आयकर अपीलीय अधिकरण "I" न्यायपीठ मुंबई मे।

IN THE INCOME TAX APPELLATE TRIBUNAL "I" BENCH, MUMBAI

श्री महावीर सिंह, न्यायिक सदस्य एवं श्री राजेश कुमार लेखा सदस्य के समक्ष।

BEFORE SRI MAHAVIR SINGH, JM AND SRI RAJESH KUMAR, AM

आयकर अपील सं./ ITA No. 853/Mum/2018

(निर्धारण वर्ष / Assessment Year 2007-08)

आयकर अपील सं./ ITA No. 852/Mum/2018

(निर्धारण वर्ष / Assessment Year 2009-10)

MSEB Holding Company Limited Hongkong Bank Building, Mahatma Gandhi Road, Fort, Mumbai, Maharashtra, Pin-400 001	Vs.	Asst. Commissioner of Income Tax, 10(1), Aayakar Bhavan, Maharshi Karve Road, Mumbai-400 020
(अपीलार्थी / Appellant)	..	**(प्रत्यर्थी / Respondent)**
स्थायी लेखा सं./PAN No. AAECM2934Q		

अपीलार्थी की ओर से / **Appellant by** : Shri J.D. Mistry
Shri Niraj Sheth, ARs'

प्रत्यर्थी की ओर से / **Respondent by** : Shri Jacinta Zimik Vashai, CIT DR

सुनवाई की तारीख / **Date of hearing:**	30-07-2018
घोषणा की तारीख / **Date of pronouncement :**	03-08-2018

आदेश / O R D E R

PER MAHAVIR SINGH, JM:

These two appeals by the assessee are arising out of the different orders of Commissioner of Income Tax (Appeals)-21, Mumbai, [in short CIT(A)] in appeal Nos. CIT(A)-21/Rationalization/(A)-22/A-1(1)&1(2)/

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ACIT-10(1)/2017-18 dated 29.12.2017. The Assessments were framed by the Addl. Commissioner of Income Tax, Circle-10(1), Mumbai (in short Addl. CIT/ AO) for the assessment years 2007-08 & 2009-10 vide orders dated 30.12.2009 & 28.12.2011 under section 143(3) of the Income Tax Act, 1961(hereinafter 'the Act'). The penalties were levied by ACIT 10(1) & DCIT10(1), Mumbai for AY 2007-08 and 2009-10 vide orders dated 31.03.2012 & 30.03.2014 under section 271(1)(c) of the Act.

2. The only common issue in these appeals of assessee is against the order of CIT(A) confirming the levy of penalty by the AO under section 271(1)(c) of the Act. For this assessee has raised identically worded grounds and issues and facts are also exactly identical in both the years. In AY 2007-08, the AO has levied the penalty on the disallowance of expenditure claimed by assessee under the following heads: -

- *Repairs and maintenance of ₹ 12.90,040/*
- *Administrative and general expenditure of ₹ 28,49,577/-*
- *Interest and finance charges of rs. 4,04,88,60,303/-*
- *Depreciation of ₹ 2,51,46,050/-*

3. However, the AO for AY 2009-10 has levied the penalty only on the item of interest and finance charges of ₹ 332,40,17,077/-. Since, the facts and circumstances are exactly identical in both years; hence we will take up the lead year i.e. AY 2007-08 in ITA No. 853/Mum/2018 and will decide the issue. The relevant grounds raised in AY 2007-08 reads as under: -

"1:0 Re.: Levy of penalty u/s. 271(l)(c).

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1:1 The Commissioner of Income-tax (Appeals) has erred in upholding the penalty levied by the Assessing Officer u/s. 271(1)(c) of the Income-tax Act, 1961 on the Appellant.

1:2 The Appellant submits that considering the facts and circumstances of its case and the law prevailing on the subject it had neither concealed any particulars of its income nor furnished any inaccurate particulars in respect thereof and hence no penalty, whatsoever, can be levied on it u/s. 271 (1) (c) of the Income-tax Act, 1961 and the Commissioner of Income-tax (Appeals) ought to have held as such.

