

IN THE INCOME TAX APPELLATE TRIBUNAL  
AHMEDABAD "A" BENCH

**Before: Smt. Annapurna Gupta, Accountant Member  
And Shri T.R. Senthil Kumar, Judicial Member**

**ITA No. 541/Ahd/2018  
Assessment Year 2011-12**

The DCIT, Circle-1(1)(1), Ahmedabad  (Appellant)	Vs	Adani Port & SEZ Ltd. 1 <sup>st</sup> Floor, Adani House, Shrimali Society, Nr. Mithakhali Circle, Navrangpura, Ahmedabad-380009 PAN: AAACG7917K (Respondent)
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**Assessee Represented: Shri Dhrunal Bhatt, A.R.  
Revenue Represented: Shri Akhilendra Pratap  
Yadav, CIT-DR**

Date of hearing : 19-09-2023  
Date of pronouncement : 27-09-2023

**आदेश/ORDER**

**PER : T.R. SENTHIL KUMAR, JUDICIAL MEMBER:-**

This appeal is filed by the Revenue as against the Appellate order dated 26.12.2017 passed by the Commissioner of Income Tax (Appeals)-1, Ahmedabad arising out of the Penalty order passed under section 271(1)(c) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') relating to the Assessment Year (A.Y) 2011-12.

2. The solitary ground raised by the Revenue is that the Ld. CIT(A) erred in law in deleting the levy of penalty of Rs. 2,27,86,676/- u/s. 271(1)(c) of the Act.

3. The brief facts of the case is that the assessee is mainly engaged in development, operation and maintenance of Ports & Economic Zone at Mundra, Gujarat. For the Assessment Year 2011-12, the assessee filed its Return of Income declaring total income of Rs. 30,81,75,558/-. Regular scrutiny assessment was completed u/s. 143(3) of the Act on 01-03-2014 determining the total income as Rs. 1,41,39,57,721/- after making various additions/disallowances. The A.O. initiated penalty proceedings u/s. 271(1)(c) of the Act for furnishing inaccurate particulars of income against the various disallowances. However on appeal against the assessment order, the Ld. CIT(A) vide its order dated 13-11-2014 confirmed the additions made on account of Amortized value of Leasehold Land of Rs. 5,16,28,097/- and Depreciation claimed on "Right to use" Leasehold Land of Rs. 1,54,11,254/-. Accordingly fresh penalty notice was issued to the assessee, as why not to levy penalty u/s. 271(1)(c) of the Act for furnishing inaccurate particulars of income.

3.1. The assessee's explanation that it is a debatable issue and pendency of the matter before ITAT was not considered by the Assessing Officer and thereby levied a minimum penalty of Rs. 2,27,86,676/- at 100% of the amount of tax sought to be evaded on account of furnishing inaccurate particulars of income.

4. Aggrieved against the same, the assessee filed an appeal before Commissioner of Income Tax (Appeals). The Ld. CIT(A) after considering the case on merits deleted the levy of penalty both on account of Amortized value of Leasehold land development expenditure and Depreciation on "Right to use" Leasehold land as follows:

*"...3.5 On careful consideration of entire facts, it is observed that AO has levied penalty under section 271(1)(c) of the Act on two disallowances confirmed by CIT(A) i.e. (i) disallowance of Amortized value of Leasehold Development Land expenditure considering the same not be not allowed under section 35D of the Act and (ii) disallowance of depreciation on Right to use leasehold land. So far as the levy of penalty u/s 271(1)(c) of the Act on both of the above disallowances is concerned, it is observed that claim of the Appellant was very much apparent in Computation of its income and in Clause No. 14(a) to 14(f) of Tax Audit Report. As such claim was certified by Tax Auditor it proves beyond doubt that claim of appellant is bonafide. Further, all the facts were disclosed on the face of Computation of income and Tax Audit Report thus: merely disallowance has been confirmed does not invite levy of penalty on ground of furnishing inaccurate particulars. It is observed that Hon'ble Supreme Court in the case of Price Waterhouse Coopers Pvt Ltd v/s CIT 348 ITR 306 wherein it is held that Tax audit Report in Form 3CD is integral part of Return. Further, Hon'ble Jurisdictional High Court in case of Geeta Prints (P) Ltd. V/s. ACIT 33 taxmann.com 393 dated 7 September, 2013 has held as under.*

*From The head note:*

*"Section 271(1)(c) of the Income-tax Act, 1961 - Penalty - For concealment of income Where assessee had made full disclosure about its claim under section 80HHC which was also certified by chartered accountant, no penalty could be levied under section 271(1)(c) just because claim on merit was not granted [In favour of assessee]"*

.....

