आयकर अपीलीय अधिकरण "H" न्यायपीठ मुंबई में।

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

BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER
AND SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER

आयकर अपील सं./I.T.A. No.3870 & 3871/Mum/2016

(**निर्धारण वर्ष /** Assessment Year : 2006-07 & 2005-06)

The Shipping Corporation of India Ltd., 245, Shipping House, Madam Cama Road, Mumbai-400021	**बनाम**/ v.	DCIT (LTU) 29th Floor, Centre no. 1. World Trade Centre, Cuffe Parade, Mumbai-400005
स्थायी लेखा सं./ PAN: AAACT1524F		
(अपीलार्थी/**Appellant**)	..	(प्रत्यर्थी / **Respondent**)

Assessee by:	Shri. Vinay Deshmane
Revenue by:	Shri Manoj Kumar Singh, DR

सुनवाई की तारीख/**Date of He ring** : **13.08.2018**
घोषणा की तारीख /**Date of Pronouncement** : **02.11.2018**

आदेश / ORDER

PER RAMIT KOCHAR, Accountant Member:

These two appeals, filed by assessee, being ITA No. No.3870 & 3871/Mum/2016, are directed against two separate appellate orders dated 16.03.2016 and 07.03.2016 respectively passed by learned Commissioner of Income Tax (Appeals)-1, Mumbai (hereinafter called "the CIT(A)"), for assessment year 2006-07 & 2005-06 respectively , the appellate proceedings had arisen before learned CIT(A) from the penalty orders dated 14.11.2014 and 13.11.2014 respectively passed by learned Assessing Officer (hereinafter called "the AO") u/s 271(1)(c) of the Income-tax Act, 1961 (hereinafter called "the Act") for AY 2006-07 & 2005-06 respectively. First we shall take up appeal of the assessee for AY 2006-07 and as similar issue's are involved in appeal

for AY 2005-06, our decision for AY 2006-07 shall apply mutatis mutandis to the appeal filed by the assessee for AY 2005-06.

2. The grounds of appeal raised by the assessee in the memo of appeal filed with the Income-Tax Appellate Tribunal, Mumbai (hereinafter called "the tribunal") for AY 2006-07 , read as under:-

> *"1. The learned Commissioner of Income Tax (Appeals), Mumbai -1 ['the ld. CIT(A)'] has erred in law and on facts in upholding the action of the learned Assessing Officer ('the Id. AO') of levying penalty u/s 271(1)(c) of the Income Tax Act, 1961 ('the Act') on*
>
> *(i) disallowance of claim of Rs. 12,10,00,000/- and Rs. 29,00,000/- in respect of profit on sale of ships and profit on sale of fixed assets respectively as turnover of core activities while computing income from incidental a tivi ies in excess of 0.25% of turnover from core activities and*
>
> *(ii) disallowance of claim of deduction of Rs. 6,35,13,110/- as proportionate cost against interest and dividend income*
>
> *on the alleged ground that the appellant had furnished inaccurate particulars of the income and explanation offered by the appellant was not bonafide. The ld. CIT(A) ought to have appreciated the following:*
>
> *a) The appellant had furnished all relevant material in its possession at the time of filing of return of income and had disclosed truly & fully all relevant particulars.*
>
> *b) The claim of the appellant was based on the bonafide interpretation of provisions of Chapter XII-G of the Act.*
>
> *c) The issue of computation of income of shipping companies under Chapter XII-G of the Act was debatable and hence levy of penalty was unwarranted.*
>
> *The appellant craves leave to add to and / or to amend and / or to modify and / or to cancel the above ground of appeal at any time before or at the time of hearing."*

3.1 The brief facts of the case are that assessee is engaged in merchant shipping business. The assessee declared income under tonnage tax scheme defined in Section 115V of the 1961 Act, and tonnage income was computed in accordance with provisions of section 115VG of the 1961 Act. It was claimed by the assessee that

all the ships operated by the assessee during the year under consideration were qualifying ships within the meaning of Section 115VD and valid certificates was produced by the assessee before the AO to substantiate the same. The assessee has also offered apart from the tonnage income, income from incidental activities in terms of proviso to sub-section 1 of section 115VI of the 1961 Act. The assessee also furnished necessary report from Chartered Accountant in Form no. 66 as well as the assessee furnished certificate from Director General of Shipping in respect to minimum training requirement for tonnage tax company u/s. 115 VU(2) of the 1961 Act.

3.2 The assessee had offered in addition to tonnage income , including income from incidental activities , income from interest and dividend under the head 'Income from other sources' The assessee allocated and claimed administrative expenses of Rs. 6,28,79,765/- against interest income of Rs. 172.11 crores and also the assessee claimed administrative expenses of Rs 7,33,346/- against dividend income of Rs. 2.01 crores. The allocation of administrative expenses was claimed to be done in the ratio of turnover as per provision of Section 115VJ of the 1961 Ac dealing with treatment of common costs. The assessee submitted that it is engaged fully in shipping business and it has no othe activity. It was submitted that during the course of business, interest is earned on funds deployed out of surplus cash/unutilized amount standing to the credit of statutory reserves while waiting for opportune time to acquire the assets. It was submitted that the interest generated needs to be treated as core shipping income. It was submitted that the said income from interest on deposits and dividend from companies are suo moto considered by the assessee as 'income from other sources' while computing taxable income under tonnage tax scheme. It was submitted that a tonnage tax company is guided by provisions of Chapter XIIG which incorporates special provisions relating to income of shipping companies. The assessee drew attention of the AO to provision of

Section 115VJ of the 1961 Act as to treatment of common costs where tonnage tax companies also carries on any business activity other than tonnage tax business. The assessee had allocated common costs being administrative costs on the basis of turnover. It was submitted that interest income is emerging because of temporary parking of funds in deposits , which are earned out of core shipping activities. It was submitted that administrative expenses were incurred for entire activities , which include core shipping activities and incidental activities and other income. The AO disallowed the same keeping in view provision of section 57(iii) of the Act as only those costs which are expended wholly and exclusively for the purposes of making or earning such income can be allowed. It was observed by the AO that interest income derived from parking of surplus funds is to be treated as income from other sources and not business income as the said income does not and cannot have an immediate nexus with business. The AO relied upon following case laws :-

a) Hon'ble Bombay High Court decision in the case of Shree Krishna Polyster Limited v. DCIT reported in 274 ITR 21.

b) Hon'ble Bombay High Court in the case of Transcon Builders v. ACIT

c) Hon'ble Delhi High Court decision in the case of CIT v. Shri Ram Honda Power Equipment & Ors. reported in 207 ITR 689(Del.).

d) Delhi ITAT Special Bench decision in the case of DCIT v. Allied Construction, reported in 105 ITD 1.

3.3 The matter against quantum assessment framed by Revenue went up-to Mumbai-tribunal in ITA no. 2944-2945/Mum/2010 for AY 2005-06 and 2006-07 , wherein tribunal was pleased to decide the issue of setting off common costs against interest income and income from dividend , against the assessee , vide common order dated

21.03.2014. Similarly, the tribunal was pleased to dismiss contentions of the assessee by holding that profits on sale of ships of Rs. 12.10 crores and profits on sale of fixed assets to the tune of Rs. 29 lacs is to be reduced from the turnover of core shipping, vide aforesaid appellate order dated 21.03.2014. Thus, in nutshell assessee lost on all these grounds of appeals before the tribunal.

3.4 The penalty provisions were invoked by the AO u/s. 271(1)(c) of the Act and notice u/s. 274 r.w.s. 271(1)(c) of the Act, dated 25.09.2014 was issued show causing the assessee as to why penalty u/s. 271(1)(c) of the Act should not be levied against the assessee.

3.5 The assessee during the course of penalty proceedings u/s 271(1)(c) conducted by the AO submitted that earning interest by placement of deposits and earning dividend income from its operation in a joint venture company were integral part of the business of operation of qualified ships. Secondly, it was submitted that the assessee apportioned the expenses as per Section 115VJ of the Act. It was also submitted by the assessee that no information was held back nor it filed inaccurate par iculars of income. It was claimed that deductible expenses were claimed under bonafide belief and these was no mensrea It was also submitted that the issues are debatable and there are more than one plausible view on these issues and hence under these circumstances as stated above , no penalty is exigible within the framework of provisions of Section 271(1)(c) of the Act.

3.6 The AO referred to provisions of Section 115VJ of the Act as under:

> *" 115VJ(1) Where a tonnage tax company also carried on any business or activity other that the tonnage tax business, common costs attributable to the tonnage tax business shall be determined on a reasonable basis.*
>
> *(2) Where any asset, other than a qualifying ship, is not exclusively used for the tonnage business by the tonnage tax company, depreciation on such asset shall be allocated between its tonnage tax business and other business on a*

fair proportion to be determined by the Assessing Officer, having regard to the use of such asset for purpose of the tonnage tax business and for the other business."

3.7 It was observed by the AO that tonnage tax scheme is a presumptive tax scheme under which no deduction or set off shall be allowed in computing the tonnage income as provided in Section 115VG of the 1961 Act. Thus, the AO observed that while arriving tonnage income all the deduction or set off have already been deemed to have been considered. It was observed by the AO that the word activity is qualified by the word 'business' . Thus, it was observed that the activity has to be business related activity and thus common costs attributable to the tonnage tax business are to be apportioned among the other business activity on reasonable basis The AO refer to Rule 11R of Income-tax Rules, 1962, wherein incidental activities for the purposes of relevant shipping income is defined, as under:-

"***Incidental activities for purposes of relevant shipping income:***

The incidental activities (details given in Note 5 appearing after the corresponding Form No. 66} referred to in sub-section (5) of section 115V-I shall be the following, namely :
(i) maritime consultancy charges;
(ii) income from loading or unloading of cargo;
iii) ship management fees or remuneration received for managed vessels; and
(iv) maritime education or recruitment fees

Note 5 of Form No. 66:

I Incidental activities for the purpose of relevant shipping income

(a) Maritime Consultancy Charges - Maritime consultancy charges received by a shipping company in the course of business of operating ships in lieu of knowledge offered by it to other companies which do not possess such expertise and which may among other things include rendering advice on setting up of shipping business, ship designing and repair and business acquisition, etc.

