

IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD "A" BENCH

**Before: DR. BRR Kumar, Vice President
And Shri T. R. Senthil Kumar, Judicial Member**

**ITA No: 279/Ahd/2026
Assessment Years: 2016-17**

Deputy Commissioner of Income Tax, Circle-2(1)(1), Vadodara (Appellant)	Vs	Unimed Technologies Limited Baska Ujiti Road Baska Halol Dist: Panch Mahal, Panch Mahals 389350, Gujarat, India Vadodaras PAN: AAACE4022B (Respondent)
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**Assessee Represented: Shri Bandish Soparkar, A.R.
Revenue Represented: Shri Nitin Kulkarni, Sr. D.R.**

Date of hearing : 26-02-2026
Date of pronouncement : 03-03-2026

आदेश/ORDER

PER: T.R. SENTHIL KUMAR, JUDICIAL MEMBER

This appeal is filed by the Revenue as against the appellate order dated 29-11-2025 passed by the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi, (in short referred to as "CIT(A)"), confirming the levy of penalty under section 271(1)(c) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') relating to the Assessment Year 2016-17.

2. Brief facts of the case is that the assessee is a company engaged in the business of manufacturing and trading pharmaceutical products and development of product technologies. For the Asst. Year 2016-17 regular assessment completed under section 143(3) of the Act on 29.12.2018 wherein various disallowances were made, including consultancy fees, foreign exchange fluctuation loss, software expenses, testing fees and interest capitalization. Based on these additions, the assessed income was enhanced and penalty proceedings u/s 271(1)(c) were initiated for furnishing inaccurate particulars of income.

3. In the quantum appeal the Commissioner of Income Tax (Appeals), vide order dated 08.02.2024, granted substantial relief by deleting multiple additions and restricting the additions relating to consultancy fees and foreign exchange fluctuation loss. It is thereafter, the Assessing Officer issued a show-cause notice dated 27.03.2025 and initiated penalty proceedings. The assessee filed a reply on 28.03.2025. However, the Ld AO levied penalty u/s. 271[1][c] of Rs.1,61,42,867/- vide order dated 29.03.20 for furnishing inaccurate particulars of income.

4. Aggrieved against the Penalty order, assessee company filed appeal before Ld CIT[A] who deleted the penalty by observing as follows:

“... 5.3. In the quantum appeal, the Commissioner of Income Tax (Appeals), NFAC, vide order No.ITBA/NFAC/S/250/2023-24/1060679970(1) dated 08.02.2024, granted substantial relief to the appellant. Out of the additions made by the Assessing Officer, the CIT(A) deleted the disallowances relating to software expenses, testing fees and interest capitalization. The CIT(A) partly restricted the disallowance of consultancy fees to Rs.1,88,13,146/-, and restricted

the disallowance of foreign exchange fluctuation loss to Rs.2,78,31,758/-. Thus, a major portion of the assessed additions forming the basis of the penalty did not survive in quantum proceedings.

5.4 Since the major quantum additions forming the foundation of the penalty have been deleted by the CIT(A), the penalty to that extent cannot survive. Even for the sustained additions, namely consultancy fees and foreign exchange fluctuation loss, the issues are highly debatable, involving interpretation of accounting standards, applicability of section 43A and determination of whether the expenditure is capital or revenue. The appellant has consistently disclosed complete particulars of such expenditure in its books, financial statements, audit reports and during assessment proceedings. There is no finding that the appellant concealed income or furnished inaccurate particulars. Penalty provisions being penal in nature require clear evidence of deliberate concealment or willful furnishing of incorrect particulars, which is absent in the present case.

5.5. The Hon'ble Supreme Court in CIT vs. Reliance Petroproducts Pvt. Ltd. (2010) 322 ITR 158 (SC) has held **that mere making of an unsustainable claim does not amount to furnishing of inaccurate particulars**. Similarly, the Hon'ble Supreme Court in K.C. Builders & Another vs. ACIT (2004) 265 ITR 562 (SC) has held **that when the addition itself does not survive or the foundation for penalty is removed, the penalty must be deleted**. Considering that substantial quantum relief was granted and the remaining issues are clearly debatable, the ratio of these judgments fully applies.

5.6. In view of the above facts and judicial principles, since the residual additions sustained in the quantum proceedings involve interpretative and debatable issues with full disclosure of facts by the appellant, no penalty u/s 271(1)(c) is leviable on such additions. Accordingly, the penalty of Rs.1,61,42,867/- levied u/s 271(1)(c) is deleted.

5.7. In the light of the foregoing, the grounds raised in the instant appeal are treated as allowed.”

5. Aggrieved against the appellate order Revenue is in appeal before us raising the following Grounds of Appeal:

i) "On the facts and circumstances of the case and in law, the Ld. CIT(A) erred in the deleting the penalty u/s 271(1)(c) of the Act imposed on account of addition of Rs.2,78,31,758/- due to foreign currency loss without appreciating the fact that the assessee has furnished inaccurate particular of income by mis-classifying the said expenditure as revenue in nature."

ii) The appellant craves leaves to add, modify, amend or alter any grounds of appeal at the time of, or before, the hearing of appeal.

6. Ld. Sr. D.R. appearing for the Revenue in support of its grounds claimed that the Ld. CIT(A) is not correct in deleting the penalty on account of addition of Rs.2.78 crores due to Foreign Exchange loss which was later confirmed by the Tribunal in the assessee's own case.