1:3 The Appellant submits that the impugned O der levying penalty u/s.271(1)(c) of the Income-tax Act, 1961 be struck down."

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4. Briefly stated facts are that original return of income was filed by assessee on 31.10.2007 declaring a total loss of ₹ 375,38,82,215/-. Subsequently, the return was revised on 27.03.2010 declaring a total loss of ₹ 287,10,66,330/-. The AO framed assessment under section 143(3) of the Act dated 30.12.2009 and assessed the total income of the assessee at ₹ 118,65,53,810/- without granting assessee set off of brought forward loss. Difference between the total loss as return by the assessee at ₹ 287,10,66,330/- and total income assessed by AO at ₹ 118,65,53,810/- was ₹ 405,76,20,140/- due to the following adjustments.

- *Repairs and maintenance of ₹ 12,66,486/-*

- *Interest and finance charges 4,04,88,60,303/-*
- *Depreciation of ₹ 2,51,46,050/-*

Total 4,07,52,72,839

In term of the above, the assessment was framed and loss converted into income, consequently, the AO initiated the penalty proceedings under section 271(1)(c) of the Act. We find that on the above, three items i.e. the CIT(A) upheld the disallowance on the ground that the assessee itself had admitted that the repairs and maintenance expenses of ₹.12,66,486/- were not allowable since the deduction to the extent were already claimed by assessee under the head income from house property. Further, the assessee claim deduction on account of depreciation at Rs.2,51,46,050/- was not allowable which the assessee itself had suo-moto disallowed in the return of income. Another item of disallowance was Interest & financial expenses of Rs.404,88,60,303/-. The assessee utilized the borrowed funds for the purpose of capital infusion and therefore, this interest expenditure was a capital expenditure, which was beyond the purview of claim of deduction under section 36(1)(iii) of the Act. The interest expenditure claimed by the assessee was having direct nexus with the investment in three subsidiary companies, in which investment would yield exempt income to the assessee. Therefore, the above said interest expenditure was disallowable u/s.14A(1) of the Act being the direct interest expenditure incurred for the purposes of earning exempt income.

5. Further, the learned Counsel for the assessee took us through the Tribunal's order in quantum appeal, which is common order for AY 2006-07 to 2010-11, wherein, the issue of disallowance of interest and finance expenses of ₹ 418,24,48,398/- was discussed as under:-

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"6. Brief facts are, the assessee company was formed vide notification no.398 dated 4th June 2005, as per Maharashtra Electricity Reform Transfer Scheme 2005. As per the above referred Scheme, Undertakings of Maharashtra State Electricity Board (MSEB) were transferred to and vested in four companies viz. Maharashtra State Electricity Generation Co. Ltd., Maharashtra State Power Transmission Co. Ltd., Maharashtra State Power Distribution Co., and the assessee. The assessee is wholly owned by Government of Maharashtra and in turn it holds shares of other three companies referred to above. During the assessment proceedings, for the impugned assessment year, the Assessing Officer noticing that the assessee had claimed set–off of business loss of 419,01,70,393 against house property income of ` 22,42,24,077, examined the same and found that as per the director's report dated 25th January 2008, it has been stated that it has no business operation. Thus, the Assessing Officer was of the view that since the assessee has not carried out any business operation and there was no income to be computed under the head business, no business expenditure, including interest expenditure, is allowable to the assessee. Accordingly, disallowing assessee's claim of set–off of loss against the rental income, the Assessing Officer determined the total income at `

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22,42,24,077. Being aggrieved with the disallowance of expenditure made by the Assessing Officer, assessee preferred appeal before the learned Commissioner (Appeals).

7. The learned Commissioner (Appeals) after considering the submissions of the assessee followed his own order in assessee's own case for the assessment year 2007–08 and disallowed assessee's claim of interest expenditure.