*3.6 It is observed that the appellant has argued that so far as deduction of Amortized value of Leasehold Development Land is concerned, Kolkata ITAT in case of Sicpa India (P) Ltd. v/s DCIT 80 taxmann.com 87 dated 22.03.2017, has held that depreciation on landscape expenses on leasehold land was allowed @ 10%. Assessing Officer treated the same as disallowable under section 35D, however, CIT(A) confirmed disallowance on the ground that Appellant was unable to justify that the said expenditure pertains to building. As apparent from the ongoing discussion the issue is highly debatable and therefore, penalty under Section 271(1)(c) cannot be levied.*

.....

*3.7 As far as levy of penalty on disallowance of expenditure on leasehold land and depreciation on right to use leasehold land. Appellant argued that such addition will in turn lead to increase in eligible profit u/s 80IAB of the Act. Such*

*fact was accepted by the AO himself while passing the Assessment Order for AY 2013-14 following Circular No. 37/2016 issued by CBDT on 02.11.2016. Further Hon'ble Jurisdictional High court in case of ITO vs. Keval Construction (33 taxmann.com 277) have also held the issue in favour of appellant company. These facts support the contention of appellant that even if disallowance is sustained, it will be entitled to deduction u/s 80IAB meaning thereby it will not have any tax effect hence by claiming such expenditure in return of income, appellant has not made any mala fide claim which triggers levy of penalty u/s 271(1)(c) of the Act.*

*3.8 Considering the facts discussed herein above and relying upon various decisions referred supra, penalty under Section 271(1)(c) levied by AO for Rs.2,27,86,676/- is deleted. This ground of appeal is allowed.*

5. Aggrieved against this deletion, Revenue is in appeal before us. At the time of hearing of the appeal, Ld. Counsel appearing for the assessee submitted before us that the Co-ordinate Bench of this Tribunal in the quantum appeals filed by the Assessee and Revenue in ITA Nos. 122 & 167/Ahd/2015 dated 29-03-2023, even on merits, deleted the additions made by the observing as follows:

*“.....14. As regards Ground no.6 & 6.1 of assessee's appeal, the Ld. AR submitted that the CIT(A) erred in confirming the disallowance of amortisation expenditure claimed in relation to leasehold land of Rs.5.16 Crores. If the disallowance is to be confirmed, the same has to increase the eligible business profit for deduction under section 80IAB of the Act. The Ld. AR further submitted that amortisation expense is claimed as part of the additional improvement cost incurred by the assessee. This is not part of the lease rent payment but cost incurred by the assessee over and above that. The same can be even revenue expense. Amortisation of the same is also permissible. The claim is correct. Amortisation is only nomenclature. The Ld. AR relied upon the decisions of Mahavir Inductomelt, 394 ITR 50 (Guj) and Sun Pharmaceuticals, 329 ITR 479 (Guj). Ld. AR further submitted that even if the said amortisation is not available, the eligible profit for computation of deduction under Section 80IAB should increase.*

*15. The Ld. DR submitted that the principle of depreciation of value/amortisation expenses does not apply to land.*

*16. We have heard both the parties and perused all the relevant material available on record. It is pertinent to note that the amortisation expenses are not available to the assessee as it was part of lease rent payment and, therefore, the plea of the assessee that eligible profit for computation of deduction under Section 80IAB should increase is acceptable. Hence, ground nos.6 and ground no.6.1 are allowed.*

.....

*11. As regards Ground nos. 5 & 5.1 of the assessee's appeal, the Ld. AR submitted that the CIT(A) erred in confirming the disallowance of depreciation on right to use lease hold land of Rs.1.54 Crores. If the disallowance is to be*

*confirmed, the same to increase the eligible business profits for deduction under Section 80IAB of the Act are not justifiable. The Ld. AR submitted that the recognition of the right to use leasehold land as intangible asset is as per the requirement of accounting standards. The assessee has to recognise the same and assessee has correctly recognised it. Once an intangible asset is recognised, the same is eligible for depreciation under Section 32 and, therefore, the claim of depreciation is correct. The Ld. AR further submitted that if the said depreciation is not available, the eligible profit for computation of deduction under Section 80IAB should increase. The Ld. AR relied upon the decisions of RFCL Limited, 57 taxmann.com 17 (HP) and Bhushan Steels, 390 ITR 485 (Delhi).*

*12. The Ld. DR submitted that as regards land, there is no question of depreciation, so question of allowing the same in the capital nature does not survive.*

*13. We have heard both the parties and perused all the relevant material available on record. It is pertinent to note that the recognition of the right to use lease hold land as intangible asset as per the statement of account and the same was not disputed by the Department at any stage. Thus, the claim of depreciation was correctly made and the same should have been taken into account by the Assessing Officer as well as CIT(A). Thus, ground no.5 and ground no.5.1 are allowed.”*

6. Thus Ld. Counsel submitted that even on merits, the additions made by the Assessing officer were deleted in the quantum appeal. Hence, there is no question of levying penalty in the above cases for furnishing inaccurate particulars of income. The Ld. CIT(A) followed the Judgment of the Hon'ble Supreme Court in the case of Reliance Petro Products and Jurisdictional High Court Judgment thereby deleted the levy of penalty. Therefore the findings reached by the Ld. CIT(A) does not require any interference and the Revenue appeal is liable to be dismissed.