(b) Income Earned from Loading/Unloading of Cargoes - Charges received for services in connection with loading and unloading of cargo to and from the ship (such charges being separate from the transit charges).

(c) Ship Management fees/remuneration for managed vessels - Fees or remuneration earned for providing services of operation and maintenance of vessels on behalf of other ship owners/agencies.

(d) Maritime Education/Recruitment fees - Training fees charged/earned by a shipping company by extending its surplus training facility to other personnel in the shipping industry and fees earned from foreign ship owners for rendering services by way of screening, interviewing, short-listing and recruitment of floating staff and officers."

3.8 Thus in nut shell it was observed by the AO that earning interest by parking funds with banks or earning dividend income does not constitute income from incidental activity to the business of shipping income/tonnage income. The AO observed that common costs has to be related to businesses or other activities . It was observed that if any activity does not involve costs, hen the question of common cots will not arise. It was observed by the AO that except for some possible small costs towards portfolio management services, no other costs could remotely be assigned to earning of interest or dividend income in the instant case. It was observed by the AO that provisions of Chapter XII-G are special provision related to income of shipping companies and they do not have over-riding effect over Section 56 and 57 of the Act,. Thus , it was observed by the AO that no costs which is not allowed to be deducted within provisions of Section 57(iii) of the 1961 Act can be deducted from 'income from other sources'. Thus the contention of the assessee that interest earned from placement of deposits and earning dividend income from its operations in a J.V. company were integral part of the business of operation of qualified ships and that it has apportioned the expenses as per provisions of Section 115VJ of the 1961 Act were not accepted by the AO. The AO also rejected the contentions of the assessee that it has neither held

back any information nor filed any inaccurate particulars of income because as per AO it amounted to furnishing of inaccurate particulars of the income . The contentions of assessee that it was having a bonafide belief was also rejected by the AO. The AO referred to following decision's in coming to the aforesaid conclusion:-

1. *Hon'ble Supreme Court decision in the case of Union of India v. Dharmendra Textile Processors and ors. (306 ITR 277(SC)*

2. ITO v. Kripashankar Chaturvedi in ITA no. 6918/Mum/2005 , order dated 24.02.2009

The AO observed that mens-rea is not required in penalty provision(s) and hence the said contention was also rejected by the AO.

3.9 With respect to the reduction of an amount of Rs. 12.10 crores being profit on sale of ships and Rs 29 lakh being profit on sale of fixed assets(non ships) from turnover of core shipping activities while computing excess of incidental shipping income , the AO observed that assessee claimed non tonnage items as tonnage items purely on the basis of its interpretation of tonnage tax provision in chapter XII-G of the 1961 Act which were rejected by the AO in view of clear provisions of Sect on 115VI(2) of the 1961 Act , which as per the AO clearly defined the scope and purview of core activity of shipping income of tonnage company. The provisions of Section 115VI(2) of the 1961 Act are reproduced here-under:

"*115V-I(2) the core activity of a tonnage tax company shall be-*
(i) its activities from operating qualifying ships; and
(ii) other ship-related activities mentioned as under:-
(A) shipping contracts in respect of-
(i) earning from pooling arrangements;
(ii) contracts of affreightment.

Explanation:- For the purpose of this sub-clause,-
(a) "pooling arrangements" means an agreement between two or more persons for providing services through a pool or operating one or more ships and sharing earnings or operating profits on the basis of mutually agreed terms;

(b) "contract of affreightment" means a service contract under which a tonnage tax company agrees to transport a specified quantity of specified products at a specified rate, between designated loading and discharging ports over a specified period;
(B) Specific shipping trades, being –
(i) On-board or on-shore activities of passenger ships comprising of fares and food and beverages consumed on board;
(ii) Slot charters, space charters, joint charters, feeder services, container box leasing of container shipping."

The AO while referring to Section 115VI(2) of the 1961 Act observed that selling of ships and fixed asset does not fall within the purview of core shipping business activities and there is no scope for interpreting anything else than what is laid down by law and there could not be any scope for having different opinion in this regard. The AO observed that the claim of the assessee is inadmissible in law and malafide which is not sustainable in law. The assessee relied upon judgment of Hon'ble Supreme Court in the case Reliance Petroproducts Private Ltd., 322 ITR 158 (SC) which stood rejected by the AO. The AO relied upon following case laws to hold against assessee, as under

1. *CIT v.. Escort Finance Ltd. (2009) 183 Taxman 453 (Delhi)*
2. *Commissioner of Income-tax v. Zoom Communication (P.) Ltd*
3. *Electrical Agencies Corporation v. CIT 253 ITR 619*

4.Commissioner of Income Tax v. Smt. Shakuntala Devi (Raj.) 270 ITR 590
5.New United Construction Company v.. Commissioner of Income Tax (No.1) (Jhar.) 270 ITR 214
6.Commissioner of Income Tax v. Gudivada Ramchandra Rao (A.P) 265 ITR 668

3.10 The AO observed that penalty is exigible in this case as assessee has furnished inaccurate particulars of income within the meaning of Section 271(1)(c) read with Explanation 1 thereto of the 1961 Act while filing return of income and assessee could not discharge its onus, penalty to the tune of Rs. 2,09,60,863/- was therefore levied by

the AO u/s. 271(1)(c) of the Act read with Explanation 1 thereto for claiming expenses to the tune of Rs. 6,28,79,765/- u/s 115VJ and claiming an amount of Rs.12.39 crores in respect of sale of ships and fixed assets as turnover of core shipping business activity for the purposes of calculating excess of incidental activities, vide penalty order dated 14.11.2014 passed by the AO u/s 271(1)(c) of the 1961 Act.

4. Aggrieved by the penalty order dated 14.11.2014 passed by the AO u/s 271(1)(c) of the 1961 Act, the assessee filed first appeal before the Ld. CIT(A) who also rejected the contentions of the assessee , vide appellate order dated 16.03.2016 , by holding as under:

> *"5.3 I have considered the facts and circumstances of the case, gone through the assessment order of the A.O and the submissions of the appellant and also discussed the case with the AR of the appellant. The contentions and submissions of the appellant are being discussed and decided here in under:*
>
> > *i. Appellant stated that the assessing officer in the assessment order has nowhere recorded that appellant has intentionally suppressed taxable income. In this regard it is mentioned that as referred to by assessing officer in his penalty order, Hon'ble Supreme Court in the case of Union of India vs. Dharmendra Textile Processors and ors (306 ITR 277), have finally settled this issue and held that penalty u/s. 271(i)(c) is a civil liability and willful concealment is not an essential ingredient for attracting civil liability. Accordingly the assessing officer is under no obligation to prove mensrea before imposing penalty u/s, 271(i)(c). Contention of the appellant is therefore not acceptable.*
> >
> > *ii. The appellant stated that the AO in the assessment order has not recorded satisfaction that there was a concealment or filing of inaccurate particulars to be liable for penalty u/s. 271(i)(c). In this regard it is mentioned that on pages 10, 16 and 17 of the assessment order dated 5 December 2008, the AO has initiated the penalty proceedings, Further in the last paragraph, Assessing officer has clearly mentioned "initiate penalty proceedings u/s. 271(l)(c) of the I.T. Act, 1961 for furnishing inaccurate particulars of income. "Further, in a recent judgement, in case of CIT v. Bansal Iron Scrap Co (2014)45 taxmann.com*

92, Hon'ble Punjab and Haryana High Court have held that in view of sub-section (IB) of section 271, direction given by Assessing Officer during course of assessment proceedings for initiation of penalty proceedings under section 271(i)(c) would be deemed to be a valid satisfaction recorded for initiating said proceedings. In view of this legal position and also, contention of the appellant being factually incorrect, same is not acceptable.

iii. The addition made by the AO has been upheld by Hon. ITAT who is the highest fact finding authority vide order dated 21.03.2014. In paragraph 7 of the order (in the part quoted from A.Y. 2007-08) the Hon. ITAT while distinguishing the High Court Ruling relied upon by the appellant have observed that "we are of the opinion that these are factual matters and the same cannot be taken as a binding precedent". Thus the Hon. ITAT has not only upheld the factual findings of the AO but also on legality. In view of these facts reliance of the appellant on the judicial pronouncements in its submissions has no relevance.

iv. The appellant contended that merely making a wrong claim or rejecting explanation of the assessee does not amount to filing of inaccurate particulars of income. In this regard it is mentioned that in the case under consideration the appellant has offered the income from interest and dividend under the head income from other sources while for claiming deduction it has apportioned the expenses relating to shipping income and made an attempt to adjust the same against income from other sources which is not allowable u/s. 57(iii). Similar is the position with reference to the reduction on account of profit on sale of ships and fixed assets. Thus this action of the appellant cannot be said to be bonafide and hence its case is also covered by the provisions of explanation 1 to section 271(i)(c). Further, it may be noted that case of the appellant is not the case of mere disallowance/wrong claim. Hon'ble ITAT in paragraph 10 of their order dated 21st of March 2014, have observed;

> *"In the present case, the income was earned by the assessee company on account of interest on fixed deposits made out of surplus funds and dividend Income earned on investment made in the shares of the company and having regard to all the facts of the case, we are of the view that the same cannot be said to have earned by the assessee by carrying on any separate business activity other than the tonnage tax business as envisaged in section 115VJ*