8. Learned Authorised Representative submitted, on demerger / unbundling of MSEB, the assessee was formed as an investment company holding shares of three other companies formed in pursuance to the demerger He submitted, assets of MSEB to the extent they pertained and were specifically allocable to generation, transmission and distribution undertakings were transferred to those companies. The remaining assets of MSEB once used by all the other three undertakings were transferred to the assessee. Similarly, liabilities of MSEB to the extent they pertained to or were directly relatable to a particular undertaking were transferred to the said undertaking and the residual liabilities were transferred to the assessee. Thus, as a result, the State Government loans and interest accrued thereon were transferred to the assessee. It

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was submitted, since such interest liability is wholly and exclusively for the purpose of assessee's business, it was claimed as a deduction under section 36(1)(iii).

9. The learned Authorised Representative submitted, in the transfer scheme as per which assessee company was formed, the Government has reserved the right to come up with modification / alteration to the scheme. It was submitted, clause (9) of the said scheme, inter–alia, la d down that the scheme would be provisional for a period of one year from the date of its notification. Further, by virtue of Government of Maharashtra letter no.Reform–2006/C.R.-STI/NRG–3 dated 2nd June 2006, the period of one year was extended beyond 5th June 2006 and untill final orders by the Government of Maharashtra. He submitted, on 31st March 2016, the Government of Maharashtra brought an amendment to the transfer scheme by providing that the loans of the erstwhile MSEB are not to be transferred to the assessee company and the same will be taken over by the Government of Maharashtra w.e.f. 6th June 2005. The learned Authorised Representative submitted, in view of taking over of the loan liability along with interest accrued thereon by the Government of Maharashtra from 6th June 2005, the claim of deduction of interest

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and finance charges by the assessee is no longer enforceable, since, the very liability in respect of which deduction was claimed has ceased to exist with retrospective effect. The learned Authorised Representative submitted, in view of such changed scenario, during the assessment proceedings for the assessment year 2014–15, the assessee submitted detailed note bringing to the notice of the Assessing Officer the fact relating to taking over of loan liability by the Government of Maharashtra and filed a revised computation withdrawing the claim for deduction of interest expenditure relating to such loan both under the normal provisions as well as under the MAT. He submitted, accepting the explanation of the assessee, the Assessing Officer completed the assessment for assessment year 2014–15. A copy of the assessment order for assessment year 2014–15, was also placed on record. Learned Authorised Representative submitted, though, the assessee had a strong case on merits as far as its claim of deduction of interest expenditure is concerned, however, considering the fact that the Government of Maharashtra has taken over the loan liability from 6th June 2005, the assessee would not like to stake its claim for deduction of interest and financial charges. The learned Authorised Representative submitted, withdrawal of its claim of interest expenditure is only because of subsequent

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development relating to taking over of the loan liability of erstwhile MSEB with retrospective effect, hence, should not be construed to mean, assessee had given upon its claim on merit.

10. Learned Departmental Representative strongly relying upon the reasoning of the learned Commissioner (Appeals) submitted, since the interest expenditure claimed by the assessee is not wholly and exclusively for the purpose of business, it is not allowable under section 36(1)(iii). He further submitted, the scheme of transfer under which the assets and liabilities were transferred to the assessee is provisional, hence, the amendment made to the said scheme by notification on 31st March 2016, should not be taken into account and disallowance should be confirmed.

11. We have heard the rival contentions and perused the material available on record. Undisputedly, as per the scheme of transfer, formulated on demerger of MSEB a part of the assets and liabilities of MSEB, including the loan liability arising out of State Government loan was transferred to the assessee company. However, on 31st March 2016, the Government of Maharashtra in its Industries, Energy and Labour Department issued a notification amending the Maharashtra Electricity Reform Transfer Scheme, 2005 and as per clause (10B) of the