7. Per contra, the Ld. CIT-DR Shri Akhilendra Pratap Yadav appearing for the Revenue supported the order passed by the Assessing Officer and thereby pleaded to sustain the levy of penalty and allow the Revenue appeal.

8. We have given our thoughtful consideration and perused the materials available on record. The Ld. CIT(A) has considered the above issue in detail which is extracted Para 4 of this order. That apart in the quantum appeal of the assessee before this Tribunal, the addition made by the Assessing Officer was also deleted. Further, the Hon'ble Jurisdictional High Court in case of Sun Pharmaceuticals Ind. Ltd. V DCIT [2009] 227 CTR 206 (Guj) have held that such expenditure on right to use leasehold land are allowable as revenue expenditure, which means such issue is also highly debatable and therefore no penalty under Section 271(1)(c) can be levied on it.

8.1. The Hon'ble Supreme Court in case of CIT v/s Reliance Petro Products Ltd. 322 ITR 158 has held as under:

*"We do not agree, as the assessee had furnished all the details of its expenditure as well as income in its Return, which details, in themselves, were not found to be inaccurate nor could be viewed as the concealment of income on its part. It was up to the authorities to accept its claim in the Return or not. Merely because the assessee had claimed the expenditure, which claim was not accepted or was not acceptable to the revenue, that by itself would not, in our opinion, attract the penalty under section 271(1)(c). If we accept the contention of the revenue then in case of every Return where the claim made is not accepted by Assessing Officer for any reason, the assessee will invite penalty under section 271(1)(c). That is clearly not the intendment of the Legislature.*

*11. In this behalf the observations of this Court made in Sree Krishna Electricals v. State of Tamil Nadu[2009] 23 VST 249 as regards the penalty are apposite. In the aforementioned decision which pertained to the penalty proceedings in Tamil Nadu General Sales Tax Act, the Court had found that the authorities below had found that there were some incorrect statements made in the Return. However, the said transactions were reflected in the accounts of the assessee. This Court, therefore, observed:*

*"So far as the question of penalty is concerned the items which were not included in the turnover were found incorporated in the appellant's account books. Where certain items which are not included in the turnover are disclosed in the dealer's own account books and the assessing authorities include these items in the dealer's turnover disallowing the exemption, penalty cannot be imposed. The penalty levied stands set aside."*

*The situation in the present case is still better as no fault has been found with the particulars submitted by the assessee in its Return.*

*12. The Tribunal, as well as, the Commissioner of Income-tax (Appeals) and the High Court have correctly reached this conclusion and, therefore, the appeal filed by the revenue has no merits and is dismissed."*

8.2. Further, the Hon'ble Jurisdictional High Court in case of Principal Commissioner of Income Tax Jamnagar v/s Jamnagar District Co Operative Bank Ltd. Tax Appeal No. 365 of 2015 dated 09/06/2016:

*".....All facts were on record to enable the Assessing Officer to make the addition if he was of the opinion the claim made by the assessee was not sustainable in law. A bonafide raising of a wrong claim by itself would not give rise to penalty. Supreme Court in the case of Reliance Petroproducts Pvt Ltd (supra) held that where there is no concealment of particulars of income, penalty cannot be imposed. It was held that submitting incorrect claims in law do not give rise to penalty proceedings....."*

9. Respectfully following the above judgments, we have no hesitation in confirming the order passed by the Ld. CIT(A). Thus the grounds raised by the Revenue is devoid of merits and the same is hereby dismissed.

10. In the result, the appeal filed by the Revenue is hereby dismissed.

Order pronounced in the open court on 27 -09-2023

**Sd/-**  
**(ANNAPURNA GUPTA)**  
**ACCOUNTANT MEMBER True Copy**  
**Ahmedabad : Dated 27/09/2023**

**Sd/-**  
**(T.R. SENTHIL KUMAR)**  
**JUDICIAL MEMBER**

**आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-**

1. Assessee
2. Revenue
3. Concerned CIT

4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार  
आयकर अपीलीय अधिकरण,  
अहमदाबाद