

IN THE INCOME TAX APPELLATE TRIBUNAL

"F" BENCH, MUMBAI

BEFORE SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER

SHRI BIJAYANANDA PRUETH, ACCOUNTANT MEMBER

ITA Nos.526 & 527/Mum./2026

(Assessment Years : 2014-15 & 2015-16)

**M/s. Small Industries Development Bank of
India,**

Swavalamban Bhawan,
C-11 G-Block,
Bandra Kurla Complex,
Bandra East,
Mumbai – 400051
PAN : AABCS3480N

..... Appellant

v/s

**Deputy Commissioner of Income Tax,
Circle 3(3)(1),**

Aayakar Bhawan,
M.K. Marg,
New Marine Lines,
Mumbai – 400020

..... Respondent

Assessee by : Ms. Vinita Shah, AR

Revenue by : Shri Anurag Tripathi, SR. AR

Date of Hearing – 09/04/2026

Date of Order – 15/04/2026

ORDER

PER SANDEEP SINGH KARHAIL, J.M.

1. The assessee has filed the present appeals against the separate impugned orders of even date 28/11/2025, passed under section 250 of the Income Tax Act, 1961 ("*the Act*") by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi, [*learned CIT(A)*], which

in turn arose from the penalty order passed under section 271(1)(c) of the Act, for the assessment years 2014-15 and 2015-16.

2. Since both the appeals pertain to the same assessee involving a similar issue arising out of a similar factual matrix, these appeals were heard together as a matter of convenience. With the consent of the parties, the assessee's appeal for the assessment year 2014-15 is considered as a lead case, and the decision rendered therein shall apply *mutatis mutandis* to the other appeal.

3. The solitary grievance of the assessee in both appeals pertains to the levy of penalty under section 271(1)(c) of the Act.

4. As the assessee has raised similar grounds in both appeals, the grounds raised in the appeal for the assessment year 2014-15 are reproduced as follows for ready reference: –

"1. On the facts and circumstances of the case as well as in law, the Learned CIT(A) has erred in not appreciating the fact that Learned Assessing Officer has passed the penalty order u/s.271(1)(c) of the Income Tax Act, without specifying the charge OR limb under which penalty is to be levied and without recording the satisfaction for imposing penalty.

2. On the facts and circumstances of the case as well as in law, the Learned CIT(A) as well as Learned Assessing Officer has erred in levying penalty of Rs.20,66,516/- u/s.271(1)(c) of the Income Tax Act, 1961, without considering the facts and circumstances of the case.

3. On the facts and circumstances of the case as well as in law, the Learned CIT(A) has erred in confirming the action of the Learned Assessing Officer in levying the penalty on the issue of disallowance of the claim of 60,79,783/-, being proportionate amortized amount of lease premium paid to Mumbai Metropolitan Regional Development Authority in respect of leasehold land, without considering the facts and circumstances of the case.

4. On the facts and circumstances of the case as well as in law, the Learned CIT(A) as well as the Learned Assessing Officer has erred in not appreciating the fact that the issue is already admitted before the

Honourable Bombay High Court as a question of law for AY 2004-05, without considering the facts and circumstances of the case.

5. The appellant craves leave to add, amend, alter OR DLEETE the said ground of appeal."

5. 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 the principal financial institution for promotion, financing and development of the MSME, and to coordinate the functions of the institution, it is engaged in similar activities. For the assessment year 2014-15, the assessee filed its return of income on 29/11/2014, declaring a total income of INR 1,769,73,82,910 under the normal provisions of the Act and book profit at INR 2,147,27,32,852 under section 115-JB of the Act. The return filed by the assessee was selected for scrutiny and vide order dated 30/12/2016 passed under section 143(3) of the Act, inter-alia, the deduction on account of rent amortisation was disallowed by treating the expenditure as capital in nature. The learned CIT(A) confirmed the disallowance. The Coordinate Bench of the Tribunal, in the quantum appellate proceedings, in light of application filed by the assessee in Form No. 8 in terms of section 158A of the Act, as identical issue was admitted by the Hon'ble Bombay High Court, directed the AO to apply the decision of the Hon'ble High Court contested by the assessee in the earlier years on this issue.

6. In the meanwhile, the AO initiated penalty proceedings and vide order dated 30/09/2024, passed under section 271(1)(c) of the Act, levied a penalty of INR 20,56,516 on this issue. The learned CIT(A), vide impugned order, dismissed the appeal filed by the assessee and upheld the levy of penalty

under section 271(1)(c) of the Act. Being aggrieved, the assessee is in appeal before us.

7. During the hearing, the learned Authorised Representative ("*learned AR*") submitted that the issue of whether the amount paid by the assessee to MMRDA as lease premium constitute revenue expenditure, and therefore, the assessee was entitled to claim a proportionate part of the said premium as a deduction has been admitted by the Hon'ble Jurisdictional High Court as a substantial question of law in assessee's appeal. Accordingly, the learned AR submitted that since the issue is debatable, no penalty under section 271(1)(c) of the Act can be levied.