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said notification, the liabilities of the erstwhile MSEB were taken over by the State Government from 5th June 2005. Thus, as could be seen, as per above notification dated 31st March 2016, the loan liabilities of erstwhile MSEB which was transferred to the assessee under the transfer scheme of 2005, was taken over by the State Government with retrospective effect from June, 2005. That being the case, the liability accruing to the assessee on account of State Government loan to MSEB which stood transferred to assessee no longer remains liability of the assessee with retrospective effect. As a consequence, the interest on such loan liability is also not payable by the assessee. Therefore, by virtue of changed scenario arising out of the taking over of the loan liability of erstwhile MSEB by the State Government, the assessee is not entitled to claim the deduction of interest expenditure. In fact, during the scrutiny assessment proceedings for assessment year 2014–15, on the basis of notification dated 31st March 2016, of the State Government taking over the loan liability the assessee voluntarily came forward and filed revised computation of income before the Assessing Officer withdrawing its claim of interest expenditure both under the normal provisions and the MAT. It is evident, the Assessing Officer completed the assessment by accepting the income declared under the revised

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computation of income. Thus, in view of the aforesaid facts and circumstances, without entering into the issue whether the interest expenditure was incurred wholly and exclusively for the purpose of assessee's business, hence, allowable under section 36(1)(iii), we hold that in view of the fact that the loan liability for which assessee has claimed deduction of the interest expenditure, since, was taken over by the State Government from June 2005, it no longer remains a liability of the assessee therefore, the assessee is not entitled for deduction of the interest expenditure on such loan liability. Having held so, we propose to examine the without prejudice claim made by the assessee in ground no.2.5."

6. The assessing officer levied the penalty vide his order dated 31.03.2012 by observing that the CIT(A) has confirmed these disallowance on account of repair and maintenance expenses, depreciation and interest and financial expenses in quantum proceedings. According to AO, the assessee's explanation is not tenable and therefore it is held that the assessee has knowingly furnished inaccurate particulars of its income. Aggrieved, assessee preferred the appeal before CIT(A), who also confirmed the action of the AO. Aggrieved, now assessee is in appeal before Tribunal.

7. Before us, the learned Counsel for the assessee argued that the opening balances of assets and liabilities as on 06.06.2005 have been incorporated in the accounts pursuant to the provisional Transfer scheme for restructuring of erstwhile Maharashtra State Electricity Board, notified

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vide Govt. Notification No. Reform 1005/CR 90611(1) NRG-5, dated 4 June 2005, notified by the Government of Maharashtra (GOM) and thereafter as approved by the Board, the said scheme being provisional and the balances of assets & liabilities are subject to change on notification of final transfer scheme by Govt. of Maharashtra. Any effect arising out of the finalization of transfer scheme shall be incorporated in the year, the finalization takes place and the accounts for the period 2005-2006 shall not be affected. Allocation of opening balances as on 06.06.2005 into five restructured entities namely Maharashtra State Power Generation Company Ltd. (MSPGCL), Maharashtra State Electricity Transmission Company Ltd. (MSETCL), Maharashtra State Electricity Distribution Company Ltd. (MSEDCL), MSEB Holding Company Ltd. (MSEBHCL) and MESS (residual Board) has been arrived at on the basis of audited balances of erstwhile MSEB as on 05.06.2005 The allocation of these balances has been as approved by the Board of the company. Details of certain opening balances as allocated to the company are in the process of being obtained from the concerned departments of erstwh le MSEB and the further adjustment if any, arising out of such details wi l be carried out in due course.

8. In view of he above facts and further the loans from State Govt. amounting to ₹ 2547.09 crores, have been accounted for based on opening balances as received under provisional scheme transfer. Further, details including terms and conditions of payment of principal as well as interest are available with MSEDCL which are being sought for any further necessary accounting adjustments. Interest payable amounting to ₹ 311.61 crs for the period under review has been accounted for on the basis of Government Resolutions (G.Rs.), as available with the company and the loan amount has been adjusted for repayment with G.R.s available in relation to such adjustments. Confirmation, reconciliation and pending accounting adjustments, if any

