

IN THE INCOME TAX APPELLATE TRIBUNAL

"I" BENCH, MUMBAI

BEFORE SHRI OM PRAKASH KANT, ACCOUNTANT MEMBER

SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER

ITA No. 1158/MUM/2025
Assessment Year :2008-09

ITA No. 1159/MUM/2025
Assessment Year :2009-10

ITA No. 1160/MUM/2025
Assessment Year :2010-11

ITA No. 1161/MUM/2025
Assessment Year :2014-15

**Deputy Commissioner of
Income Tax (IT)-2(1)(2),**
Room 604, Kautilya Bhavan,
Mumbai- 400051

..... Appellant

v/s

DZ Bank India Representative Office
124, Maker Chambers VI, Nariman Point,
Mumbai- 400021
PAN: AABCD6455E

..... Respondent

CO No. 206/MUM/2025
Assessment Year :2008-09

CO No. 208/MUM/2025
Assessment Year :2009-10

CO No. 209/MUM/2025
Assessment Year :2010-11

CO No. 207/MUM/2025
Assessment Year :2014-15

**DZ Bank AG Deutsche Zentral-
Genossenschaftsbank**
**(formerly 'DZ Bank India Representative
Office')**

1604, One Lodha Place, Senapati Bapat Marg,
Lower Parel, Mumbai- 400013
PAN: AABCD6455E

..... Cross Objector
(Original Respondent)

v/s

**Deputy Commissioner of
Income Tax (IT)-2(1)(2),**
Room 604, Kautilya Bhavan, BKC,
Mumbai- 400051

..... Respondent
(Original Appellant)

Assessee by : Shri Nitesh Joshi

Revenue by : Shri Krishna Kumar, Sr. DR

Date of Hearing – 22/01/2026

Date of Order - 04/02/2026

ORDER

PER BENCH

The present appeals by the Revenue and cross-objections by the assessee have been filed against the separate impugned orders of even date 28/11/2024, passed under section 250 of the Income Tax Act, 1961 ("the Act"), by the learned Commissioner of Income Tax (Appeals)-56, Mumbai, ["learned CIT(A)"], which in turn arose from the separate penalty orders passed under section 271(1)(c) of the Act, for the assessment years 2008-09 to 2010-11 and 2014-15.

2. Since all these matters pertain to the same assessee arising from the same factual matrix, these matters were heard together as a matter of convenience and are being disposed of by way of this consolidated order. With the consent of the parties, the Revenue's appeal for the assessment year 2008-09 is considered as a lead case, and the decision rendered therein shall apply *mutatis mutandis* to the other appeals. As the Revenue, in all the appeals before us, has raised identical grounds, the grounds raised by the Revenue in its appeal for the assessment year 2008-09 are reproduced as follows, for ready reference: -

"1. Whether on the facts of the case and in law, the Id. CIT(A) has erred in deleting the penalty levied by the AO for concealment of income, when the penal proceedings were initiated consequent to reassessment proceedings u/s 147 of the Act.

2. Whether on the facts of the case and in law the Id. CIT(A) has erred in basing his decision to delete the penalty u/s 271(1)(c) by determining whether 'malafide' was involved or not, when the provision does not give any leverage for determining the intent of the assessee.

3. Whether on the facts of the case and in law the Id. CIT(A) has erred in holding that there was no concealment, when the assessee despite its obligation u/s 139 of the Act to file a return of income failed to do so and reported the said income only after notice of reassessment was issued u/s 148 rws 147 of the Act.

4. Whether on the facts of the case and in law the Id. CIT(A) has erred in deleting the penalty by holding that the income determined after reassessment was subjective and open to interpretation, whereas the facts are different and heads of income have been confirmed by the ITAT and only the rate of taxability has been altered based on beneficial provisions of India-Germany DTAA.”

3. The only dispute raised by the Revenue, in its appeals, 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, DZ Bank Deutsche Zentral Genossenschaftsbank AG (“DZ Bank AG”), is incorporated and is a tax resident of Germany. Pursuant to the permission obtained from the Reserve Bank of India on 20/02/1996 to establish a representative office in India, DZ Bank-India Representative Office, was established. The assessee is engaged, inter alia, in providing foreign currency loans to Indian companies/borrowers through the Head Office/Overseas Branches. The assessee has opened a liaison office, “DZ Bank-India Representative Office”, which is based in Mumbai. The loans granted by the assessee’s Head Office/Overseas Branches are in the nature of External Commercial Borrowings as permitted under the Indian exchange control regulations. These borrowings were made under the agreement entered into between the parties, where under the interest payment by the Indian companies/borrowers to the assessee’s Head Office/Overseas Branches would be made on a gross basis without any deduction of taxes,

and if any deduction is required to be made under the Act, then it will be the responsibility of the Indian companies/borrowers to pay such deduction separately as provided under the Act.