7. Per contra, Ld. Counsel appearing for the assessee submitted that the addition made on account of consultancy fees and Foreign Exchange Fluctuation loss are highly debatable involving interpretation of Accounting Standards, applicability of Section 43A of the Act and determination whether the expenditure is capital or Revenue in nature. The assessee company consistently disclosed the complete particulars of such expenses in its books of account and in its Audit Reports. Therefore, there is no concealment of income or furnishing inaccurate particulars of income by the assessee company. Thus Ld. CIT(A) following Supreme Court Judgment in the case of the Reliance Petroproducts Pvt. Ltd. and K.C. Builders deleted the penalty levied u/s. 271(1)(c) of the Act, which does not require any interference and also placed on record cancelling penalty levied on account of Foreign exchange loss by the Co-ordinate Bench decisions of this Tribunal in the case of Microsoft Corporation (India) (P.) Ltd. vs. DCIT reported in 8 ITR(T) 58 (Delhi) and in the case of Bella Premier Happy Hygiene Care (P.) Ltd. Vs. ACIT reported in 32 ITR 312

(Chennai Trib.) and requested to confirm the order passed by Ld. CIT(A).

8. We have given our thoughtful consideration and perused the materials available on record. It is not the case of the assessee, there is concealment of income or furnishing inaccurate particulars of the Foreign Exchange Fluctuation loss claimed by the assessee. Though the assessee claims that provisions of Section 43A of the Act will not be applicable, since it only an advance payment made by the assessee for purchase of machinery from outside India. Thus a wrong claim would not amount to concealment of income.

8.1. Co-ordinate Bench of this Tribunal in the case of Microsoft Corporation (India) (P.) Ltd. on the very same issue of Foreign Exchange Loss deleted the penalty levied u/s. 271(1)(c) of the Act by observing as follows:

“6.3 In this case, the details of foreign exchange loss were not furnished in the return of income. In the tax audit report, it was shown as increase in liability of the loan. The loss was not debited in Schedule K of the audited accounts. The particulars of expenditure were ascertained by the ld. CIT(A) in quantum-appeal proceedings, which have been furnished by us in paragraph 3.4 of this order. Thus, it can be said that the assessee made a claim in respect of which full particulars were not furnished in the return. The claim not warranted as per the tenor of Schedule-XI of the tax-audit report and Schedule-K of the audited accounts. Nonetheless, we have already held that there could be a bona fide belief as to whether increase in liability on account of purchase of assets and security deposit was revenue or capital liability. There could have been no such belief in regard to the tax payment. Thus, the claim was ex-facie false in respect of the tax payment. There is no explanation beyond what has been considered earlier, i.e., existence of bona fide belief. As per statutory language the initial onus to furnish satisfactory explanation is on the assessee. No satisfactory explanation has been furnished in regard to the loss occurring on account of tax payment. The general explanation that

capital expense versus revenue expense is a vexed question is not applicable to loss occurring on this account. Therefore, we are of the view that –(i) the ld. CIT(A) was not right in levying penalty in respect of loss occurring on account of purchase of capital asset and placing security deposit; and (ii) he was right in levying penalty in respect of loss occurring on account of tax payment.”

8.2. Similarly Chennai Bench of this Tribunal in the case of Bella Premier Happy Hygiene Care (P.) Ltd. held as follows:

“16. Now coming to the justification of penalty, in the present case, we find that the case is squarely covered by the judgment of the Hon’ble Supreme Court rendered in the case of CIT v. Reliance Petro Products Pvt. Ltd., 230 ITR 320. In the said case, the Hon’ble apex court has made it very clear that the disallowance of a claim or a wrong claim made by the assessee, ipso facto, do not amount to furnishing of inaccurate particulars or thereby concealment of income. In the present case, it is a fact that the assessee has a liability of foreign exchange loan. It is also true that the assessee has to evaluate the current position of such foreign exchange loan as on the last day of the previous year. If a liability is cast on the assessee on account of fluctuation in foreign exchange rate, the assessee has to provide for the same in its books of account. This is a mandatory provision for companies. The assessee has provided for such liability arising out of the currency fluctuation. In respect of such liability arising out of the currency fluctuation, treatment has to be given in two ways; first, in respect of revenue items and second, in respect of capital items. In the present case, loss of Rs.1,93,13,616/- related to capital items and therefore, the said loss should have been added to the cost of assets acquired by the assessee utilizing the foreign exchange loan as provided under sec.43A. On the other hand, in its return, the assessee claimed this amount also as loss instead of claiming higher amount of depreciation. This is not a case of concealment of income or furnishing of inaccurate particulars. This is a case of a mistake or an oversight or at the best, a case of wrong claim. There is no scope to invoke sec.271(1)(c) in the present case.”

9. Ld. CIT(A) in his order considered Supreme Court judgment in the case of Reliance Petroproducts Pvt. Ltd. and deleted the penalty levied by the assessing officer, on the ground that the quantum proceedings involved interpretative and debatable issue which was fully disclosed

of by the assessee in his Return of Income. Therefore Penalty u/s. 271(1)(c) is not leviable and deleted the same. We do not find any infirmity in the order passed by the Ld. CIT(A). Therefore the same does not require any interference. Thus the ground raised by the Revenue is devoid of merits and liable to be dismissed.

10. In the result, the appeal filed by the Revenue is hereby dismissed.

Order pronounced in the open court on 03-03-2026

Sd/-
(DR. BRR KUMAR)
VICE PRESIDENT True Copy
Ahmedabad : Dated 03/03/2026

Sd/-
(T.R. SENTHIL KUMAR)
JUDICIAL MEMBER

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण,
अहमदाबाद