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required, will however be done at the time of finalization of transfer scheme. Unsecured Loans also include CPSU Bonds for coal related Liabilities Rs. 567.19 crores; CPSU Bonds for power purchase Rs. 451.41 crores; Interest accrued & due on CPSU bonds for power purchase 56.70 crores; Interest accrued & due on CPSU bond for coal payment, 73.12 crores, which were created by erstwhile MSEB in the books of accounts from 2001-2002 towards amount payable to GOM on securitization of CPSUs dues under one-time settlement scheme of Govt. of India. These balances are as transferred to the company under the provisional scheme of transfer and supporting records thereof are being sought from respective departments of erstwhile MSEB. As per the principles of Provisional Transfer Scheme 2005, these amounts have been proposed to be taken over by GOM. The company has not borrowed any additional amounts during the period. The loans shown in the accounts are as received under the provisional Transfer scheme. The company is in the process of passing a resolution u/s 293(I)(d) of the Companies Act, 1956 in due course.

9. Further, learned Counsel explain that in view of the above ammendment claim of deduction of interest and finance charges of Rs. 4,04,88,60,303/- was no longer necessary since the very liability in respect of which deduction was claimed by the assessee was also taken over by the GOM from the date on which they were originally sought to be transferred to the assessee in terms of the Transfer Scheme. Accordingly, the interest and finance charges on the said loans claimed as an expenditure in the earlier years from 06 June 2005 to 31 March 2015 were written back by the assessee in its books of accounts for the year ended 31 March 2016. Even, during the course of the assessment proceedings for the Assessment Year 2014-15, a detailed note disclosing the above facts was also submitted to the Assessing Officer and the claim for deduction of interest made in terms of the return of income for

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that year was withdrawn. Considering the facts and submissions the Assessing Officer passed an Order dated 26 December 2016 for the assessment year 2014-15 accepting the assessee's explanation and the withdrawal of the claim for interest debited to its Profit and Loss for the year.

10. Subsequently, when the quantum appeal for the year tiled by the assessee before the ITAT, which came up for hearing and in view of the fact that the loan liability for which the assessee was claiming the interest expenditure was taken over by the State Government with effect from 05 June 2005 (the date from which it was sought to have been transferred to it – the assessee), no longer remained a liability of the assessee. The assessee during the course of the hearing before the ITAT pointed out that it is not entitled to the deduction of the interest expenditure on such loan liability even if otherwise allowable by following the principles laid down by the Apex Court in the case of S.A. Builders v/s. CIT reported in (2006) 288 ITR 1(SC).

11. The second aspect of levy of penalty is regarding repair and maintenance expenses claimed by assessee of ₹ 12,90,040/-, the learned Counsel for the assessee before us, stated that the assessee earned rental income from letting out of its premise to its three subsidiary companies i.e. MSETCL, MSPGCL and MSGEDCL. The assessee offered this rental income under the head income from house property and deduction under section 24 of the Act was claimed. However, for the purpose of preparing of its books of account, the assessee debited a sum of ₹ 12,90,040/- as repair and maintenance expenditure to its profit and loss account and out of this repair and maintenance expenditure, the amount of ₹ 12,66,486/- pertain to the repair and maintenance for the premises which were let out by the assessee as income earned was offered to tax under the head income from house property. The assessee

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admitted that while returning its income for the year under consideration this expenditure due to inadvertent left out to be disallowed by the assessee as the expenditure claimed under the head repairs and maintenance amounting to ₹ 12,66,486/-. Before us, now it was claimed that there was in dispute about quantum of claim of expenditure incurred this particular issue and hence, aforesaid expenses were inadvertently left out to be disallowed by the assessee while filing return of income. It was claimed that this inadvertent error was not covered during the course of assessment proceedings but no sooner the same was released during the appellate proceedings before CIT(A), the same was accepted and assessee was owned up.

12. As regards to the claim of depreciation disallowed amount to ₹ 2,51,46,050/-, it was stated that for the purpose of preparing its accounts under the Companies Act 1956, the assessee has debited a sum of ₹ 2,51,46,050/- as depreciation on the premises, which it owned and were let out during the year under consideration. However, while computing the income for the purpose of computation of tax assessee has suo moto disallowed the depreciation and the CIT(A) after looking at the relevant documents accepted that the depreciation was suo moto disallowed and no further disallowance in this respect thereof was called for.