5. For the assessment year 2008-09, the assessee filed its return of income on 29/09/2008, declaring a total income of Rs.NIL on the basis that in view of the provisions of section 115A(5), as it stood at the relevant point of time, DZ Bank AG was not required to file the income tax return under section 139(1) of the Act, as the tax deductible under Chapter XVIIB was duly deducted from such income. The return of income was filed in the name of "*DZ Bank-India Representative Office*". Subsequently, vide notice dated 30/03/2015 issued under section 148 of the Act, proceedings under section 147 of the Act were initiated. In response to the notice issued under section 148 of the Act, the assessee filed its return of income on 29/04/2015, declaring interest income amounting to Rs.72,28,20,467 taxable at 10% under Article 11 of the India-Germany Double Taxation Avoidance Agreement ("*DTAA*") and claimed the exemption of commitment fees amounting to Rs.7,63,758 under Article 5 read with Article 7 of the India-Germany DTAA. Accordingly, the assessee declared a total income of Rs.7,22,83,047 vide its return of income filed on 29/04/2015. Subsequently, the assessee filed its revised return of income on 12/08/2016, whereby the interest income declared earlier was reduced to Rs.38,52,04,210. Vide order dated 24/02/2017, passed under section 143(3) read with section 147 of the Act, DZ Bank-India Representative Office was held to be a Permanent Establishment of DZ Bank AG in India and the interest income, as well as

commitment fees earned by DZ Bank AG from the operations in India was held to be taxable at the rate of 40% as per the Act. Accordingly, after allowing the deduction of expenses incurred for carrying out its business activities in India, the Assessing Officer ("AO") assessed the net total income of Rs.36,11,10,526.

6. During the pendency of its appeal before the learned CIT(A), the assessee vide its letter dated 15/11/2017, offered certain additional income to tax, in the nature of fees for technical services amounting to Rs.5,81,09,693, and additional commitment fees amounting to Rs.13,97,207. The said additional income was offered by the assessee before the learned CIT(A) on the basis that in the majority of the cases, the payers of the income have not reported the interest payments appropriately to the income tax authorities, thereby making the assessee's exercise of the India-sourced income extraordinarily complicated. Thus, as per the assessee, despite the aforementioned difficulty, it has, by using its best efforts, reported its India-sourced income based on enquiries undertaken across its multiple branches engaged in such activities. Accordingly, after issuing the necessary notice, the learned CIT(A) in quantum proceedings, vide its order dated 20/12/2017, enhanced the total assessable income of the assessee by Rs.5,95,06,901. In conformity with the order passed by the learned CIT(A), an order giving effect dated 27/02/2018 was passed by the AO, whereby interest income and commitment fees were taxed at the rate of 40%, while the fees for technical services declared by the assessee before the learned CIT(A) was taxed at the rate of 10%.

7. It is pertinent to note that since the assessee disclosed additional income of Rs.5,95,06,901 before the learned CIT(A), notice under section 274 read with section 271(1)(c) of the Act was issued by the learned CIT(A). After considering the submissions of the assessee, the learned CIT(A) vide its order dated 14/03/2019, held that the additional income disclosed was not as a result of any enquiry, directly or indirectly, and there is no material to draw satisfaction that the assessee has concealed the particulars of income or furnished inaccurate particulars of income. The learned CIT(A) further held that there is no *mala fide* or any attempt to take any undue benefit of the law when the additional income was disclosed by the assessee. Accordingly, the learned CIT(A) held that without prejudice to the right of the AO to initiate penalty under section 271(1)(c) of the Act depending on his independent satisfaction on the basis of facts and circumstances, it is decided not to impose the penalty under section 271(1)(c) of the Act on the incremental figure of income declared by the assessee.

8. In the meanwhile, pursuant to the notice issued under section 274 read with section 271(1)(c) of the Act, the AO vide order dated 21/03/2019 passed under section 271(1)(c) of the Act, disagreed with the submissions of the assessee that it was not required to file the return of income as mandated by section 115A of the Act and held that in the return of income filed by the assessee in response to notice under section 148 of the Act, the assessee declared interest income and commitment fees. The AO further

held that by not including the various income, namely, interest income, the assessee had filed inaccurate particulars of income. Accordingly, finding the case to be fit for the levy of a penalty under section 271(1)(c) of the Act, the AO levied a penalty of Rs. 20 crore at the rate of 124% of the tax sought to be evaded.

9. In further appellate proceedings against the order passed by the learned CIT(A) in quantum proceedings, the Tribunal, vide order dated 07/04/2021 passed in DZ Bank-India Representative Office v/s DCIT, in ITA No. 1812/Mum/2018, held that the interest income is required to be taxed under Article 11 of the India-Germany DTAA. It was further held that the commitment fees and agency fees also fall within the ambit of the term "*interest*" as defined in Article 11(4) of the India-Germany DTAA, and therefore, are taxable at the rate of 10% as against 40% taxed by the AO under the Act. The Tribunal also agreed with the submissions of the assessee that it did not have any obligation to file the income tax return under section 115A(5) of the Act. During the hearing before us, reference was also made to the order dated 21/04/2023 passed by the AO giving effect to the Tribunal's directions, taxing the income declared by the assessee at the rate of 10%.

