

**IN THE INCOME TAX APPELLATE TRIBUNAL
DEHRADUN “DB” BENCH: DEHRADUN**

**BEFORE SHRI YOGESH KUMAR U.S, JUDICIAL MEMBER &
SHRI MANISH AGARWAL, ACCOUNTANT MEMBER**

[THROUGH VIRTUAL MODE]

**ITA No.134/DDN/2024
[Assessment Year : 2012-13]**

ACIT International Taxation, Aayakar Bhawan, 13, Subhash Road, Dehradun, Uttarakhand	vs	Seabird Exploration FZ- LLC , J-271, Saket, New Delhi-110017. PAN-AALCS3026L
APPELLANT		RESPONDENT
Revenue by		Shri Vijyanand Bhartiya, Sr. DR
Assessee by		None
Date of Hearing		09.12.2025
Date of Pronouncement		18.02.2026

ORDER

PER MANISH AGARWAL, AM :

The captioned appeal is filed by the Revenue against the order dated 22.05.2024 by Ld. Commissioner of Income Tax (A), Noida [“Ld. CIT(A)”] in Appeal No. CIT(A) Noida-2/10052/2019-20 passed u/s 250 of the Income Tax Act, 1961 [“the Act”] arising from the assessment order dated 14.05.2019 passed u/s 143(3) r.w.s. 144C(13) of the Act pertaining to Assessment Year 2012-13.

2. Brief facts of the case are that assessee is a company registered under the laws of United Arab Emirates (UAE) and a tax resident of UAE, engaged in rendering seismic data acquisition and processing

services to international offshore oil and gas industry. The assessee has received income in pursuance to the contract No.9010014830 dated 15.09.2011 with ONGC for acquiring 4C-3D seismic data using ocean bottom nodes technology. The return of income of the year under appeal was filed on 23.11.2012, declaring NIL income as assessee was not having PE under Article 5(2)(i) of India-United Arab Emirates Double Taxation Avoidance Agreement (“DTAA”). The assessee applied before Authority for Advance Rulings (“AAR”) for obtaining adjudication on taxability of revenues received from the above-mentioned contract with ONGC. The AAR vide its order dated 28.03.2018 held that income derived by the assessee with respect to the contract awarded by ONGC is taxable in India and is to be computed in accordance with the provisions of section 44BB of the Act against which an appeal is filed by the assessee before the Hon’ble High Court of Uttarakhand which is pending as on date.

3. In the meantime, the assessment for the year under appeal was taken up for scrutiny and draft assessment order was passed wherein AO has proposed the addition of INR 16,87,46,765/- being 10% of the gross revenue and further proposed addition of INR 11,95,89,412/- on account of TP adjustments as per TPO’s order and the total income was proposed at INR 28,83,36,180/-. Thereafter the assessee filed objections before the ld. Dispute Resolution Panel (“DRP”) who vide order dated 03.04.2019 has confirmed the addition on account of income @ 10 % computed u/s 44BB of the Act and delete the adjustment proposed by TPO. Accordingly, total income

was assessed at INR 16,87,46,765/- in terms of order passed u/s 143(3)/144C(13) of the Act. AO further initiated penalty proceedings u/s 271(1)(c) of the Act for concealment of income. Thereafter, the AO proceeded to conclude the pending penalty proceedings and in terms of order passed u/s 271(1)(c) of the Act dated 31.10.2019 imposed a penalty of INR 7,09,14,142/- being 100% of the tax to be evaded.

4. Against the said order, assessee filed an appeal before Ld. CIT(A) who vide order dated 22.05.2024, has deleted the penalty and allowed the appeal of the assessee.

5. Aggrieved by the order of Ld. CIT(A), Revenue is in appeal before the Tribunal by taking following grounds of appeal:-

1. *“On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in deleting penalty u/s 271(1)(c) of the IT Act ignoring that the Hon'ble AAR held that there existed a PE in India and the assessee was liable to pay taxes in India, whereas in the return of income filed, the assessee had claimed its income as non-taxable stating that the period of stay in India did not constitute PE as per Article 5(2) (i) of DTAA with UAE. The concealment of income resulted in imposition of penalty u/s 271(1)(c). The Ld. CIT (A) has erred in law by deleting the penalty u/s 271(1)(c) by treating it as change of opinion.*
2. *On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in deleting penalty u/s 271(1)(c) of the IT Act ignoring that the assessee has put up incorrect facts and made incorrect claim in the ITR and before Authority for Advance Ruling to the extent that there does not exist a PE in India.*
3. *The appellant prays for leave to add.”*

6. Before us, no one appeared on behalf of the assessee however, Ld. DR appeared and supports the order of AO in levying penalty u/s 271(1)(c) and submits that assessee has concealed the income and furnished he inaccurate particulars of its income by declaring the income at NIL in the return of income filed though its income is taxable in India and to be computed as per section 44BB of the Act according to which the income was assessed at INR 16,87,46,765/-. He therefore, requested for the restoration of the penalty levied by AO U/S 271(1)(c) of the Act.