13. In view of the above facts and circumstances of the case we find that the Tribunal in quantum order dated 21.04.2017 has categorically recorded finding of fact at Para 11 that, "……*However, on 31st March 2016, the Government of Maharashtra in its Industries, Energy and Labour Department issued a notification amending the Maharashtra Electricity Reform Transfer Scheme, 2005 and as per clause (10B) of the said notification, the liabilities of the erstwhile MSEB were taken over by the State Government from 5th June 2005. Thus, as could be seen, as per above notification dated 31st March 2016, the loan liabilities of erstwhile MSEB which was transferred to the assessee under the transfer scheme of 2005, was taken over by the State*

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Government with retrospective effect from June, 2005. That being the case, the liability accruing to the assessee on account of State Government loan to MSEB which stood transferred to assessee no longer remains liability of the assessee with retrospective effect. As a consequence, the interest on such loan liability is also not payable by the assessee. Therefore, by virtue of changed scenario arising out of the taking over of the loan liability of erstwhile MSEB by the State Government, the assessee is not entitled to claim the deduction of interest expenditure. In fact, during the scrutiny assessment proceedings for assessment year 2014–15, on the basis of notification dated 31st March 2016, of the State Government taking over the loan liability the assessee voluntarily came forward and filed revised computation of income before the Assessing Officer withdrawing its claim of interest expenditure both under the normal provisions and the MAT. It is evident, the Assessing Officer completed the assessment by accepting the income declared under the revised computation of income. Thus, in view of the aforesaid facts and circumstances, without entering into the issue whether the in erest expenditure was incurred wholly and exclusively for the purpose of assessee's business, hence, allowable under section 36(1)(iii), we hold that in view of the fact that the loan liability for which assessee has claimed deduction of the interest expenditure, since, was taken over by the State Government from June 2005, it no longer remains a liability of the assessee, therefore, the assessee is not entitled for deduction of the interest expenditure on such loan liability….". From this finding of Tribunal it is clear that there is every particular regarding the claim of deduction on account of interest expenditure was available before the AO and there is no concealment by the assessee of these particulars.

14. In view of the above facts and circumstances on all the three appellate issues, we are of the view that the case law relied on by the learned Counsel for the assessee of Hon'ble Supreme Court in the case of Price Waterhouse Coopers (P.) Ltd. vs. CIT (2012) 348 ITR 306 (SC), clearly shows that wherever bonafide mistakes and inadvertent error is discovered, whether assessee was not guilty either of furnishing of

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inaccurate particulars of income or admitting the concealment of its income. Hon'ble Supreme Court held as under: -

> *"15. The assessee has filed an affidavit dated 14th September, 2012 in which it is stated that the assessee is engaged in Multidisciplinary Management Consulting Services and in the relevant year it employed around 1,000 employees. It has a separate accounts department which maintains day to day accounts, payrolls etc. It is stated in the affidavit that perhaps there was some confusion because the person preparing the return was unaware of the fact that the services of some employees had been taken over upon acquisition of a business, but they were not members of an approved gratuity fund unlike other employees of the assessee. Under these circumstances, the tax return was finalized and filled in by a named person who was not a Chartered Accountant and was a common resource.*
>
> *16. It is further stated in the affidavit that the return was signed by a director of the assessee who proceeded on the basis that the return was correctly drawn up and so did not notice the discrepancy between the Tax Audit Report and the return of income.*
>
> *17. Having heard learned counsel for the parties, we are of the view that the facts of the case are rather peculiar and somewhat unique. The assessee is undoubtedly a*

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reputed firm and has great expertise available with it. Notwithstanding this, it is possible that even the assessee could make a "silly" mistake and, indeed this has been acknowledged both by the Tribunal as well as by the High Court

18. The fact that the Tax Audit Report was filed along with the return and that it unequivocally stated that the provision for payment was not allowable under section 40A(7) of the Act indicates that the assessee made a computation error in its return of income. Apart from the fact that the assessee did not notice the error, it was not even noticed even by the Assessing Officer who framed the assessment order. In that sense, even the Assessing Officer seems to have made a mistake in overlooking the contents of the Tax Audit Report.