10. The learned CIT(A), vide impugned order, after taking into consideration the decision of the Coordinate Bench of the Tribunal in quantum proceedings, held that the entire addition is on account of a difference of opinion on the manner of taxation of the interest income and

commitment fees. The learned CIT(A) also agreed with the findings of its predecessor that there was no *mala fide* intention to take undue benefit of the law or to twist the law for the escapement of income by not disclosing the additional income in the return filed. Accordingly, the learned CIT(A) directed the AO to delete the penalty levied under section 271(1)(c) of the Act. Being aggrieved, the Revenue is in appeal before us.

11. Having considered the submissions of both sides and perused the material available on record, it is evident that the assessee filed its original return of income on 29/09/2008, declaring the total income at Rs.NIL and the said return of income was filed in the name of DZ Bank-India Representative Office. As per the assessee, in view of the provisions of section 115A(5), as it stood at the relevant point of time, DZ Bank AG was not required to file the income tax return under section 139(1) of the Act, as the tax deductible under Chapter XVIIB was duly deducted from such income. As noted above, the Coordinate Bench of the Tribunal, vide order passed in quantum proceedings, found no fault in the aforesaid submission of the assessee in terms of the provisions of section 115A(5) of the Act. Therefore, in view of the aforesaid facts, we do not find any merit in the submissions of the learned Departmental Representative ("*learned DR*"), that since the assessee filed the return of income only after the notice issued under section 148 of the Act, the penalty is impossible, in terms of the provisions of Explanation-3 to section 271(1)(c) of the Act.

12. It is further pertinent to note that in its return of income filed by the assessee pursuant to the notice issued under section 148 of the Act, the assessee declared the interest income and offered the same to tax at the rate of 10% under Article 11 of the India-Germany DTAA. Further, the commitment fees earned by DZ Bank AG were claimed as exempt under Article 5 read with Article 7 of the India-Germany DTAA. However, the AO vide order passed under section 143(3) read with section 147 of the Act disagreed with the submissions of the assessee and taxed the entire income at the rate of 40% by treating DZ Bank-India Representative Office as the Permanent Establishment of DZ Bank AG in India. In further appellate proceedings, the Coordinate Bench of the Tribunal held the aforesaid two receipts to be taxable under Article 11 of the India-Germany DTAA at the rate of 10%. Therefore, we agree with the findings of the learned CIT(A), vide impugned order, that the penalty levied is entirely on account of a difference of opinion on the manner of taxation of the interest income and commitment fees.

13. We find that while examining the meaning of the term "*particulars*" in section 271(1)(c) of the Act, the Hon'ble Supreme Court in CIT v/s Reliance Petroproducts (P) Ltd., reported in [2010] 322 ITR 158 (SC), held that 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. The relevant findings of the Hon'ble Supreme Court, in the case cited supra, are as follows: –

"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."

10. 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."

14. As regards the income from fees for technical services, it is also evident that the same was voluntarily disclosed by the assessee before the learned CIT(A), and the assessee duly explained the circumstances for the delay in reporting the said income. As noted in the foregoing paragraphs, accepting the submissions of the assessee, the learned CIT(A), vide order dated 14/03/2019, held that the said additional disclosure of income by the assessee was not pursuant to any query or enquiry made during the appellate proceedings, directly or indirectly and there was no *mala vide* or any attempt to take any undue benefit of law by the assessee. It is pertinent to note that the entire addition made by the AO, on the basis of which the impugned penalty was levied under section 271(1)(c) of the Act, was only pursuant to the assessee's own disclosure. Further, the basis of not declaring the income in the original return filed on 29/09/2008 has already been accepted by the Coordinate Bench of the Tribunal, and no fault was found in the claim of the assessee.

15. Therefore, we do not find any infirmity in the findings of the learned CIT(A) that no penalty under section 271(1)(c) of the Act is warranted in the

present case on the income voluntarily disclosed by the assessee during the reassessment proceedings as well as the appellate proceedings. Accordingly, the impugned order is upheld, and the grounds raised by the Revenue for the assessment year 2008-09 are dismissed.

16. Since in the other assessment years before us the penalty levied under section 271(1)(c) of the Act arises out of the similar factual matrix, which were quashed by the learned CIT(A) vide similar findings as rendered in the assessment year 2008-09, our findings/conclusions as rendered in Revenue's appeal for the assessment year 2008-09 shall apply *mutatis mutandis* to the other appeals filed by the Revenue before us. Accordingly, the impugned orders for the assessment years 2009-10, 2010-11 and 2014-15 are upheld, and the grounds raised by the Revenue in these years are dismissed.

17. As we have dismissed the appeals filed by the Revenue, cross-objections filed by the assessee become infructuous and are accordingly dismissed.

18. In the result, the appeals by the Revenue and the cross-objections by the assessee are dismissed.

Order pronounced in the open Court on 04/02/2026

Sd/-
OM PRAKASH KANT
ACCOUNTANT MEMBER

Sd/-
SANDEEP SINGH KARHAIL
JUDICIAL MEMBER

MUMBAI, DATED: 04/02/2026

Disha Raut
Stenographer

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.