

IN THE INCOME TAX APPELLATE TRIBUNAL

"I" BENCH, MUMBAI

BEFORE SHRI OM PRAKASH KANT, ACCOUNTANT MEMBER

SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER

ITA No.7519/MUM/2025
Assessment Year : 2006-07

**Deputy Commissioner of Income Tax
(International Taxation) – 3(2)(1),**

Room No.614,
Kautilya Bhavan, BKC,
Mumbai – 400051

..... Appellant

v/s

Marriott International Inc.

303A, 304, Fulcrum, B Wing,
Sahar P & T Colony SO,
Mumbai – 400099
PAN: AAECM8040K

..... Respondent

CO No.393/MUM/2025
(Arising out of ITA No.7519/Mum/2025)
Assessment Year : 2006-07

Marriott International Inc.

303A, 304, Fulcrum, B Wing,
Sahar P & T Colony SO,
Mumbai – 400099
PAN: AAECM8040K

..... Cross Objector
(Original Respondent)

v/s

**Deputy Commissioner of Income Tax
(International Taxation) – 3(2)(1),**

Room No.614,
Kautilya Bhavan, BKC,
Mumbai – 400051

..... Respondent
(Original Appellant)

Assessee by : Shri Paras Savla
Shri Pratik Poddar
Shri Karan Jain

Revenue by : Shri Krishna Kumar, Sr.DR

Date of Hearing – 20/01/2026

Date of Order – 30/01/2026

ORDER

PER BENCH :

The present appeal by the Revenue and cross-objection by the assessee have been filed against the impugned order dated 15.09.2025, passed under section 250 of the Income Tax Act, 1961 ("*the Act*") by the learned Commissioner of Income Tax (Appeals)-57, Mumbai, [*learned CIT(A)*], which in turn arose from the penalty order passed under section 271(1)(c) of the Act for the assessment year 2006-07.

2. In its appeal, the Revenue has raised the following grounds: -

"1. " Whether on the fact and in the circumstances of the case and in law, the Ld. CIT(A) is justified in deleting the penalty without discussing the merits of the issue merely on the basis of deletion of quantum addition by the ITAT?

2. Whether on the fact and in the circumstances of the case and in law, the Ld. CIT(A) is justified in deleting the penalty imposed by the Assessing Officer without appreciating the facts highlighted by the AO in the penalty order?."

3. The only dispute raised by the Revenue is against the deletion of the penalty levied under section 271(1)(c) of the Act.

4. We have considered the submissions of both sides and perused the material available on record. The brief facts of the case are that the assessee is a company incorporated under the laws and a tax resident of the United States of America. The assessee maintains and administers a centralised marketing fund for the purpose of undertaking global and continental advertising, marketing, promotion and sales activities on behalf of hotel owners who have been licensed various "*Marriott*" brands. For the year under consideration, the original return filed by the assessee was selected for

scrutiny and assessment was completed under section 143(3) of the Act. In appellate proceedings before the Tribunal, the Coordinate Bench, vide order dated 14.01.2015, *inter alia*, restored the matter to the file of the Assessing Officer ("AO") to determine the taxability of receipts in the hands of the assessee as a "*representative assessee*". In the remand proceedings pursuant to the directions of the Tribunal, the AO passed the draft assessment order under section 143(3) read with section 254 read with section 144C(1) of the Act assessing the total income of the assessee. Along with the draft assessment order, the AO also issued notice of demand under section 156 of the Act. Further, the AO also directed the initiation of penalty proceedings under section 271(1)(c) of the Act for concealment of income.

5. In the appeal before the Tribunal in quantum proceedings, the assessee raised the additional ground challenging the validity of the draft assessment order passed by the AO along with notice of demand under section 156 of the Act.