19. The contents of the Tax Audit Report suggest that there is no question of the assessee concealing its income. There is also no question of the assessee furnishing any inaccurate particulars. It appears to us that all that has happened in the present case is that through a bona fide and inadvertent error, the assessee while submitting its return, failed to add the provision for gratuity to its total income. This can only be described as a human error which we are all prone to make. The calibre and expertise of the assessee has little or nothing to do with the

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inadvertent error. That the assessee should have been careful cannot be doubted, but the absence of due care, in a case such as the present does not mean that the assessed is guilty of either furnishing inaccurate particulars or attempting to conceal its income.

20. We are of the opinion, given the peculiar facts of this case, that the imposition of penalty on the assessee is not justified We are satisfied that the assessee had committed an inadvertent and bona fide error and had not intended to or attempted to either conceal its income or furnish inaccurate particulars

15. Identical issue has been dealt with by Mumbai Bench of this Tribunal in the case of Tropical Clothing Co. Ltd. Vs. ACIT in ITA No. 787/Mum/2008 wherein it has been held that once the assessee himself disclose the particulars / details in their annual accounts the question of furnishing of inaccurate particulars of income does not arise. In the present case before us, complete disclosure regarding the expenditure claimed as allowable was given in the statement of accounts and in the return of income.

16. We also find that the Hon'ble supreme court in the case of CIT vs. Reliance Petroproducts Pvt. Ltd (2010) 322 ITR 158 (SC), held that the term inaccurate particulars of income means the details supplied in the return, which are not accurate, not exact or correct, not according to truth or erroneous. We find that honorable Supreme Court in Para 7 & 9 considered the issue as under: -

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"7……However, the learned Counsel for revenue suggested that by making incorrect claim for the expenditure on interest, the assessee has furnished inaccurate particulars of the income. As per Law Lexicon, the meaning of the word "particular" is a detail or details (in plural sense); the details of a claim, or the separate items of an account. Therefore, the word "particulars" used in the section 271(1)(c) would embrace the meaning of the details of the claim made. It is an admitted position in the present case that no information given in the Return was found to be incorrect or inaccurate. It is not as if any statement made or any detail supplied was found to be factually incorrect. Hence, at least, prima facie, the assessee cannot be held guilty of furnishing inaccurate particulars. The learned Counsel argued that "submitting an incorrect claim in law for the expenditure on interest would amount to giving inaccurate particulars of such income". We do not think that such can be the interpretation of the concerned words. The words are plain and simple. In order to expose the assessee to the penalty unless the case is strictly covered by the provision, the penalty provision cannot be invoked. By any stretch of imagination, making an incorrect claim in law cannot tantamount to furnishing inaccurate particulars……

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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."

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17. In view of the above facts and circumstances of the present case and the case laws of Hon'ble Supreme Court in Price Waterhouse Coopers (P.) Ltd. (supra) and Reliance Petroproducts Pvt. Ltd (supra), we are of the view that there is a complete disclosure in the present

regarding all the facts relating to expenditure on repairs and maintenance, depreciation and expenditure on interest and financials and hence, there is no question of concealment of particulars of income by the assessee. Hence, we delete the penalty. The facts being identical in AY 2009-10 also, we delete the penalty in this year also.

18. **In the Result, both the appeals of the assessee are allowed**.

Order pronounced in the open court on 03-08-2018.

Sd/-	Sd/-
(राजेश कुमार /RAJESH KUMAR)	(महावीर सिंह /MAHAVIR SINGH)
(लेखा सदस्य / ACCOUNTANT MEMBER)	(न्यायिक सदस्य/ JUDICIAL MEMBER)

मुंबई, दिनांक/ Mumbai, Dated: 03-08-2018

सुदीप सरकार, व.निजी सचिव */ Sudip Sarkar, Sr.PS*

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai

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