> *of the Act The said income was chargeable to tax in the hands of the assesses under the head "income from other sources" as rightly held by the authorities below and even the assesses itself had originally offered the said income under the head "income from other sources".*

From the above observations of Hon'ble ITAT it is quite clear that appellant has claimed deduction fully knowing that interest income and dividend income are not business income but income from other sources which the appellant was well aware since the same was claimed in the return of income under the head income from other sources. Thus there is no force in contention of the appellant that it was a case of mere disallowance/rejection of legal claim which is not acceptable.

v. Further, on the basis of above observations of Hon'ble ITAT, it is noted that claim of the appellant was also was not bonafide and hence explanation 1 to section 271(i)(c) is also applicable. In the case of MAK Data P. Ltd vs. CIT 358 JTR 593, Hon'ble Supreme Court have upheld penalty under section 271(i)(c)observing that where explanation offered was not bonafide, penalty was rightly imposed by assessing officer. Similar observations have been made by Hon'ble Punjab & Haryana High Court in the case of CIT Vs. Lalchand Tiratram 225 ITR 675.

vi. Even otherwise, in the case of CIT Vs. Zoom Communication Pvt. Ltd (327 ITR 510), the Hon'ble Delhi High Court, after considering the decision of the Hon'ble Supreme Court in Reliance Petroproducts Ltd. (supra.), have upheld the penalty u/s.271(i)(c) even on wrong claim made, observing as under:-

> *"lf one takes the view that a claim which is wholly untenable in law and has absolutely no foundation on which it could be made, the assessee would not be liable to imposition of penalty, even if he was not acting bona fide while making a claim of this nature, that would give a licence to unscrupulous assessee to make wholly untenable and unsustainable claims without there being any basis for making them"*

Similar observations were made by the Hon'ble Delhi High Court in the case of CIT vs. Escorts Finance Ltd. (381 Taxman 87) and also by the Hon'ble Bombay High Court (after considering Reliance Petro Products] in the case of

Sanghavi Swiss Refills Pvt. Ltd., 255 CTR 251. Contention of the appellant is therefore, rejected.

vii. Appellant stated that this was the second year where computation of income was on a different methodology and hence it was a bona fide mistake. In this regard it is mentioned that the appellant is assisted by legal experts and hence it cannot claim ignorance of law. Being a public-sector company its responsibility to follow the legal provisions strictly was higher as compared to other assesses. Further it is noted that the so-called "mistake", which is being claimed now, was never admitted as such before Assessing Officer or CIT(A) or before Hon'ble ITAT. In fact as mentioned in the submissions it is still in appeal before Hon'ble Bombay High Court, Thus, the appellant is not admitting it to be a mistake which is contrary to its claim in the submissions made. Even otherwise, in the case of Cement Marketing Company of India Ltd. Vs Assistant Commissioner of Sales Tax & Ors, 124 ITR 15, Hon'ble Supreme Court have held that even where the incorrectness of the return is claimed due to want of care on the part of the assessee and there is no reasonable explanation for such want of care, infer deliberateness and treat it as a false return. Similar observations were made by Hon'bfe Gujarat High Court in the case of A.M. Shah & Co. Vs CIT (Guj) 238 ITR 415. This contention of the appellant is therefore rejected.

viii. During the course of appellate proceedings it was noted that in paragraph 6 of the penalty order, the AO has discussed the issue of reduction of an amount of Rs. 12.10 crores being profit on sale of ships and Rs. 29 lakhs being profit on sale of fixed assets (non ships). As evident from the discussion in succeeding paragraphs (particularly paragraph 8 of the penalty order), the AO has imposed penalty on these issues also. However, while computing the penalty in, paragraph 9, the penalty has been levied with reference to the amount of Rs. 6,28,82,589/- only. Similarly in paragraph 2.1 of the penalty order the AO has referred to the administrative expenses of Rs. 7,33,346/- relatable to dividend income but while computing the penalty this amount appears not to have been included. This fact was brought to the knowledge of the AR. In response the AR vide letter dated 10.3.2016 submitted that due to difference of opinion the AO might not have imposed penalty on these items. This contention of the appellant is not acceptable since apparently there is mistake in calculation only while in the main order the assessing officer has discussed and intended to impose penalty on

these amounts also. The assessing officer, after verifying the facts and figures on record, is directed to recalculate the correct amount of penalty imposable."

5. Aggrieved by the appellate order dated 16.03.2016 passed by learned CIT(A), the assessee has come in an appeal before the tribunal. The Ld. Counsel for the assessee at the outset submitted that the assessee is a public sector undertaking and penalty was wrongly levied of Rs. 2,09,60,863/- u/s. 271(1)(c) of the Act. It was submitted that quantum additions were made in an assessment framed u/s 143(3) of the 1961 Act which were later upheld by Mumbai-tribunal as all the aforesaid issues were decided against the assessee, vide common order in ITA no. 2944 & 2945/Mum/2010 for AY 2005-06 and 2006-07 , dated 21.03.2014 passed by the tribunal by holding as under :-

" 7. We have heard the arguments of both the sides and also perused the relevant material available on record. It is observed that a similar issue was involved in assessee's own case for A.Y. 2007-08 and th co-ordinate Bench of this Tribunal decided the same against the assessee vide para 36 & 37 of its order dated 29th July, 2011 passed in ITA No. 145/Mum/2011 which read as under:-

"Ground no.7, is on allocation of administrative expenditure to income, which is admittedly assessable under the head "Other Sources". The assessee relies on the provisions of section 115VJ. In our considered opinion, this section does not apply to the factual situation. The assessee has contended that it does not carry on any other business and the entire income relates to income from business of operating qualifying ships. We have also held that the assessee does not have any separate activity which could result in income. There is no dispute that the income is assessable under the head "Income From Other Sources". Interest is earned on parking of surplus funds. Allocation of expenditure as that which is necessary to earn the interest income to the tune of ` 7,83,88,809 is, in our opinion, is highly excessive and incorrect. Reliance on Rule-8D is also misplaced. The issue is, whether or not the claim falls under the ken of section 57(iii), which reads as follows:-

"57(iii) any other expenditure (not being in the nature of capital expenditure) laid out or expended

wholly and exclusively for the purpose of making or earning such income."

As the expenditure being claim by the assessee cannot be said to have been laid down or expended wholly and exclusively for the purpose of making or earning such income, we uphold the finding of the Revenue authorities in this regard. In our opinion, the Assessing Officer has rightly held that the assessee would not have incurred the expenditure claimed for earning income. The estimation of Rs. 1,00,000 by the Assessing Officer, in our opinion, is reasonable. Coming to reliance placed by the learned Sr. Counsel, on the decision of Hon'ble Jurisdictional High Court Chinai And Co. Pvt. Ltd. (supra), we are of the opinion that these are factual matters and the same cannot be taken as a binding precedent. In view of the above discussion, we uphold the finding of the Commissioner (Appeals) and dismiss ground no.7, raised by the assessee."

8. At the time of hearing before us, the ld. Counsel for the assessee has submitted that the investment in fixed deposits was made by the assessee company out of its income from shipping business and interest earned thereon thus very much formed part of core shipping business of the assessee. He submitted that similarly the dividend income was earned by the assessee on the investment made in the shares of other shipping company and the same therefore was also covered within the core shipping business of the assessee. He has contended that the assessee therefore was entitled to claim deduction on account of common costs attributable to the tonnage tax business on a reasonable basis as per section 115 VJ of the Act. In support of this contention, he relied on the decision of Hon ble Bombay High Court in the case of CIT vs. Punit Commercial Ltd. [2000] 245 ITR 550 (Bom.) and in the case of CIT vs. Indo Swiss Jewels Ltd. and Other [2006] 284 ITR 389 (Bom).

9. The ld. D.R., on the other hand, has submitted that a similar issue involving identical facts and circumstances has already been decided by the Tribunal in favour of the Revenue in assessee's own case for A.Y. 2007-08 and there is no justifiable reason to deviate from the view already taken by the Tribunal on a similar issue. He has contended that the interest income earned by the assessee on investment out of surplus funds as well as dividend income earned by it was chargeable to tax under the head "income from other sources" and even the assessee company itself had offered the same in the return of income as "income from other sources". He has contended that the core activities and incidental activities of shipping business are defined in the Act and interest and dividend income earned by the assessee is not falling either under the core activity or even under incidental activity as per the said definition.

10. After considering the rival submission and perusing the relevant material on record, we find no infirmity in the impugned order of the ld. CIT(A) confirming the disallowance made by the A.O. on account of assessee's claim for deduction from interest and dividend income on account of common costs attributable to the tonnage tax business as per section 115 VJ of the Act. As per the said provision, where tonnage tax company also carries on any business or activity other than the tonnage tax business, then common costs attributable to the tonnage tax business is required to be determined on a reasonable basis. In the present case, the income was earned by the assessee company on account of interest on fixed deposits made out of surplus funds and dividend income earned on investment made in the shares of other company and having regard to all the facts of the case, we are of the view that the same cannot be said to have earned by the assessee by carrying on any separate business activity other than the tonnage tax business as envisaged in section 115 VJ of the Act. The said income was chargeable to tax in the hands of the assessee under the head "income from other sources" as rightly held by the authorities below and even the assessee itself had originally offered the said income under the head "income from other sources". As regards the decision of Hon'ble Bombay High Court in the case of Punit Commercial Ltd. (supra) cited by the ld. Counsel for the assessee, it is observed that the same was rendered in the context of section 80HHC(3)(a) of the Act and the ratio of the said decision therefore cannot be applied in the present case which involves the issue in the context of section 115 VJ of the Act. In the case of Indo Swiss Jewels Ltd. and Other (supra) cited by the ld. Counsel for the assessee, the facts involved were different from the present case inasmuch as inter-corporate deposits were made by the assessee from the surplus funds that were kept apart for payment for imported machinery and the interest earned on such short term deposits of the money kept apart for the purpose of business was held to be business income of the assessee by the Hon'ble Bombay High Court. The case laws cited by the ld. Counsel for the assessee thus are not applicable in the present case. On the other hand, a similar issue involving identical facts and circumstances has already been decided by the Tribunal in assessee's own case for A.Y. 2007-08 vide its order dated 29th July, 2011 (supra) and respectfully following the said decision of the co-ordinate Bench of this Tribunal in assessee's own case, we uphold the impugned order of the ld. CIT(A) confirming the disallowance made by the A.O. on account of assessee's claim for deduction from interest and dividend income on account of common costs attributable to the tonnage tax business as per the provisions of section 115VJ of the Act. Ground No. 3 & 4 of the assessee's appeal for A.Y. 2005-06 are accordingly dismissed.