6. The Coordinate Bench of the Tribunal vide common order dated 29.01.2024, passed in ITAs No.3232 to 3235/Mum/2018, for the assessment years 2006-07 to 2009-10, allowed the additional grounds of appeal filed by the assessee following the decision of the Hon'ble Karnataka High Court in CIT vs. Cisco Systems Services BV, reported in (2023) 456 ITR 50 (Karn), observing as follows: -

"010. We have carefully considered the rival contention and perused the orders of the lower authorities. Admittedly, in this case the draft assessment order is passed which is also accompanied by the notice of demand issued under section 156 of the income tax act on the same date along with the computation of tax payable by the assessee. We find that the issue is identical to the facts of the case of the Cisco Systems services BV decided by the honourable Karnataka High Court in 456 ITR 50 on 24/2/2023

wherein the facts were that the assessee received the notice of demand under section 156 of the income tax act 1961 along with the draft assessment order under section 143(3) of the act passed by the learned AO. The honourable High Court held that provisions of section 144C lays down a detailed procedure wherein the assessing officer is required to forward a draft of the proposed order of assessment to the assessee. The assessee may file its acceptance/ objections before the dispute resolution panel and the AO. If the assessee intimates acceptance of no objections or are not received within 30 days, the AO shall complete the assessment. Where the DRP receives any objections from the assessee, it shall issue necessary directions to the assessing officer to enable him to complete the assessment after considering the documents/material mentioned in section 144C 6) which includes the draft order. Before issuing the directions, the DRP may also make such further enquiry by any income tax authority. Upon receipt of the direction from dispute resolution panel the AO shall in conformity with a direction complete the assessment within one month from the end of the month in which the direction is received. Notice of demand under section 156 may be issued after computation of the assessment under section 144C (13) of the act. In that case, it was also claimed by the revenue that the order dated December 28, 2018 was a draft assessment order but the honourable High Court held that the assessing Officer has directed the issuance of demand notice and also initiated penalty proceedings. The honourable High Court also held that a provision of section 292B of the act does not come to the rescue of the revenue.

011. In the present case before us in the draft, assessment order dated 22/3/2016 the assessing officer in the last paragraph has directed computation of total tax payable as per ITS 150, which was part of the order. The penalty under section 271(1)(c) is also initiated for the concealment of income in not reporting the receipts. In view of this we do not find any reason to not to follow the decision of the honourable Karnataka High Court wherein the draft assessment order so passed is quashed. Therefore, the additional ground filed by the assessee for assessment year 2006 - 07 in ITA number 3232/M/2018 is allowed and draft assessment order is quashed."

7. Accordingly, the Coordinate Bench of the Tribunal in quantum proceedings quashed the draft assessment order passed by the AO for the year under consideration.

8. In the meanwhile, vide penalty order passed under section 271(1)(c) read with section 274 of the Act, the AO levied a penalty at 100% of the tax assessed in the hands of the assessee. The learned CIT(A), vide impugned order, deleted the penalty levied by the AO under 271(1)(c) of the Act since the Tribunal had already quashed the draft assessment order. Being aggrieved, the Revenue is in appeal before us.

9. Having considered the submissions of both sides and perused the material available on record, as in the present case, the Coordinate Bench of the Tribunal vide order dated 29.01.2024 for the assessment years 2006-07 to 2009-10 has already quashed the draft assessment order following the decision of the Hon'ble Karnataka High Court in Cisco Systems Services BV (*supra*) and resultantly the quantum addition has also been deleted, we do not find any basis in the penalty levied under section 271(1)(c) of the Act based on the very same quantum addition. It is well settled that once the foundation, i.e., the additions made, has been removed, the superstructure, i.e., the penalty, also falls. Therefore, as the very basis of levying the penalty has been quashed by the Coordinate Bench of the Tribunal in quantum proceedings, the penalty levied in the present case under section 271(1)(c) of the Act is not sustainable. Accordingly, we do not find any infirmity in the impugned order passed by the learned CIT(A) in deleting the penalty, and the same is upheld. As a result, the grounds raised by the Revenue are dismissed. As we have dismissed the appeal filed by the Revenue, the cross-objection filed by the assessee becomes infructuous and is accordingly dismissed.

10. In the result, the appeal by the Revenue and the cross-objection by the assessee are dismissed.

Order pronounced in the open Court on 30/01/2026

Sd/-

**OM PRAKASH KANT
ACCOUNTANT MEMBER**

Sd/-

**SANDEEP SINGH KARHAIL
JUDICIAL MEMBER**

MUMBAI, DATED: 30/01/2026

Prabhat

Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The PCIT / CIT (Judicial);*
- (4) *The DR, ITAT, Mumbai; and*
- (5) *Guard file.*

By Order

Assistant Registrar
ITAT, Mumbai