8. Having considered the submissions of both sides and perused the material available on record, we find that vide order dated 18/03/2013 passed in assessee's own case in Small Industries Development Bank of India v/s DCIT, in ITA No. 792 of 2012, the Hon'ble Jurisdictional High Court admitted the following substantial question of law: –

"Heard. Admit on the following substantial question of law.

a) Whether on the facts and in the circumstances of the case and in law the amount paid by the appellant to MMRDA as "lease premium" constituted revenue expenditure and the appellant was entitled to claim a proportionate part of the said "premium" as a deduction in the current assessment year?"

9. Thus, from the perusal of the aforesaid order passed by the Hon'ble Jurisdictional High Court, it is evident that the solitary issue on the basis of which penalty under section 271(1)(c) of the Act has been levied in the present case has already been admitted for consideration by the Hon'ble High Court. It is a trite law that no penalty is leviable on an issue on which the

appeal in the quantum proceedings has been admitted by the Hon'ble High Court. Thus, the admission of the substantial question of law by the Hon'ble High Court lends credence to the *bona fide* of the assessee in claiming the deduction.

10. In this regard, it is relevant to note the following observations of the Hon'ble Delhi High Court in PCIT v/s Harsh International (P.) Ltd., reported in [2021] 128 taxmann.com 88 (Delhi): -

"10. This court is also of the opinion that levy of penalty cannot be a matter of course, as sought to be contended by the Revenue. It can only be levied in cases where the concealment of income has been proven. If the quantum order itself has been challenged and this Court has framed substantial questions of law in the appeal preferred by the respondent-assessee, it shows that the alleged concealment is not final and the issue is disputable. Consequently, the penalty levied by the assessing officer cannot survive in such a case.

11. It is pertinent to note that this Court in similar cases [CIT v. Liquid Investment Ltd. [IT Appeal No. 240 of 2009, dated 5-10-2010], CIT v. H B Leasing & Finance Co. Ltd. [2012] 20 taxmann.com 190/211 Taxman 132 (Mag.)/[2011] 334 ITR 367 and CIT v. Thomson Press India Ltd. [IT Appeal 426,440 of 2013] has upheld the deletion of the penalty on the same ground i.e. the fact that appeals were admitted proved that the issue was debatable. The relevant portion of the orders in Liquid Investment Ltd (supra) and Thomson Press India Ltd. (supra) is reproduced hereinbelow:—

(A) Order dated 5th October, 2010 passed by this Court in Liquid Investment Ltd (supra) :—

"Both the CIT(A) as well as the ITAT have set aside the penalty imposed by the Assessing Officer under section 271(1)(c) of the Income-tax Act, 1961 on the ground that the issue of deduction under section 14A of the Act was a debatable issue. We may also note that against the quantum assessment where under deduction under section 14A of the Act was prescribed to the assessee, the assessee has preferred an appeal in this Court under section 260A of the Act which has also been admitted and substantial question of law framed. This itself shows that the issue is debatable. For these reasons, we are of the opinion that no question of law arises in the present case."

(B) Order dated 3rd March, 2014 passed by this Court in Thomson Press India Ltd. (supra) :—

" This Court is of the opinion that where the question of law as raised by the assessee has been framed and admitted in the circumstances of

this case, imposition of penalty cannot be justified. The appeals being bereft of substantial question of law are dismissed."

12. Keeping in view the aforesaid, this Court finds that no question of law arises in the present appeals for consideration of this Court."

11. We find that similar findings were rendered by the Hon'ble Jurisdictional High Court in CIT v/s Nayan Builders and Developers, in ITA No. 415 of 2012, vide its decision dated 08/07/2014, wherein findings of the Tribunal quashing the penalty on the basis that a substantial question of law has been admitted by the Hon'ble High Court on the issue were upheld.

12. At this stage, it is also pertinent to note 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 reproduced 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."

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."

13. Therefore, in view of the facts and circumstances of the present case and judicial pronouncements as noted above, we are of the considered view that the levy of penalty under section 271(1)(c) of the Act in the facts of the present case is not justifiable, and accordingly, the same is quashed. As a result, the impugned order is set aside, and the grounds raised by the assessee for the assessment year 2014-15 are allowed.

14. As penalty under section 271(1)(c) of the Act was levied in the assessment year 2015-16 on the similar issue, which has already been admitted as a substantial question of law by the Hon'ble Jurisdictional High Court in assessee's quantum appeal in preceding years, we are of the considered view that our findings/conclusions as rendered in the foregoing paragraphs shall apply *mutatis mutandis* to the present appeal. Accordingly, the penalty levied under section 271(1)(c) of the Act is quashed. As a result, the impugned order is set aside, and the grounds raised by the assessee for the assessment year 2015-16 are allowed.

15. In the result, both appeals by the assessee are allowed.

Order pronounced in the open Court on 15/04/2026

Sd/-
BIJAYANANDA PRUSETH
ACCOUNTANT MEMBER

Sd/-
SANDEEP SINGH KARHAIL
JUDICIAL MEMBER

MUMBAI, DATED: 15/04/2026

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