***

***

19. Ground No. 5 raised in the appeal of the assessee reads as under:-

"5. On the facts and as per provisions of 'Act' 'CIT (A)' has erred in confirming the A.O.'s action of re-adjusting the turnover by reducing Rs. 73.52 crores from 'core shipping".

20. We have heard the arguments of both the sides and also perused the relevant material available on record. It is observed that the following items of income were reduced by the A.O. as well as the ld. CIT(A) from the turnover of core shipping while computing the excess of incidental shipping income:-

(Amount in crores)

Profit on sale of ships	12.10
Excess provision written back	23.94
Sundry receipts (core shipping)	11.11
Sundry credit balances written back	0.47
Profit on sale of fixed ships (non ship)	0.29
Reimbursement from managed vessels	25.61
Amount reduced from Turnover of core shipping	73.52

21. At the time of hearing before us, the ld. Representatives of both the sides have agreed that a similar issue was involved in assessee's own case for A.Y. 2007-08 and the Tribunal vide its order dtd. 29th July, 2011 has decided the same in respect of item No. 2 (excess provision written back) and item No. 4 sundry credit balances written back) in favour of the assessee and item No. 1 (profit on sale of ships) and item No. 5 (profit on sale of fixed ships (non ship) against the assessee for the following reasons given in para 29 and 39 of its order:-

> "29. Provisions of section 115VA provides that the income from business of operating qualifying ships may be computed in accordance with the provisions of chapter XII-G, and that the income so computed shall be deemed to be the profits and Income from qualifying ships are defined in section 115VC, and there is no dispute on this aspect. Section 115VE mandates that profits from business of a company engaged in the business of operating qualifying ships shall be computed under the tonnage tax scheme. It also specifies that such business of operating qualifying ships shall be considered as a separate business distinct from all other activities or business carried on by the company. The mode of computation of tonnage income is given under section 115VG. The term "relevant shipping income" has been defined in section 115VI. It is basically classified into two categories i.e., profits from core activities referred to in sub-section 2 and profits from incidental activity referred to in sub-section 5. The issue is, whether the income by way of right back of provisions of sundry credit balances and prior period expenses can be considered as income from core activities of a tonnage tax company. In our opinion, write back of these items is to be considered as income from core

activity. In a going concern, such write backs and making of supplementary provisions takes place. The Assessing Officer as well as the Commissioner (Appeals) have treated the very same income which is taxable under section 41(1) differently. The first being expenditure claimed in pre-tonnage tax scheme assessment years and the second being expenditure claimed in post tonnage tax scheme assessment years. Such a segregation is not permissible under the Act. Both the incomes are incomes from core activity and just because tax rates different, they cannot be treated as non-business income. The Assessing Officer as well as the Commissioner (Appeals) seem to have been influenced by the fact that the assessee has an income of ` 800 crores in its Profit & Loss account and whereas he has offered only ` 18 crores to tax under the tonnage tax scheme. The decision whether a particular income has to be brought to tax or not, cannot be based on such a view of the matter. The legislature in its wisdom provided the manner of computation of income under the tonnage tax scheme. In section 115VA, it is clearly provided that sections 28 to 43C would not over ride the computation of profits and gains under section 115VA. As section 41(1) falls within sections 28 to 43C, no separate addition under that section can be made. As section 41(1) seeks to bring to tax certain specified items of receipts under the head "profits and gains of business" the scheme should not be invoked while computing profits and gains of business under Chapter-XII-G. Hence, we are of the opinion that the argument of the assessee should succeed.

30. Coming to ground no.10, as already stated, the assessee has no other activity which would result in income. It also does not have any other business. Thus, the income is from core activity only. Nevertheless, the income in question is taxable under the head "Capital Gains" and does not fall within the ambit of sections 28 to 43C. Thus, the receipt cannot be considered as turnover in view of the provisions of section 115VA and consequently out of the purview of Chapter-XII-G. In view of the above discussion, we uphold the finding of the Assessing Officer in this regard."

22. Respectfully following the Tribunal's order dated 29th July, 2011 (supra) in assessee's own case for A.Y. 2007-08, we uphold the action of the authorities below in reducing the profit on sale of ships and fixed ships from the turnover of core shipping. The action of the authorities below in reducing the excess provision written back and sundry credit balances written back, however, is set aside and the A.O. is directed to include the said income in the turnover of core shipping. As regards item No. 3 (sundry receipts from core shipping) and item No. 6 (reimbursement from managed vessels), the ld. Counsel for the assessee has submitted that neither the A.O. nor the ld. CIT(A) has examined the relevant details placed at 157 of the paper book and urged that the matter may be sent back to the A.O. for deciding the same afresh after verifying the said detail. As the ld. D.R. has no objection in this regard, the issue relating to inclusion or exclusion of item No. 3 & 6 is restored to the file of the A.O. for

deciding the same afresh after verifying the said details. Ground No. 5 of the assessee's appeal for A.Y. 2006-07 is thus partly allowed."

The Ld. Counsel for the assessee further submitted that Hon'ble Bombay High Court in ITA no. 1013 of 2015 vide orders dated 20.2.2018 was pleased to admit substantial question of law which arose from the appeal decided by the tribunal against the assessee in ITA no. 2945/Mum/2010 for AY 2006-07, by holding as under:

"*1. Heard. Appeal relates to Assessment Year 2006-07.*

2. Appeal admitted on the following substantial questions of law:-

1) Whether on the facts and in the circumstances of the case and in law, the Tribunal ought to have held that interest and dividend income forms part of the core activity and cannot be separately assessed to tax as income from other sources?

2) Whether on the facts and in the circumstances of the case and in law, the Tribunal ought to have held that administrative expenses of Rs. 6,36,13,111/- should be allowed as deduction while computing the interest and dividend income?

3) Whether on the facts and in the circumstances of the case and in law, the Tribunal ought to have held that profits from sale of ships and other related assets should qualify as total turnover from core activity for the purposes of proviso to Section 115VI(1) of the Income Tax Act, 1961?

3. Registry is directed to communicate copy of this order to the Tribunal. This would enable the Tribunal to keep papers and proceedings relating to the present appeal available, to be produced when sought for by the Court.

4. Mr. Malhotra waives service.

5. To be heard along with Income Tax Appeal No. 2653 of 2011"

It was submitted that assessee has adopted tonnage tax scheme for the first time for computing income in the AY 2005-06, as the scheme was introduced by Finance Act, 2004 w.e.f. 01.04.2005 by insertion of Chapter XX-G consisting of Section 115V to 115VZC. The assessee claimed that it bonafidely allocated administrative expenses against interest income and dividend income . It was submitted that profit on sale of ships as well on fixed assets were considered as part of core shipping activities under a bonafide belief. It was stated that all the issues were decided against the assessee concurrently by all the authorities in quantum assessments including tribunal who have taken consistent stand against the assessee. It was submitted that for AY 2007-08 also , the tribunal has decided the issue against the assessee in ITA no. 145/Mum/2011. It was submitted that deposits were made keeping in view requirements of creating tonnage tax reserves account for purchasing new ships from which interest income arose, as contemplated u/s 115VT of the 1961 Act. It was submitted that the assess e is statutorily required to invest surplus funds to the tune of 20% of Book Profits as provided under Section 115VT towards tonnage tax reserves which is to be utilised for making investments in new ships within a period of 8 years . It was submitted that the acquisition of new ships is highly capital intensive and funds are to be kept available in deposits to finance acquisition of new ships as contemplated u/s 115VT within stipulated period of 8 years, on which interest income arose and hence there is a direct nexus of the interest income with the shipping business and such activity is to be described an activity which is incidental to core shipping business. It was also submitted that the investments were made in shipping companies mainly JV in Iran from which dividend arose and such dividend income was taxable. It was submitted that income from dividend was received from foreign company based in Iran namely Irano Hind Shipping Co. Ltd. and hence the same was taxable . It was claimed that the assessee claimed deduction of

