

**IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH "E", MUMBAI
BEFORE SHRI R.S. SYAL (AM) & SHRI VIVEK VARMA (JM)**

**I.T.A. No. 6701/Mum/2010
(A.Y. 2004-05)**

Dy. Commr. of Income-tax-3(3), R.No.609, 6 th floor, Aaykar Bhavan, M.K. Road, Mumbai-400 020.	Vs.	Sofotel Software Services P.Ltd., 10-B, Bakhtawar, Nariman Point, Mumbai-400 021. PAN: AAACS8038B.
Appellant		Respondent

Appellant by	Shri K.G. Kutty.
Respondent by	Shri S.V. Joshi.

Date of hearing	08-05-2012
Date of pronouncement	11-05-2012

ORDER

PER R.S. SYAL, AM :

This appeal by the Revenue is directed against the order passed by the Id. CIT(A)-7, Mumbai, on 13-04-2010 deleting penalty of Rs.6,99,112/- imposed by the AO u/s. 271(1)(c) of Income-tax Act, 1961, in relation to assessment year 2004-05.

2. Briefly stated, the facts of the case are that the assessee wrote off a sum of Rs.19,48,743/- in its books of account towards Cafeteria expenses. On being called upon to explain as to how such deduction was claimed, the assessee

submitted that the project was initiated in early 1999 for catering to the needs of working staff employed with various MNCs. Since the project was not found to be feasible, it was abandoned and the said amount was written off in the Profit & loss account for the current year. The AO did not accept the assessee's contention on the ground that the assessee itself had capitalized this amount in earlier years and hence such deduction was not admissible. He, therefore, refused deduction on this account and consequently imposed penalty u/s.271(1)(c) of the Act in this regard. The Id. CIT(A) got convinced with the assessee's submissions and ordered to delete the penalty.

3. We have heard the rival submissions and perused the relevant material on record. It is observed that the assessee capitalized the expenses in relation to Cafeteria project as capital work in progress in earlier year. Such project did not take off and eventually the assessee claimed it as a business loss in the current year. It is clearly borne out from records that the assessee claimed deduction by disclosing complete particulars in this regard. Simply because the assessee did not succeed in the first appeal on this issue, it does not mean that penalty will be automatic. The Id. CIT(A), while deciding the issue in assessee's favour has taken note of certain decisions including that of the Hon'ble jurisdictional High Court in the case of Bralco Metal Industries Pvt. Ltd. vs. CIT (1994) 206 ITR 477 (Bom). We are agreeable with the viewpoint of the AO that the amount in question may not be conclusively allowable as deduction. At the same time, it

cannot be said that there is no possibility to claim such amount as a business loss. In other words, it is a case of debatable issue on which two views are possible. It is settled legal position that penalty u/s. 271(1)(c) cannot be imposed on a debatable issue. Moreover, since the assessee made complete disclosure of the details in this regard in its return of income, in our considered opinion the judgment of the Hon'ble Supreme Court in the case of CIT vs. Reliance Petroproducts (P) Ltd. (2010) 322 ITR 158 (SC) will come to the assessee's rescue, in which it has been held that mere making of a claim which is not sustainable in law, by itself, will not attract penalty under this section. Considering the entirety of facts and circumstances prevailing in the instant case, we are of the considered opinion that the ld. CIT(A) was justified in ordering the deletion of penalty. We, therefore, uphold the impugned order.

4. In the result, the appeal is dismissed.

Order pronounced on the 11th day of May, 2012.

Sd/-
(VIVEK VARMA)
JUDICIAL MEMBER

Sd/-
(R.S. SYAL)
ACCOUNTANT MEMBER

Mumbai: 11th May, 2012.

NG:

Copy to :

1. Department.
 2. Assessee.
 - 3 CIT(A)-7, Mumbai.
 - 4 CIT-3, Mumbai.
 5. DR, "E" Bench, Mumbai.
 6. Master file.
- (TRUE COPY)

BY ORDER,

Asst. Registrar, ITAT, Mumbai.

	Details	Date	Initials	Designation
1.	Draft dictated on	8-05-2012		Sr.PS/
2.	Draft Placed before author	8-05-2012		Sr.PS/
3.	Draft proposed & placed before the Second Member			JM/A M
4.	Draft discussed/approved by Second Member			JM/A M
5.	Approved Draft comes to the Sr.PS/PS			Sr.PS/
6.	Kept for pronouncement on			Sr.PS/
7.	File sent to the Bench Clerk			Sr.PS/
8.	Date on which the file goes to the Head clerk			
9.	Date on which file goes to the AR			
10.	Date of dispatch of order			

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