



Reserved On : 15/10/2025

Pronounced On : 13/11/2025

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

R/TAX APPEAL NO. 2255 of 2010

With

R/TAX APPEAL NO. 2258 of 2010

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE BHARGAV D. KARIA

and

HONOURABLE MR. JUSTICE PRANAV TRIVEDI

=====

Approved for Reporting	Yes	No
		✓

=====

DIRECTOR OF INCOME TAX (INTERNATIONAL TAXATION)

Versus

NIKO RESOURCES LTD

=====

Appearance:

MR. VARUN K. PATEL(3802) for the Appellant(s) No. 1

MS VINISHA JAIN FOR M/S WADIAGHANDY AND CO(5679) for the

Opponent(s) No. 1

=====

CORAM: HONOURABLE MR. JUSTICE BHARGAV D. KARIA

and

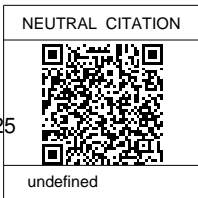
HONOURABLE MR. JUSTICE PRANAV TRIVEDI

CAV JUDGMENT

(PER : HONOURABLE MR. JUSTICE BHARGAV D. KARIA)

1. Heard learned Senior Standing Counsel

Mr. Varun K. Patel for the appellant and

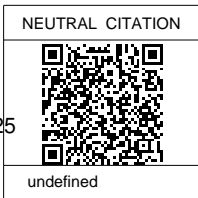


learned advocate Ms. Vinisha Jain for M/s. Wadia Ghandy and Co. for the respondent.

2. These two appeals are filed against the common judgment and order dated 30.04.2010 passed by the Income Tax Appellate Tribunal, Ahmedabad, Bench-D (For short "the Tribunal") in cross appeals filed by the assessee and Revenue being ITA No. 2476/Ahd/2008 and ITA NO.2718/Ahd/2008 for Assessment Year 2002-2003 respectively.

3. The Tax Appeals were admitted vide order dated 11.06.2012 for consideration of the following substantial question of law:

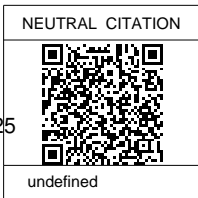
"Whether the Appellate Tribunal is right in law and on facts in correctly appreciating the facts



on record and law so as to cancel the penalty levied under section 271(1)(c) of the Act ?

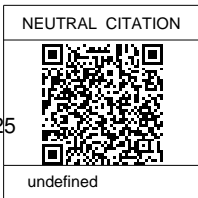
4. Brief facts of the case are that the assessee company which is incorporated in Canada is engaged in the business of natural gas and oil exploration.

5. The assessee company entered into a joint venture with the Gujarat State Petroleum Corporation Ltd. (GSPCL) for the exploration and development of natural gas and oil fields located in India. The joint venture resulted in entering into production sharing contracts with the Government of India on 23.09.1994 for exploration and development of five designated natural gas and oil fields in Gujarat. The Company was permitted to set up a project office in India with effect from 14.08.1994.



6. The assessee company filed its return of income for the year under consideration at Rs.63,14,97,010/-. The Assessing Officer framed the assessment under section 143(3) of the Act vide order dated 28.02.2005 determining the total income at Rs.77,14,83,380/- wherein he also initiated the penalty proceedings under section 271(1)(c) of the Act for furnishing inaccurate particulars of income. These penalty proceedings were kept in abeyance till the Commissioner of Income Tax (Appeals) decide the quantum appeal. In the quantum appeal vide order dated 30.11.2006, the CIT(Appeals) confirmed the following additions/disallowances :

i) Addition by way of disallowance of



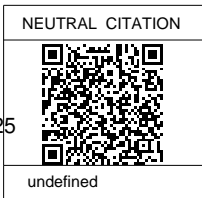
expenditure incurred on exploration and drilling activities amounting to Rs.13,65,14,009/- under section 42 of the Act.

ii) Disallowance of depreciation on land based drilling platform at the rate of 10% instead of 25% claimed by the assessee.

iii) Addition in respect of depreciation claimed in respect of cost of pipe lines amounting to Rs.2,14,19,917/-

iv) Disallowance of claim of deduction under section 80IB(9) made by the assessee company.

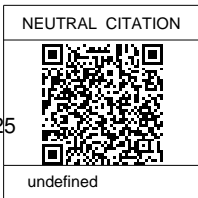
7. Subsequently, the Assessing Officer



vide order dated 27.06.2007 levied the penalty under section 271(1)(c) of the Act of Rs.3,17,14,898/- being 100% of tax sought to be evaded in respect of all additions/disallowances.