administrative expenses being common cost against the aforesaid dividend income earned from said foreign company based in Iran engaged in shipping business to be income from incidental activities connected with shipping business. It was submitted that the assessee has also considered income from sale of ships and other fixed assets to be income from core activities of shipping . It was submitted that Ld. CIT(A) and the tribunal has decided issue against the assessee against quantum assessment proceedings , while Hon'ble Bombay High Court has now admitted substantial question of law which arose from the appeal decided against the assessee by the tribunal. The assessee also referred to provisions of Section 115VJ of the 1961 Act for treatment of common costs and submitted that administrative costs allocated to income from interest and dividend were disallowed even by tribunal but the assessee had a bonafide belief that such common costs are deductible u/s 115VJ. It was submitted that AO had observed that the assessee furnished inaccurate particulars of income which led to the levying of penalty u/s. 271(1)(c) of the Act. Our attention was also drawn to page no. 24 of the paper book wherein computation of income is placed in which administrative expenses were claimed to the tune of aggregate of Rs. 6,36,11,310/- to be deducted from dividend income of Rs. 2.01 crores and interest income to the tune of Rs. 172.12 crores respectively . The assessee referred to page no. 25/paper book to contend that administrative expenses were also allocated against income from incidental activities and also against interest and dividend income. The assessee also referred to page no. 44 of the paper book /para 6 to contend that complete disclosures were made in the return of income filed in computation of income(page 24-25/pb) as well before the AO during assessment proceedings conducted u/s 143(3) read with Section 143(2) of the 1961 Act , vide submissions dated 30.09.2008 (page no. 24 to 29/pb) . Thus, it was submitted that it could not be said that the assessee concealed particulars of income or furnished inaccurate particulars of income and it was claimed that complete disclosures

were made by the assessee. Our attention was drawn to para 4.1.2 of the penalty order dated 14.11.2014 passed u/s 271(1)(c) of the 1961 Act , wherein the AO observed that the assessee has not filed complete details and information before the AO and claiming of the said administrative expenses against interest income and dividend income was held to be against the provisions of the 1961 Act which amounted to furnishing of inaccurate particulars of income for which penalty is justifiably leviable within mandate of Section 271(1)(c) of the 1961 Act. The learned counsel for the assessee submitted that even for assessment year 2009-10 in the case of the assessee, the said expenses stood disallowed by the tribunal in cross appeals in ITA no. 3117/Mum/2013 and 3546/Mum/2013 , vide common order dated 19.08.2015. The issue was also decided against the assessee by tribunal for AY 2007-08 in ITA no. 145/Mum/2011. The assessee relied upon the decision of Hon'ble Supreme Court in the case of Reliance Petroproducts P. Ltd. (2010) 189 Taxmann 322(SC), and decision of Kolkatta-tribunal in the case of Surendra Overseas Ltd v. DCIT in ITA no. 824/Kol/2009, vide orders dated 17.02.2012, and submitted that penalty u/s 271(1)(c) of the 1961 Act is not exigible in the instant case as merely because a claim is filed which stood rejected by Revenue authorities will not make assessee liable to penalty within provisions of the 1961 Act. It was submitted that special reserves are to be created u/s. 115VT(formerly under Section 33AC) which was deposited in FDR's for the purpose of buying new ship within a period of 8 years. The learned counsel for the assessee relied upon provisions of Section 57(iii) of the Act and submitted that these interest income is inextricably linked with core shipping business and being activity incidental to core shipping business activity , administrative expenses being common costs claimed based on turnover are to be allowed which infact was belief of the assessee for making such claim in return of income filed with Revenue which was a bonafide claim . It was also submitted that assessee has invested in JV in an Iranian company which is engaged in shipping

business from where dividend income arose and the said dividend income was taxable. The assessee also relied upon Hon'ble Bombay High Court decision which is placed in paper book / page no. 59 wherein Hon'ble Bombay High Court admitted substantial question of law in ITA no. 1013 of 2015 dated 26.02.2018 pertaining to AY 2006-07 against the aforesaid decision of the tribunal . The assessee also relied upon the decision of Hon'ble Bombay High Court in the case of CIT v. Nayan Builders and Developers reported in (2015) 56 taxmann.com 335(Bombay) and submitted that once substantial question of law is admitted by Hon'ble Bombay High Court then no penalty is exigible because admission of appeal by Hon'ble Bombay High Court on substantial question of law evidences that the issue is debatable, but on being confronted by the Bench , the Ld. Counsel for the assessee fairly submitted that this decision of Hon'ble Bombay High Court in the case of Nayan Builders and Developers(supra) does not lead to laying down rule for universal application as was held by Hon'ble Bombay High Court in the case of Pr. CIT v. Shree Gopal Housing and Plantation Corporation in ITA no. 701 of 2015 vide judgment dated 06-02.2018 , wherein Hon'ble Bombay High Court held as under:-

> *"4..... Therefore, each appeal in respect of the order deleting / imposing a penalty by the Tribunal would have to be considered in relation to the facts arising therein and also in the quantum proceedings. It cannot be said as a matter of rule that in case where this Court admits an appeal relating to quantum proceedings ipso facto i.e. without anything more, the penalty order get vitiated. Thus, the question of entertaining an appeal from an order imposing / deleting penalty would have to be decided on a case to case basis. There can be no universal rule to the effect that no penalty, if quantum appeal is admitted on a substantial question of law."*

Our attention was also drawn to page no. 73 and 74 of the paper book , wherein notice dated 05.12.2008 issued by the AO for AY 2006-07 u/s. 274 r.w.s. 271(1)(c) of the 1961 Act was placed and it

was submitted that the AO initiated penalty u/s. 271(1)(c) for furnishing of inaccurate particulars of income in the assessment order dated 05.12.2008 passed u/s 143(3) of the 1961 Act , but appropriate column in the said penalty notice dated 05.12.2008 issued u/s 271(1)(c) was not struck off . Hon'ble Karnataka High Court decision in the case of CIT v. SSA's Emerald Meadows in ITA no. 380 of 2015 dated 23.11.2015 was relied upon by learned counsel for the assessee to contend that since the AO has not struck off relevant limb under which the penalty provisions u/s 271(1)(c) was invoked for furnishing of inaccurate particulars of income or for concealment of income, no penalty is exigible and the said notice dated 5.12.2008 ought to have been quashed . It was submitted that SLP filed by Revenue against the aforesaid decision of Hon'ble Karnataka High Court stood dismissed by Hon'ble Supreme Court in SLP(C) CC 11485/ 2016 vide orders dated 05.08.2016. It was submitted that profit on sale of ship was not considered as core activity from shipping business. Reference was made to decision of the Visakhapatnam-tribunal in the case of Dredging Corporation of India Limited v. ACIT in ITA no. 6 to 8 and 5 to 17/Vizag/2011 vide orders dated 25.07.2011 reported in (2011) 13 taxmann.com 37(Vishak.), wherein profit on sale of assets was held to be from core activity from shipping. It was submitted that the assessment year 2005-06 was first year when the assessee claimed tonnage tax scheme as the said provisions relating to tonnage tax scheme were introduced by Finance Act, 2004 w.e.f. 01.04.2005. It was submitted that Hon'ble Bombay High Court was pleased to admit substantial question of law arising from dismissal of appeal of the assessee by tribunal against quantum assessment framed by the AO. The assessee also relied upon decision of Pune Bench in the case of Kanbay Software India P. Ltd v. DCIT (2009)31 SOT 153(Pune).

6. The Ld. DR on the other hand relied upon appellate order passed by Ld.CIT(A) and it was submitted that the tribunal has rightly held

that no administrative expenses can be deducted from income from interest and dividend income as provisions of Section 57(iii) are applicable and these expenses were not incurred wholly and exclusively for earning of interest income from deposits and dividend income from JV company based in Iran . It was submitted by learned DR that income from other sources by way of interest on deposits and dividend income cannot be considered to be an activity incidental to the core activity of shipping. It was also submitted that profit on sale of ships and other fixed assets cannot be considered to be core shipping activities.

7. We have carefully considered rival contentions and perused the material on record including relevant orders of he authorities, paper book filed by the assessee and cited case laws We have observed that the assessee is a Public Sector Undertaking engaged mainly in the business of shipping . The gross turnover of the assessee was to the tune of Rs.3677.56 crores (pb/page 47). The assessee opted for tonnage tax scheme as is contained in newly inserted Chapter XII-G of the 1961 Act for bringing to tax its income arising from shipping business .The tonnage tax scheme was introduced by Finance Act, 2004 w.e.f. 01.04.2005 by insertion of Chapter XII-G in the 1961 statute , wherein Section 115V to 115VZC of the 1961 Act were inserted dealing with Special provisions relating to chargeability to tax income of shipping companies. The assessee opted for tonnage tax scheme as is provided under Chapter XII-G for the first time for AY 2005-06 i.e. from the very first year of inception when the scheme was introduced by Finance Act, 2004 . This assessment year viz. AY 2006-07 is the second year of availement of tonnage tax scheme by the assessee. Undisputedly, the assessee was entitled and eligible to opt for the tonnage tax scheme as it met all the conditions of the scheme and the assessee in-fact opted and availed the new scheme as provided under the 1961 Act. The assessee has also furnished all necessary reports and certificates which are required under this

scheme to avail the tonnage tax scheme. The assessee declared income under tonnage tax scheme defined in Section 115V of the 1961 Act and tonnage income was computed in accordance with provisions of Section 115VG of the 1961 Act. The assessee apart from the tonnage income declared income from incidental activities in terms of proviso to sub-section 1 of Section 115VI of the 1961 Act. The assessee offered in addition to tonnage income , including income from incidental activities, income from interest and dividend income initially under the head 'Income from other Sources' .It is also undisputed that the scheme entails creation of a special tonnage tax reserves by transferring 20% of book profits computed in the manner as laid down in Chapter XII-G under Section 115VT The said special reserves as is created u/s 115VT are to be utilised for the purposes of acquiring a new ship for the purposes of business within a period of 8 years as is provided u/s 115VT(3)(a). The said amount is allowed to be used for the purposes of business of operating qualifying ships in the interim period but the same cannot be used for distribution by way of dividends or profits or for remittance outside India as profits or for the creation of any asset outside India as is contemplated u/s 115VT(3)(b). It is also undisputed that acquisition of a new ship is an highly capital intensive activity and requires huge financial outlay. Prior to introduction of Chapter XII-G in 1961 Act , the provision of Section 33AC of the 1961 Act held the field dealing with shipping companies which also stipulated creation of special reserves to be used for acquiring a new ship for the purposes of the business of the assessee within eight years. The dispute has arisen between the rival parties as to the interpretation of provisions of Chapter XII-G of the 1961 Act, wherein the assessee claimed administrative expenses to the tune of Rs. 6,36,13,110/- to be deducted from dividend income of Rs. 2.01 crores and interest income to the tune of Rs. 172.12 crores respectively. The said common costs are required to be deducted from any business or other activities other than the tonnage tax business as provided u/s 115VJ of the 1961 Act. The interest income has

