PRADIP KUMAR CHOUBEY)
(JUDICIAL MEMBER)

Sd/-
(RAJESH KUMAR)
(ACCOUNTANT MEMBER)

Kolkata, Dated: 20.01.2026

Sudip Sarkar, Sr.PS

Copy of the Order forwarded to:

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

BY ORDER,

True Copy//

Sr. Private Secretary/ Asst. Registrar
Income Tax Appellate Tribunal, Kolkata