8. The assessee preferred an appeal before the CIT(Appeals) who confirmed the penalty in respect of addition made on deduction claimed under section 42 of the Act and disallowance of depreciation on land based platform which was restricted from 25% to 10% however deleted the penalty in respect of disallowance of depreciation claimed on cost of pipe lines.

9. The cross appeals were filed before the Tribunal challenging the order dated 25.07.2007 passed by CIT(Appeals) who

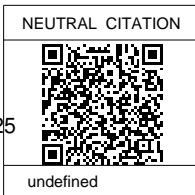


partly confirmed the penalty levied by the Assessing Officer under section 271(1)(c) of the Act.

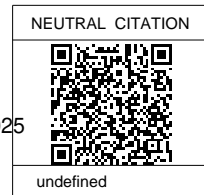
10. The Tribunal by the impugned order deleted the penalty levied in the facts of the case relying upon the decision of Hon'ble Supreme Court in case of **CIT v. Reliance Petroproducts Pvt. Ltd** reported in (2010) 322 ITR 158 (SC) by observing as under:

"11. Having heard both the sides. We have carefully gone through the orders of authorities below. The reasoning given by the Learned Commissioner of Income Tax (Appeals) in the impugned order on page 18 for cancelling the penalty in respect of disallowance of depreciation claimed on 36" 14 kms. Hazira - Mora Pipelines amounting to Rs. 2,14,19,917/- is as under:-

"In so far as disallowance of depreciation on 36" 14 km. Hazira-Mora Pipeline and levy of penalty



thereon is concerned, it is noted from the order of the Assessing Officer that there is a joint venture of Niko- GSPCL and GSPCL transferred the pipeline to its subsidiary, Gujarat State Petronet Limited (GSPL) who made the pipeline operational during the F.Y. 2000-01 without the consent of the appellant. The appellant is of the opinion that it has a legal title to this property and accordingly did not accept the transfer of the pipeline to GSPL by GSPCL. The matter is before the arbitrator as agreed upon by GSPCL and the appellant and the decision of the arbitrator is awaited and in view of that the Assessing Officer did not allow the claim of the appellant regarding depreciation. The depreciation was disallowed by the Assesseing Officer and has also been confirmed by the CIT (A) holding that these can be revisited after the decision is final. As is evident from the above facts, narrated in briefly that the claim of the appellant is debatable which is also in the knowledge of the department. Therefore to levy penalty on a debatable claim is not justified. I therefore, direct the Assessing Officer to delete the penalty levied on the disallowance made on account of depreciation on this 36 14 km



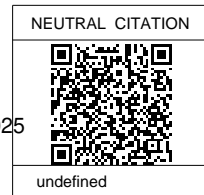
Hazira Mora pipeline

12. From the reasoning given by the Learned Commissioner of the Income Tax (Appeals), we are convinced that the depreciation claimed by the assessee on 36" 14km. Hazira-Mora Pipeline was bonafide. The same has been disallowed on difference of opinion or for want of decision of arbitrator which was awaited. The Hon'ble Supreme Court recently in the case of CIT-vs. Reliance Petroproducts Pvt. Ltd. [2010] 322 ITR 158 (SC) held that "no opinion given in the return found to be incorrect, making of incorrect claim does not amount to concealment of particular of income and penalty under section 271 (1)(c) is not leviable". The head-notes of the said judgment read 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 o 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

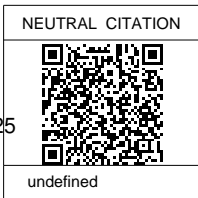


particulars.

Decision of the Gujarat High Court affirmed".

13. In our considered opinion, the decision of the Hon'ble vs. Reliance Supreme Court in the case of CIT Petroproducts Pvt. Ltd. (supra) is squarely applicable to the facts of assessee's case. It is therefore, incline to uphold the order of Learned Commissioner of Income Tax (Appeals) and reject the grounds of appeal to the Revenue."

11. The Tribunal after considering the decision of Hon'ble Apex Court in case of **Reliance Petroproducts Pvt. Ltd** (supra) has rightly concluded that no penalty could have been levied upon the appellant in absence of any finding that any details supplied by the appellant in the return were found to be incorrect, erroneous or false. Similarly so far as the claim of depreciation on land based drilling platform is concerned, this Court in case



of **Niko Resources Ltd.** reported in (2017) 88 taxmann.com 691 (Gujarat) has held that mineral oil wells is to be treated as plant and not building and therefore, in view of such facts also the Tribunal has rightly deleted the penalty levied upon the appellant assessee.

12. We, therefore, answer the question of law in favour of the assessee and against the Revenue. Appeals are accordingly dismissed.

(BHARGAV D. KARIA, J)

(PRANAV TRIVEDI, J)

RAGHUNATH R NAIR