arisen to the assessee from investments of surplus fund in deposits while dividend income arose to the assessee from investments in shipping company mainly JV company in Iran namely Irono Hind Shipping Company Limited, Tehran. The said dividend income is taxable under the 1961 Act as it has been received from foreign company. The assessee initially offered to tax income from interest from deposits as well income from dividend under the head 'income from other sources' but claimed deduction of administrative expenses being common costs allocated on turnover basis which is considered to be a reasonable basis, as is provided u/s 115VJ of the 1961 Act. All the authorities below viz. AO , learned CIT(A) and also Mumbai-tribunal has concurrently held against assessee by holding that these incomes consisting of interest income as well dividend income cannot be classified as income from an activity incidental to the shipping business and had held that the assessee could not have adjusted administrative expenses against these incomes arising from interest on deposits or dividend income from the foreign company. The relevant extract of the tribunal order which is a common order in ITA no. 2944 & 2945/Mum/2010 for AY 2005-06 and 2006-07 , dated 21.03.2014 dismissing the contention of the assessee is reproduced as hereunder :-

> *" 7. We have heard the arguments of both the sides and also perused the relevant material available on record. It is observed that a similar issue was involved in assessee's own case for A.Y. 2007-08 and the co-ordinate Bench of this Tribunal decided the same against the assessee vide para 36 & 37 of its order dated 29th July, 2011 passed in ITA No. 145/Mum/2011 which read as under:-*
>
> > *"Ground no.7, is on allocation of administrative expenditure to income, which is admittedly assessable under the head "Other Sources". The assessee relies on the provisions of section 115VJ. In our considered opinion, this section does not apply to the factual situation. The assessee has contended that it does not carry on any other business and the entire income relates to income from business of operating qualifying ships. We have also held that the assessee does not have any separate activity which could result in income.*

There is no dispute that the income is assessable under the head "Income From Other Sources". Interest is earned on parking of surplus funds. Allocation of expenditure as that which is necessary to earn the interest income to the tune of ` 7,83,88,809 is, in our opinion, is highly excessive and incorrect. Reliance on Rule-8D is also misplaced. The issue is, whether or not the claim falls under the ken of section 57(iii), which reads as follows:-

> *"57(iii) any other expenditure (not being in the nature of capital expenditure) laid out or expended wholly and exclusively for the purpose of making or earning such income."*

As the expenditure being claim by the assessee cannot be said to have been laid down or expended wholly and exclusively for the purpose of making or earning such income, we uphold the finding of the Revenue authorities in this regard. In our opinion, the Assessing Officer has rightly held that the assessee would not have incurred the expenditure claimed for earning income. The estimation of Rs. 1,00,000 by the Assessing Officer, in our opinion, is reasonable. Coming to reliance placed by the learned Sr. Counsel, on the decision of Hon'ble Jurisdictional High Court Chinai And Co. Pvt. Ltd. (supra), we are of the opinion that these are factual matters and the same cannot be taken as a binding precedent. In view of the above discussion, we uphold the finding of the Commissioner (Appeals) and dismiss ground no.7, raised by the assessee."

8. At the time of hearing before us, the ld. Counsel for the assessee has submitted that the investment in fixed deposits was made by the assessee company out of its income from shipping business and interest earned thereon thus very much formed part of core shipping business of the assessee. He submitted that similarly the dividend income was earned by the assessee on the investment made in the shares of other shipping company and the same therefore was also covered within the core shipping business of the assessee. He has contended that the assessee therefore was entitled to claim deduction on account of common costs attributable to the tonnage tax business on a reasonable basis as per section 115 VJ of the Act. In support of this contention, he relied on the decision of Hon'ble Bombay High Court in the case of CIT vs. Punit Commercial Ltd. [2000] 245 ITR 550 (Bom.) and in the case of CIT vs. Indo Swiss Jewels Ltd. and Other [2006] 284 ITR 389 (Bom).

9. The ld. D.R., on the other hand, has submitted that a similar issue involving identical facts and circumstances has already been decided by the Tribunal in favour of the Revenue in assessee's own case for A.Y. 2007-08 and there is no justifiable reason to deviate from the view already taken by the Tribunal

on a similar issue. He has contended that the interest income earned by the assessee on investment out of surplus funds as well as dividend income earned by it was chargeable to tax under the head "income from other sources" and even the assessee company itself had offered the same in the return of income as "income from other sources". He has contended that the core activities and incidental activities of shipping business are defined in the Act and interest and dividend income earned by the assessee is not falling either under the core activity or even under incidental activity as per the said definition.

10. After considering the rival submission and perusing the relevant material on record, we find no infirmity in the impugned order of the ld. CIT(A) confirming the disallowance made by the A.O. on account of assessee's claim for deduction from interest and dividend income on account of common costs attributable to the tonnage tax business as per section 115 VJ of the Act. As per the said provision, where tonnage tax company also carries on any business or activity other than the tonnage tax business, then common costs attributable to the tonnage tax business is required to be determined on a reasonable basis. In the present case, the income was earned by the assessee company on account of interest on fixed deposits made out of surplus funds and dividend income earned on investment made in the shares of other company and having regard to all the facts of the case, we are of the view that the same cannot be said to have earned by the assessee by carrying on any separate business activity other than the tonnage tax business as envisaged in section 115 VJ of the Act. The said income was chargeable to tax in the hands of the assessee under the head "income from other sources" as rightly held by the authorities below and even the assessee itself had originally offered the said income under the head "income from other sources". As regards the decision of Hon'ble Bombay High Court in the case of Punit Commercial Ltd. (supra) cited by the ld. Counsel for the assessee, it is observed that the same was rendered in the context of section 80HHC(3)(a) of the Act and the ratio of the said decision therefore cannot be applied in the present case which involves the issue in the context of section 115 VJ of the Act. In the case of Indo Swiss Jewels Ltd. and Other (supra) cited by the ld. Counsel for the assessee, the facts involved were different from the present case inasmuch as inter-corporate deposits were made by the assessee from the surplus funds that were kept apart for payment for imported machinery and the interest earned on such short term deposits of the money kept apart for the purpose of business was held to be business income of the assessee by the Hon'ble Bombay High Court. The case laws cited by the ld. Counsel for the assessee thus are not applicable in the present case. On the other hand, a similar issue involving identical facts and circumstances has already been decided by the Tribunal in assessee's own case for A.Y. 2007-08 vide its order dated 29th July, 2011 (supra) and respectfully following the said decision of the co-ordinate Bench of this Tribunal in assessee's own case, we uphold the impugned order of the ld.

CIT(A) confirming the disallowance made by the A.O. on account of assessee's claim for deduction from interest and dividend income on account of common costs attributable to the tonnage tax business as per the provisions of section 115VJ of the Act. Ground No. 3 & 4 of the assessee's appeal for A.Y. 2005-06 are accordingly dismissed.

The assessee in our considered view, however , had made due disclosure in the return of income filed vide computation of income as well in its submissions before the AO during the course of assessment proceedings . The assessee has drawn our attention to page no. 24-25/paper book as well page 43-45 of paper book to support its contentions that due disclosures were made and nothing was concealed from Revenue. Section 271(1)(c) of the 1961 Act provide for levying of penalty for furnishing of inaccurate particulars of income or for concealment of income. The AO had invoked limb concerning filing of inaccurate particulars of income by the assessee for levying penalty u/s 271(1)(c) of the 1961 Act. The effect of Explanation 1 to Section 271(1)(c) of the 1961 Act is that if the assessee offers an explanation which is bonafide which the assessee is able to substantiate and that all the facts relating to the same and material to computation of income have been disclosed, then the assessee is out of clutches of penalty provisions as are contained u/s 271(1)(c) of the 1961 Act. The claim of the assessee is that these income from interest on deposits as well dividend income are business incomes incidental to the income from shipping although offered to tax under the head 'income from other sources' and deduction u/s 57(iii) of the expenses towards administrative expenses being common costs is to be allowed which stood rejected by all the authorities concurrently including Mumbai-tribunal. The investments on which dividend income arose is in the Iranian JV company engaged in shipping business namely 'Irono Hind Shipping Company Limited' based in Tehran, Iran. The claim of the assessee albeit rejected by all the authorities concurrently in quantum assessment proceedings keeping in view special scheme concerning shipping companies as is contained in Chapter XII-G of the 1961 Act ,

was not however without any basis and cannot be said to be malicious or non bonafide claim. This is also not the claim and the case of the Revenue that the said administrative expenses claimed to be set off against interest income and dividend income were altogether bogus or sham expenses which were never incurred by the assessee and an attempt was made by the assessee to perpetrate fraud on revenue. The assessee had made an legal claim of deduction of administrative expenses against interest and dividend income based on interpretation of provisions of newly inserted chapter XII-G under the 1961 Act which claim of the assessee did not found favour with any of the authorities including Mumbai-tribunal. The matter in quantum has now reached the doors of Hon'ble Bombay High Court at the behest of the assessee and Hon'ble Bombay High Court was pleased to admit substantial question of law in ITA no. 1013 of 2015 vide orders dated 20.02.2018 , by holding as under:

"*1. Heard. Appeal relates to Assessment Year 2006-07.*

2. Appeal admitted on the following substantial questions of law:

1) Whether on the facts and in the circumstances of the case and in law, the Tribunal ought to have held that interest and dividend income forms part of the core activity and cannot be separately assessed to tax as income from other sources?

