IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX APPEAL NO.222 OF 2017

Pr.Commissioner of Income Tax-15 … Appellant

V/s.

M/s Uhde India Pvt. Ltd. … Respondent

Mr.Suresh Kumar for the Appellant.
Mr.Firoze Andhyarujina, Senior Counsel with Mr.Atul Jasani for the Respondent.

CORAM : AKIL KURESHI AND
SARANG V.KOTWAL, JJ.
DATE : APRIL 22, 2019.

P.C.:-

1. Revenue has filed this appeal against the judgment of the Income Tax Appellate Tribunal. Following question is presented for our consideration:-

> "Whether on the facts and in the circumstances of the case and in law, the Tribunal erred in deleting penalty u/s 271(1)(c) of the Income Tax Act when the ITAT itself confirmed the quantum addition in favour of the revenue in its previous order and change its opinion on account of quantum addition in the present order to delete the penalty levied u/s 271(1)(c) of the Income Tax Act ?

2. Issue pertains to penalty imposed by the Assessing Officer under Section 271(1)(c) of Income Tax Act, 1961, which the Tribunal deleted by the impugned judgment. While doing so the Tribunal observed as under :-

> "6. Keeping in view the arguments advanced by the parties and on careful perusal of the record before us it is required to be seen by this Tribunal that whether the assessee concealed the particulars of income or furnished inaccurate particulars of income to avoid tax liability which attract to the imposition of penalty u/s 271(1)(c) of the Act or not. While passing the assessment order by the AO for the AY 2003-04, the AO disallowed the claim on incomplete contracts and added the amount of Rs.8,61,19,588/-. In the instant case, it is to be seen as to whether the assessee has furnished accurate particulars of income or concealed the particulars of income to avoid tax liability or not. In view of the provisions of AS -7, (revised-2002) it came to the notice that the assessee can recognize the expected loss. The said matter is hereby mentioned at page 118 of the paper book (AS-7), i.e. recognition of expected losses, wherein it is stated at para 35 **"when it is probable that total contract costs will exceed total contract revenue, the expected loss should be recognized as an expenses immediately"** and under para 36, it is mentioned that the amount of such a loss is determined irrespective of:
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> (a) Whether or not work has commenced to the contract;
>
> (b) The stage of completion of contract activity; or;
>
> (c) The amount of profits expected to arise on

> other contracts which are not treated as a single construction contract in accordance with paragraph 8 the stage:
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> On perusal of the assessment order dated 28.2.2006, apparently, the assessee claimed losses with regard to the incomplete work which has not been allowed by the AO and the said losses having been added to the income of the assessee. In our view, it is not a case of furnishing in accurate particulars of income. Making incorrect claim, if any, does not amount to concealment of particulars because no information given by the assessee in its return of income is found to be incorrect. In this regard, we draw the support from the decision of the Hon'ble Supreme Court in the case of CIT vs. Reliance Petroproducts (Supreme Court) (2010)322 ITR 158 (SC). Further it is also noted that the assessment for the assessment year 2003-04 is in appeal before the Hon'ble Bombay High Court in ITA No.477 of 2012 vide which the said question of law has arisen. In effect, we are of the view that the AO was not justified in levying penalty on the amount disallowed since the said claim is supported by Accounting Standard-7 issued by ICAI. Accordingly, we set aside the order of ld. CIT (A) and direct the AO to delete the penalty."

3. It could thus be seen that the assessee had made a claim of losses. With regard to the incomplete work as against such amount of loss being granted at the stage of the completion of the project. The assessee did not succeed in such claim. The issue was decided against the assessee right upto the level of the

Tribunal. Neverthless when it came to the question of penalty, the Tribunal expressed the opinion that it was not a case of concealment of income or the particulars of income. The Tribunal referred to and relied upon the decision of the Supreme Court in case of **CIT Vs. Reliance Petro Products Ltd.**[1] to come to the conclusion that rejection of claim does not necessarily give rise to penalty proceedings.

4. In the result, no question of law arises. Income Tax Appeal is dismissed.

(SARANG V.KOTWAL,J.) **(AKIL KURESHI,J.)**

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1 322 ITR 158 (SC)