

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES “ D ”, MUMBAI**

**BEFORE SHRI B. RAMAKOTAIAH, ACCOUNTANT MEMBER
AND SHRI AMIT SHUKLA, JUDICIAL MEMBER**

ITA No. : 5900/Mum/2011
Assessment Year : 1998-99

M/s. Reliance Infrastructure Limited (Formerly known as BSES Ltd.) H Block, 1 st floor, Dhirubhai Ambani Knowledge City, Navi Mumbai-400 710 PAN NO: AACCR 7446 Q	Vs.	ACIT-10(1) Aaykar Bhavan, M. K. Road, Mumbai-400 020
(Appellant)		(Respondent)

Appellant by : Shri Jitendra Sanghavi &
Shri Amit Khatiwala

Respondent by : Shri Pradeep Kumar Singh

Date of hearing : 16.07.2012

Date of Pronouncement : 01.08.2012

ORDER

Per AMIT SHUKLA, J.M. :

This appeal has been preferred by the assessee against order dated 01.06.2011 passed by the Ld. CIT(A) -21, Mumbai in relation to the penalty proceedings u/s.271(1)(c) for the A.Y. 1998-99. The only issue involved in this appeal is levy of penalty of ₹.31,36,815/- on account of disallowance of interest u/s.220(2) amounting to ₹.89,62,329/-.

2. The brief facts of the case are that the assessee under the head “interest and other charges” had debited an amount of ₹.2056.50 lakhs on account of “guarantee & other charges”. During the assessment proceedings from the perusal of these details, the A.O. noticed that the assessee has also claimed an amount of ₹.89,62,329/- in respect of interest paid u/s.220(2) for the A.Y. 1991-92. The A.O. was of the opinion that interest in question was clearly in the nature of income-tax and was not allowable expenditure under the provisions of the Act. The A.O. required the assessee as to why such an interest amount should not be disallowed and added back to the total income. In response, the assessee agreed that the said claim was clearly disallowable and due to bonafide mistake the said interest was grouped under the head “guarantee and other charges”. Therefore, the same was added back in the computation of income. Accordingly, the said claim of ₹.89,62,329/- stood disallowed.

3. The A.O. thereafter, initiated the penalty proceedings u/s.271(1)(c) on this disallowance. Before the A.O. in the penalty proceedings, it was submitted that the amount of interest u/s.220(2) was included due to bonafide mistake made in the computation of income and it had neither concealed any income nor had furnished any inaccurate particulars of income thereof. It was further explained that during F.Y. 1997-98 it had received interest u/s.244A amounting to ₹.711.21 lakhs which was

credited to the P & L account and had paid interest u/s.220(2) at ₹.89.62 lakhs which was debited to the P & L account under the head “guarantee & commissioner charges”. Accordingly, the assessee offered to tax on the net interest income of ₹.621.59 lakhs. Since the interest u/s.220(2) was clubbed with “guarantee and other charges”, it was not possible for appellant to identify the interest expenditure and offer the same for disallowance. On this explanation of netting off interest and bonafide mistake, it was requested that the penalty proceedings should be dropped. However, the A.O. did not agree with the assessee’s contention and after relying upon the various court decisions, he levied the penalty of ₹.31,36,815/-.

4. Before the Ld. CIT(A) the same contentions were reiterated and was submitted that purely due to bonafide mistake that the said interest u/s. 220(2) could not be added back in the computation of income. Reliance was also placed on the decision of **Reliance Petro Products Ltd. reported in 322 ITR 158**. The Ld. CIT(A) too confirmed the said penalty on the ground that the claiming of interest paid u/s.220 was not only on incorrect claim but also goes in reducing the interest income and, therefore, penalty has been rightly levied.

5. Before us, the learned Sr. Counsel submitted that this was a mistake on factual aspect and expenditure was claimed on a bonafide

belief that the same was “guarantee & commission charges”. He further contented that the various decisions of the Tribunal have held that the interest received and interest paid to Income Tax Department can be netted and same is permissible. In this regard reliance was placed on the decision of the Mumbai Bench of the Tribunal in the case of **DCIT vs. Bank of America NT & SA, reported in (2011) 47 SOT 124**, wherein the Hon'ble ITAT after taking into account several decisions of the High Court and Tribunal has come to conclusion that netting of interest u/s.244 and 220(2) is permissible. Lastly, he submitted that on these facts there cannot be case of furnishing of any inaccurate particulars of income, as the moment the A.O. brought to the notice of the assessee, it had agreed for disallowance. In support of this contention, he has relied upon the decision of the ITAT Mumbai Bench in the case of **M/s. B. S. I. S LTD., in ITA No. 2935/Mum/2003**.

6. On the other hand, the learned Sr. DR submitted that there could not be any better case for confirming the penalty, as under no provision of law interest u/s.220 can be held to be allowable expenditure. Such a claim definitely amounts to furnishing of inaccurate particulars of income. He thus relied upon the findings of the Ld. CIT(A).

