

**IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH "D", MUMBAI**

**BEFORE SHRI SANJAY GARG, JUDICIAL MEMBER AND
SHRI ASHWANI TANEJA, ACCOUNTANT MEMBER**

**ITA No.7100/M/2014
Assessment Year: 2010-11**

ACIT-8(1)(1), Room No.624, M.K. Road, Mumbai - 400020	Vs.	M/s. Richardson and Cruddas (1972) Ltd., 1, Sir, J.J. Road, Byculla, Mumbai – 08 PAN: AAACR 5670A
(Appellant)		(Respondent)

Present for:

Assessee by : Shri Rashmikant C. Modi, A.R.
Revenue by : Shri B.S. Bist, D.R.

Date of Hearing : 26.09.2016
Date of Pronouncement : 26.09.2016

ORDER

Per Sanjay Garg, Judicial Member:

The present appeal has been preferred by the Revenue against the order dated 25.09.2014 of the Commissioner of Income Tax (Appeals) [hereinafter referred to as the CIT(A)] agitating the action of the Ld. CIT(A) in deleting the penalty of Rs.1688994/- levied by the Assessing Officer (hereinafter referred to as the AO) under section 271(1)(c) of the Act.

2. We have heard the rival contentions and have also gone through the records. The AO in this case had levied the impugned penalty in relation to the disallowance of prior period expenditure. The assessee in the return of income offered prior period income of Rs.54.66 lakhs against which it claimed prior period expenditure of Rs.125.91 lakhs. The AO disallowed the amount of prior period expenses without adjusting prior period income. He also levied

penalty under section 271(1)(c) of the Act in relation to the above disallowance of prior period expenditure.

3. In appeal before the Ld. CIT(A), the assessee submitted that the assessee is a public sector undertaking fully owned by Government of India and was engaged in the business as “Engineers and contractors” and that the assessee company had no reason to conceal or submit inaccurate particulars of income. The assessee was a sick company and was under BIFR. It was also submitted that the prior period expenditure was debited in the P&L Account as the same came to the notice of the company during the relevant previous year only. Moreover, the assessee had also offered the prior period income also in the return of income which has been accepted by the AO. The disallowance, if any, was to be made that could have been even otherwise restricted to net disallowance only. Neither any inaccurate particulars have been furnished nor any income had been concealed.

4. The Ld. CIT(A), after considering the submissions of the assessee observed that the facts of the case of the assessee for A.Y. 2010-11 and A.Y. 2011-12 were same. However, the AO had chosen to levy penalty for one year and not to levy penalty for another year. He, further, noticed that the assessee had fully disclosed all the material facts. Though the AO had disallowed the prior period expenditure while computing the business income of the assessee, however, all the details were available in the return of income itself. He, further, observed that the assessment proceedings and penalty proceedings were two separate, different and distinguished proceedings. Merely because the AO had made certain disallowance in the assessment proceedings that itself would not be sufficient for levy of penalty under section 271(1)(c) of the Act. He, relying upon the decision of the Hon’ble Punjab & Haryana High Court in the case of “CIT, Ludhiana vs. East Man International” (2014) 41 Taxman.com 239 observed that mere making of claim for deduction of prior period expenses which was ultimately found to be unsustainable would not by itself be

inaccurate particulars of income as to pass penalty order under section 271(1)(c) of the Act.

5. After hearing the Ld. Representative of the parties, we find that on the identical facts, the AO for A.Y. 2011-12 has dropped the penalty proceedings. Copy of the order of the AO in this respect dated 26.08.2014 is placed on page 21 of the file. We further find that assessee is a government undertaking and no personal interest was involved for furnishing of inaccurate particulars of income or concealment of income. In our view, it is not a case of furnishing of inaccurate particulars of income or of concealment of income. We, therefore, do not find any infirmity in the order of the Ld. CIT(A) while deleting the impugned penalty.

6. In the result, the appeal of the Revenue is therefore dismissed.

Order pronounced in the open court on 26.09.2016.

Sd/-
(Ashwani Taneja)
ACCOUNTANT MEMBER

Sd/-
(Sanjay Garg)
JUDICIAL MEMBER

Mumbai, Dated: 26.09.2016.

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The CIT (A) Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.