7. Heard the contention of ld. Sr. DR and perused the material available on record. As observed above in the instant case, assessee had filed its return of income, declaring income at NIL since it has no PE in India which facts has not been doubted. The assessee approached AAR for obtaining adjudication of taxability of its revenue from contract with ONGC and on such application of the assessee, the AAR has held that income received by the assessee from the contract with ONGC is liable to tax as per Indian Taxation laws and further directed to computed the same in accordance with the provisions of section 44BB of the Act. In terms of this order of AAR, ld. DRP has directed to compute the income of the assessee company @ 10% of the gross revenue as per section 44BB of the Act.

8. It is not the case where the receipts by the assessee was otherwise taxable in India since it has no PE in India income and the AAR has held the same as taxable in India since it is derived in India.

Assessee has acted in bonafide and had approached the AAR for clarification. Ld. CIT(A) appreciated these facts and observed that the income assessed in terms of the directions of AAR cannot be held as concealment of income. Further, no particulars of income were concealed by the assessee and all the facts are emanated from the return of income filed. Since the assessee is a foreign company and has no PE in India therefore, was under bonafide belief that the entire receipts from contract with ONGC are not taxable in India. The Ld. CIT(A) followed the judgement of Hon'ble Supreme Court in the case of ***CIT vs Reliance Petro Products Pvt. Ltd.*** reported in **[2010] 322 ITR 158 (SC)** and deleted the penalty levied by the AO u/s 271(1)(c) of the Act.

9. Explanation 1 to section 271(1)(c) of the Act provides that the penalty would be deemed to attract where in respect of a fact material to the computation of income either no explanation is offered, or explanation offered is found to be false. Assessee has offered explanation which was not found to be false and accordingly its case is not covered by Clauses (A) of Explanation 1. Clause (B) of Explanation 1 provides that where the assessee is not able to substantiate its explanation and fails to prove that such explanation is bonafide and all the facts relating to the same have been disclosed, penalty is leviable. As observed above, assessee had made disclosure of all the facts in the return of income field. We further observe that at best it is only a difference of opinion as to whether there exists PE in India for Assessee or not. The income of the assessee is taxable in

India as per the order of AAR. In the penalty proceedings the AO simply relied on the income computed in the assessment orders as per the directions of DRP who has followed the orders of AAR.

10. The Hon'ble Supreme Court in the case of CIT vs Reliance Petro Products (P) Ltd. (supra) has held that Section 271(1)(c) applies where the assessee "has concealed the particulars of his income or furnished inaccurate particulars of such income". As regards the furnishing of inaccurate particulars, it was found by the Hon'ble Supreme Court that no information given in the Return was found to be incorrect or inaccurate. It was held that the words "inaccurate particulars" mean that the details supplied in the Return are not accurate, not exact or correct, not according to truth or erroneous and in the absence of a finding by the AO that any details supplied by the assessee in its Return were found to be incorrect or erroneous or false, there would be no question of inviting penalty u/s 271(1)(c). The argument of the revenue raised in this regard that "submitting an incorrect claim for expenditure would amount to giving inaccurate particulars of such income" was not found to be acceptable by the Hon'ble Apex Court observing that by no stretch of imagination can the making of an incorrect claim in law tantamount to furnishing inaccurate particulars. It was held that 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 and if the contention of the Revenue to this effect is accepted then in case of every Return where the claim made is not accepted by

the AO for any reason, the assessee will invite penalty u/s 271(1)(c) which is clearly not the intendment of the Legislature. Respectfully following the said judicial pronouncement of hon'ble Supreme court, we uphold the impugned order of the learned CIT(A) cancelling the penalty imposed by the AO u/s 271(1)(c) of the Act and dismiss all the grounds of appeal raised by the Revenue.

11. In the result, appeal of the Revenue is dismissed.

Order pronounced in the open Court on 18.02.2026.

Sd/-

(YOGESH KUMAR U.S)
JUDICIAL MEMBER

Date:-18.02.2026

Amit Kumar, Sr.P.S

Sd/-

(MANISH AGARWAL)
ACCOUNTANT MEMBER

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