7. We have carefully considered the rival submissions and also perused the material placed on record. From the records it is seen that

the assessee under the head “interest and other charges” has debited an amount of ₹.2056 lakhs on account of “guarantee and other charges” which also includes interest u/s.220(2) paid to the Income Tax Department for a sum of ₹.89,62,329/- for the A.Y. 1991-92. Before the A.O. following explanation was given during the course of the penalty proceedings:

“8. We would like to bring out to your honour that during the financial year 1997-98 we had received interest u/s.244A amounting to ₹.711.21 lakhs which was credited to the profit and loss account and had paid interest u/s.220(2) of ₹.89.62 lakhs which was debited to the profit & loss account under the head “Guarantee & commission charges”. Accordingly, we had offered to tax the net interest income of ₹.621.59 lakhs. Since the interest u/s.220(2) was clubbed with guarantee and commission charges, it was not possible for us to identify the interest expenditure and offer the same for disallowance. We had claimed the interest expenditure as an allowable expenses since the same was included with guarantee and commission charges which qualify as eligible business expenditure.

It was a mistake on our part and penalty proceedings cannot be initiated since we had claimed the expenditure on a bonafide belief that the same were guarantee and commission charges. We rely on the following judgments in support of our contention that penalty proceedings under section 271(1)(c) cannot be initiated in case of bonafide mistakes :

- *CIT vs. Reliance Petroproducts Ltd. [2010 (322 ITR 158) (SC)].*
- *CIT vs. Shahabad Co-op Sugar Mills Ltd. [322 ITR 73] P & H].*
- *CIT v. Milex Cable Industries (261 ITR 675) [Gujarat High Court]*
- *Colour House vs. ACIT (53 ITD page 245)*
- *CIT vs. Shanti Sports Enterprises (217 ITR 243)*
- *CIT vs. Ask Enterprises Ltd. (230 ITR 48) [Bombay HC].”*

7.1 Thus the assessee has given all the particulars except for the fact that in the computation of income such interest was not added back to

the total income and the same was immediately included when the A.O. pointed out, at the first instance. From the above explanation, it can be inferred that the assessee had a bonafide belief that the interest received u/s.244A amounting to ₹.711.21 lakhs and interest paid u/s.220 of ₹.89.62 lakhs can be netted and the net interest is to be offered for tax. This view of the assessee as submitted by the learned Counsel is also supported by the various decisions of the ITAT Mumbai Benches. Therefore, such an explanation cannot be held to be incorrect or malafide. The assessee's case is also covered by the ratio and principle laid down by the Hon'ble Supreme Court in the case of **CIT vs. Reliance Petroproducts Ltd. (supra)**, wherein the lordship has observed and held as under :-

“A glance at the provisions of section 271(1)(c) of the Income-tax Act, 1961, suggests that in order to be covered by it, there has to be concealment of the particulars of the income of the assessee. Secondly, the assessee must have furnished inaccurate particulars of his income. The meaning of the word "particulars" used in section 271(1)(c) would embrace the details of the claim made. Where no information given in the return is found to be incorrect or inaccurate, the assessee cannot be held guilty of furnishing inaccurate particulars. In order to expose the assessee to penalty, unless the case is strictly covered by the provision, the penalty provision cannot be invoked. By no stretch of imagination can making an incorrect claim tantamount to furnishing inaccurate particulars. There can be no dispute that everything would depend upon the return filed by the assessee, because that is the only document where the assessee can furnish the particulars of his income. When such particulars are found to be inaccurate, the liability would arise. To attract penalty, the details supplied in the return must not be accurate, not exact or correct, not according to the truth or erroneous.

Where there is no finding that any details supplied by the assessee in its return are found to be incorrect or erroneous or false there is no question of inviting the penalty under section 271(1)(c). A mere making of a claim, which is not sustainable in law, by itself, will not amount to furnishing inaccurate particulars regarding the income of the assessee. Such a claim made in the return cannot amount to furnishing inaccurate particulars.”

8. Thus in view of the facts and circumstances of the case we do not find any reason to confirm the penalty levied by the A.O. u/s.271 (1)(c) and accordingly the same is cancelled.

9. In the result, the appeal filed by the assessee is allowed.

Order pronounced on this 1st day of August, 2012.

Sd/-

**(B. RAMAKOTAIAH)
ACCOUNTANT MEMBER**

Sd/-

**(AMIT SHUKLA)
JUDICIAL MEMBER**

MUMBAI, Dt: 01.08.2012

Copy forwarded to :

1. The Appellant,
2. The Respondent,
3. The C.I.T.
4. CIT (A)
5. The DR, - Bench, ITAT, Mumbai

//True Copy//

BY ORDER

ASSISTANT REGISTRAR
ITAT, Mumbai Benches, Mumbai

Roshani