2) Whether on the facts and in the circumstances of the case and in law, the Tribunal ought to have held that administrative expenses of Rs. 6,36,13,111/- should be allowed as deduction while computing the interest and dividend income?

3) Whether on the facts and in the circumstances of the case and in law, the Tribunal ought to have held that profits from sale of ships and other related assets should qualify as total turnover from core activity for the purposes of proviso to Section 115VI(1) of the Income Tax Act, 1961?

3. Registry is directed to communicate copy of this order to the Tribunal. This would enable the Tribunal to keep papers and proceedings relating to the present appeal available, to be produced when sought for by the Court.

4. Mr. Malhotra waives service.

5. To be heard along with Income Tax Appeal No. 2653 of 2011"

The special provisions relating to shipping companies as are contained in Chapter XII-G were newly inserted provisions by Finance Act, 2004 w.e.f. 01.04.2005 and this chapter is a code in itself for bringing to tax income of shipping companies eligible to opt for this scheme. The assessee opted for the scheme from AY 2005-06 and this is only the second year of introduction of this new regime for taxation of shipping companies. The interpretation of various clauses of this new scheme relating to income of shipping companies did not stood the scrutiny of courts by the time the assessee filed its return of income for relevant AY i.e. 2006 07 as this scheme of taxation was new introduced by Finance Act, 2004 wef 01.04.2005 . The assessee presented its claim by interpreting the special provisions relating to shipping companies under Chapter XII-G in the manner that the interest income from deposits and dividend income from investments in shipping company were considered to be other/incidental activity to the core shipping activity as contemplated u/s 115VJ as the assessee was under a bonafide belief that deposits on which interest arose are being made have origin to special tonnage tax reserve created as is statutorily mandated u/s 115VT which needed to be compulsorily created u/s 115VT which can be used only for acquiring a new ship within 8 years as contemplated u/s 115VT(3)(a) and thus consequently have business nexus with shipping activities. The dividend income also arose from investment in an Iranian JV company engaged in shipping business namely 'Irano Hind Shipping Company Limited', Tehran Iran. The said belief that these

aforesaid income(s) are from incidental activity or activity related to core shipping activities was not completely without any basis more-so the entire scheme under Chapter XII-G was newly inserted scheme in the statute albeit the said claim of deduction of administrative expenses was rejected by tribunal also. The Hon'ble Bombay High Court has also admitted substantial question of law in an appeal filed by assessee arising from decision of the tribunal wherein the issue's were decided by the tribunal against the assessee.We are also aware that mere admission of substantial question of law by Hon'ble High Court will not however lead to the conclusion as a universal rule that no penalty is exigible as laid down by Hon'ble Bombay High Court in the case of Shree Gopal Housing and Plantation Corporation(supra) but the belief as was held by assessee in the instant appeal to come to the conclusion that these incomes from interest and dividend are from activities incidental to or connected to core shipping activities was not without any basis altogether , albeit the said belief does not found favour with all the three authorities including tribunal concurrently . The decision of Hon'ble Supreme Court in the case of Reliance Petroproducts Private Ltd. supra) is directly applicable to factual matrix of the case and the aforesaid explanation in our considered view had arisen from a bonafide belief which has taken the assessee out of clutches of penalty provisions as are contained in Section 271(1)(c) of the 1961 Act as it could not be said that the explanation offered by the assessee was ex-facie illegal and it could also not be said that completely a bogus /sham claim of deduction was set out by the assessee to defraud Revenue. It is another matter that the claim filed by the assessee in seeking deduction of common costs being administrative costs from interest income and dividend income did not found favour with all the authorities concurrently including Mumbai-tribunal but mere rejection of a legal claim will not automatically lead to levying of penalty u/s 271(1)(c) of the 1961 Act. Hon'ble Bombay High Court is now seized of all the issues as the assessee challenged the appellate order passed by Mumbai-tribunal

by filing an appeal u/s 260A of the 1961 Act. The Hon'ble Bombay High Court in ITA no 1013 of 2015 vide orders dated 20.02.2018 for the impugned assessment year was pleased to admit substantial question of law arisen from the aforesaid appeal decided by Mumbai-tribunal against the assessee for the impugned assessment year. This is also a strong indicative of the fact that the issue's under consideration being debatable in nature. The decision of Hon'ble Bombay High Court decision in the case of Nayan Builder and Developer(supra) stood explained in the later decision of Hon'ble Bombay High Court in the case of Pr. CIT v. Shree Gopal Housing and Plantation Corporation in ITA no. 701 of 2015 vide judgment dated 06-02.2018 , wherein Hon'ble Bombay High Court held as under:-

> *"4..... Therefore, each appeal in respect of the order deleting / imposing a penalty by the Tribunal would have to be considered in relation to the facts arising therein and also in the quantum proceedings. It cannot be said as a matter of rule that in case where this Court admits an appeal relating to quantum proceedings ipso facto i.e. without anything more, the penalty order get vitiated. Thus, the question of entertaining an appeal from an order imposing / deleting penalty would have to be decided on a case to case basis. There can be no universal rule to the effect that no penalty, if quantum appeal is admitted on a substantial question of law."*

Thus , due to detailed reasoning as set out above , we are of the considered view that penalty u/s 271(1)(c) of the 1961 Act in the instant case before us is not exigible with respect to the claim of the assessee for deduction of administrative expenses against income from interest on deposits and dividend income as explanations as were submitted by the assessee were bonafide explanations as to interpretation of a newly inserted special scheme of taxation for shipping companies as are contained in Chapter XII-G which has taken the assessee out of clutches of penalty provisions as were contained in Section 271(1)(c) of the 1961 Act and hence we have no hesitation in deleting the penalty as levied by the AO u/s 271(1)(c) and

confirmed by learned CIT(A) with respect to the claim of the assessee for deduction of administrative expenses against income from interest on deposits and dividend income. The assessee succeeds on these two issues on which penalty was levied by AO and as was confirmed by learned CIT(A). We order accordingly

Coming next to the issue of treating profit on sale of ships as well as profits on sale of other fixed assets being treated as income from core shipping activities by the assessee was also decided against the assessee by all the three authorities concurrently i.e. AO, learned CIT(A) and the tribunal .The assessee is a Public Sector Undertaking mainly engaged in the business of shipping wherein it is operating large number of qualifying ships of which details are placed in paper book/page 26 onwards . The assessee has treated profit on sale of ships as well profit on sale of other assets to be income from core shipping businesses. The assessee is Public Sector Undertaking and majorily the activities of the assessee were solely shipping business. All the three authorities including tribunal has decided both the issue concurrently against the assessee in quantum assessment proceedings and appeals arising therefrom. The relevant extract of the tribunal decision holding against the assessee in quantum on both these issues is reproduced hereunder:

> 19. Ground No. 5 raised in the appeal of the assessee reads as under:-
>
> "5. On the facts and as per provisions of 'Act' 'CIT (A)' has erred in confirming the A.O.'s action of re-adjusting the turnover by reducing Rs. 73.52 crores from 'core shipping".
>
> 20. We have heard the arguments of both the sides and also perused the relevant material available on record. It is observed that the following items of income were reduced by the A.O. as well as the ld. CIT(A) from the turnover of core shipping while computing the excess of incidental shipping income:-
>
> (Amount in crores)

Profit on sale of ships	12.10
Excess provision written back	23.94
Sundry receipts (core shipping)	11.11
Sundry credit balances written back	0.47

Profit on sale of fixed ships (non ship)	0.29
Reimbursement from managed vessels	25.61
Amount reduced from Turnover of core shipping	73.52

21. At the time of hearing before us, the ld. Representatives of both the sides have agreed that a similar issue was involved in assessee's own case for A.Y. 2007-08 and the Tribunal vide its order dtd. 29th July, 2011 has decided the same in respect of item No. 2 (excess provision written back) and item No. 4 sundry credit balances written back) in favour of the assessee and item No. 1 (profit on sale of ships) and item No. 5 (profit on sale of fixed ships (non ship) against the assessee for the following reasons given in para 29 and 39 of its order:-

> "29. Provisions of section 115VA provides that the income from business of operating qualifying ships may be computed in accordance with the provisions of chapter XII-G, and that the income so computed shall be deemed to be the profits and Income from qualifying ships are defined in section 115VC, and there is no dispute on this aspect. Section 115VE mandates that profits from business of a company engaged in the business of operating qualifying ships shall be computed under the tonnage tax scheme. It also specifies that such business of operating qualifying ships shall be considered as a separate business distinct from all other activities or business carried on by the company. The mode of computation of tonnage income is given under section 115VG. The term "relevant shipping income" has been defined in section 115VI. It is basically classified into two categories i.e., profits from core activities referred to in sub-section 2 and profits from incidental activity referred to in sub-section 5. The issue is, whether the income by way of right back of provisions of sundry credit balances and pr or period expenses can be considered as income from core activities of a tonnage tax company. In our opinion, write back of these items is to be considered as income from core activity. In a going concern, such write backs and making of supplementary provisions takes place. The Assessing Officer as well as the Commissioner (Appeals) have treated the very same income which is taxable under section 41(1) differently. The first being expenditure claimed in pre-tonnage tax scheme assessment years and the second being expenditure claimed in post tonnage tax scheme assessment years. Such a segregation is not permissible under the Act. Both the incomes are incomes from core activity and just because tax rates different, they cannot be treated as non-business income. The Assessing Officer as well as the Commissioner (Appeals) seem to have been influenced by the fact that the assessee has an income of ` 800 crores in its Profit & Loss account and whereas he has offered only ` 18 crores to tax under the tonnage tax scheme. The decision whether a particular income has to be brought to tax or not, cannot be based on such a view of the matter. The legislature in its wisdom provided the manner of computation

of income under the tonnage tax scheme. In section 115VA, it is clearly provided that sections 28 to 43C would not over ride the computation of profits and gains under section 115VA. As section 41(1) falls within sections 28 to 43C, no separate addition under that section can be made. As section 41(1) seeks to bring to tax certain specified items of receipts under the head "profits and gains of business" the scheme should not be invoked while computing profits and gains of business under Chapter-XII-G. Hence, we are of the opinion that the argument of the assessee should succeed.

30. Coming to ground no.10, as already stated, the assessee has no other activity which would result in income. It also does not have any other business. Thus, the income is from core activity only. Nevertheless, the income in question is taxable under the head "Capital Gains" and does not fall within the ambit of sections 28 to 43C. Thus, the receipt cannot be considered as turnover in view of the provisions of section 115VA and consequently out of the purview of Chapter-XII-G. In view of the above discussion, w uphold the finding of the Assessing Officer in this regard."

22. Respectfully following the Tribunal's order dated 29th July, 2011 (supra) in assessee's own case for A.Y. 2007-08, we uphold the action of the authorities below in reducing the profit on sale of ships and fixed ships from the turnover of core shipping. The action of the authorities below in reducing the excess provision written back and sundry credit balances written back, however, is set aside and the A.O. is directed to inc ude the said income in the turnover of core shipping. As regards item No. 3 (sundry receipts from core shipping) and item No. 6 (reimbursement from managed vessels), the ld. Counsel for the assessee has submitted that neither the A.O. nor the ld. CIT(A) has examined the relevant details placed at 157 of the paper book and urged that the matter may be sent back to the A.O. for deciding the same afresh after verifying the said detail. As the ld. D.R. has no objection in this regard, the issue relating to inclusion or exclusion of item No. 3 & 6 is restored to the file of the A.O. for deciding the same afresh after verifying the said details. Ground No. 5 of the assessee's appeal for A.Y. 2006-07 is thus partly allowed."

The assessee has now filed an appeal with Hon'ble Bombay High court challenging the order of the tribunal in quantum.The Hon'ble Bombay High Court has admitted substantial question of law arising from the tribunal decision holding against the assessee, which decision was reproduced by us in preceding para's of this order. The special provisions relating to shipping companies as are contained in Chapter XII-G were newly inserted provisions by Finance Act, 2004 w.e.f.

01.04.2005 and this chapter is a code in itself for bringing to tax income of shipping companies eligible to opt for this scheme. The assessee opted for the scheme from AY 2005-06 and this is only the second year of introduction of this new regime for taxation of shipping companies. The interpretation of various clauses of this new scheme relating to income of shipping companies did not stood the scrutiny of courts by the time the assessee filed its return of income for relevant AY i.e. 2006-07 as this scheme of taxation was new introduced by Finance Act, 2004 wef 01.04.2005 . The assessee presented its claim by interpreting the special provisions relating to shipping companies under Chapter XII-G in the manner that the income arising from sale of ships and fixed assets form part of core shipping business activities. The belief of the assessee that income from profit on sale of ships and other fixed asset was from core shipping business albeit rejected by all the authorities in context of special provisions as are contained in Chapter XII-G is not without basis as majorily activities of the assessee are solely from shipping business. The aforesaid claim of the assessee in treating the said income by way of profit from sale of ships and fixed assets to be from core shipping business cannot be called as an ex-facie illegal claim albeit the same was not accepted by all the authorities concurrently including the tribunal nor it is the case of the Revenue that bogus/sham claim was set up by the assessee with an intent to defraud Revenue. Special provisions as are contained in Chapter XII-G of the 1961 Act are newly inserted provisions which came into statute by Finance Act, 2004 w.e.f. 01.04.2005 and the year under consideration is AY 2006-07. The assessee in our considered view, however , had made due disclosure in the return of income filed vide computation of income as well in its submissions before the AO during the course of assessment proceedings . The assessee has drawn our attention to page no. 24-25/paper book as well page 43-45 of paper book to support its contentions that due disclosures were made and nothing was concealed from Revenue. Section 271(1)(c) of the 1961 Act provide for

levying of penalty for furnishing of inaccurate particulars of income or for concealment of income. The AO had invoked limb concerning filing of inaccurate particulars of income by the assessee for levying penalty u/s 271(1)(c) of the 1961 Act. The effect of Explanation 1 to Section 271(1)(c) of the 1961 Act is that if the assessee offers an explanation which is bonafide which the assessee is able to substantiate and that all the facts relating to the same and material to computation of income have been disclosed, then the assessee is out of clutches of penalty provisions as are contained u/s 271(1)(c) of the 1961 Act. The assessee's view that profit arising on sale of ships and other fixed assets have nexus with the core shipping business of the assessee as it is exclusively engaged in the shipping business was one of the plausible and bonafide belief and cannot be treated as an ex-facie illegal belief nor a fraudulent claim was set up by the assessee with an intent to defraud Revenue.It is another matter that the claim set up by the assessee by treating income from sale of fixed assets as well income from sale of other assets did not found favour with all the authorities including Mumbai-tribunal and the issues in quantum were decided against the assessee. The decision of Hon'ble Supreme Court in the case of Reliance Petroproducts Private Ltd.(supra) is directly applicable to factual matrix of the case and the aforesaid explanation in our considered view had arisen from a bonafide belief which has taken the assessee out of clutches of penalty provisions as are contained in Section 271(1)(c) of the 1961 Act as it could not be said that the explanation offered by the assessee was an ex-facie illegal or was completely a bogus/sham claim of deduction set up by the assessee with an intent to defraud Revenue. It is another matter that the claim as set up by the assessee was rejected by all the authorities including Mumbai-tribunal. The Hon'ble Bombay High Court in assessee's own case for the impugned assessment year in ITA no 1013 of 2015 vide orders dated 20.02.2018 has admitted substantial question of law arisen from the appeal decided by the tribunal which was decided against the assessee. This is also a strong

indicative of the fact that the issue's being debatable in nature. The decision of Hon'ble Bombay High Court decision in the case of Nayan Builder and Developer(supra) stood explained in the later decision of Hon'ble Bombay High Court in the case of Pr. CIT v. Shree Gopal Housing and Plantation Corporation in ITA no. 701 of 2015 vide judgment dated 06-02.2018 , wherein Hon'ble Bombay High Court held as under:-

> *"4..... Therefore, each appeal in respect of the order deleting / imposing a penalty by the Tribunal would have to be considered in relation to the facts arising therein and also in the quantum proceedings. It cannot be said as a matter of rule that in case where this Court admits an appeal relating to quantum proceedings ipso facto i.e. without anything more, the penalty order get vitiated. Thus, the question of entertaining an appeal from an order imposing / deleting penalty would have to be decided on a case to case basis. There can be no universal rule to the effect that no penalty, if quantum appeal is admitted on a substantial question of law."*

In-fact Visakhapatnam-tribunal in the case of the tax-payer M/s Dredging Corporation of India Limited(supra) has held these issues in favour of the tax-payer by holding these income arising from sale of assets to be from core shipping activities. This also indicates issue being debatable involving interpretation of legal provisions of a newly inserted special scheme of taxation of shipping companies and the explanations offered by the assessee to that effect cannot be termed as not bonafide albeit rejected even by tribunal in quantum. Thus , due to detailed reasoning as set out above , we are of the considered view that penalty u/s 271(1)(c) of the 1961 Act in the instant case before us is not exigible as explanations as were submitted by the assessee were bonafide explanations which has taken it out of clutches of penalty provisions as were contained in Section 271(1)(c) of the 1961 Act and hence we have no hesitation in deleting the penalty as levied by the AO u/s 271(1)(c) and confirmed by learned CIT(A) with respect to the claim of the assessee for treating income from sale of fixed assets as

well income by way of profit from sale of other fixed assets to be income from core shipping activities albeit the said claim stood rejected by all the authorities concurrently including Mumbai-tribunal in assessee's own case for impugned assessment year 2006-07. The assessee succeeds on these two issues also on which penalty was levied by Revenue. We order deletion of penalty u/s 271(1)(c). We order accordingly.

8. In the result appeal of the assessee in ITA no.3870/Mum/2016 for AY 2006-07 is allowed.

9. We have observed that facts in ITA no.3871/Mum/2016 for AY 2005-06 are similar and our aforesaid decision in ITA no. 3870/Mum/2016 for AY 2006-07 shall apply mutatis mutandis to ITA no. 3871/Mum/2016 for AY 2005-06. We order accordingly.

10. In the result appeal of the assessee in ITA no. 3871/Mum/2016 for AY 2005-06 is allowed.

11. In the result both the appeals of the assessee in ITA no. 3870/Mum/2016 and 3871/Mum/2016 for AY 2006-07 and 2005-06 respectively stood allowed.

Order pronounced in the open court on 02.11.2018.

आदेश की घोषणा खुले न्यायालय में दिनांकः 02.11.2018 को की गई

Sd/-	Sd/-
(SAKTIJIT DEY) JUDICIAL MEMBER	(RAMIT KOCHAR) ACCOUNTANT MEMBER

Mumbai, dated: 02.11.2018

Nishant Verma
Sr. Private Secretary

copy to…

1. The appellant
2. The Respondent
3. The CIT(A) – Concerned, Mumbai
4. The CIT- Concerned, Mumbai
5. The DR Bench,
6. Master File

// Tue copy//

BY ORDER

DY/ASSTT. REGISTRAR
ITAT, MUMBAI