

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'C' BENCH
MUMBAI**

**BEFORE: SHRI AMIT SHUKLA, JUDICIAL MEMBER
&
SMT RENU JAUHRI, ACCOUNTANT MEMBER**

**ITA No.2926/Mum/2025
(Assessment Year :2007-08)**

Income Tax Officer 5(2)(1), Room No.567, 5 th Floor Aaykar Bhavan M.K. Road, Mumbai	Vs.	Micro Plantea Limited 4, Unity House 2 nd Floor, 8 Mama Parmanand Marg Opera House, Mumbai- 400 004
PAN/GIR No.AAACM3686P		
(Appellant)	..	(Respondent)

**CO No.123/Mum/2025
(Arising out of ITA No.2926/Mum/2025)
(Assessment Year :2007-08)**

Income Tax Officer 5(2)(1), Room No.567, 5 th Floor Aaykar Bhavan M.K. Road, Mumbai	Vs.	Micro Plantea Limited 4, Unity House 2 nd Floor, 8 Mama Parmanand Marg Opera House, Mumbai- 400 004
PAN/GIR No.AAACM3686P		
(Appellant)	..	(Respondent)

Assessee by	Shri Dharmesh Shah & Ms. Mitali Parekh
Revenue by	Shri Virabhadra S Mahajan, Sr. DR
Date of Hearing	16/07/2025
Date of Pronouncement	21/07/2025

आदेश / ORDER**PER AMIT SHUKLA (J.M):**

The aforesaid appeal has been filed by the Revenue and Cross Objection by the assessee in the quantum of assessment passed u/s.153A r.w.s. 143(3) for the A.Y.2007-08.

2. The Revenue is aggrieved by deletion of penalty u/s.271(1)(c) of Rs.16,29,627/- on account of disallowance of expenses like finance expenses, operative and other expenses depreciation and balance written off.

3. The brief facts are that assessee has filed its return of income for A.Y.2017-18 showing business loss of Rs. 52,74,086/- and assessment was completed u/s.143(3) r.w.s. 153C vide order dated 21/12/2011 assessing total income at Rs.50/- after making following disallowance of expenses:-

Expenses	Amount
Finance Expenses	1787.00
Operative and other Expenses	41,447.00
Depreciation	22,80,670.00
Balance Written Off / Back	29,50,232.00
Total	52,74,136.00

4. Since there was a low tax effect, assessee did not contest this disallowance made in the assessment order. The ld. AO has levied the penalty on the ground that, since assessee has not

preferred any appeal or contested the disallowance, therefore, penalty should be levied on such adhoc disallowance and that to be made in the order passed u/s.153C when admittedly no incriminating material qua this disallowance found during the course of search. A search action u/s.132 was carried out in the case of Temptation Foods Group on 24/09/2009 and assessee was issued notice 153C.

5. The ld. CIT (A) has deleted the penalty on facts in the following manner:-

9.9 Now, coming to the facts of the present case, the AO has levied the impugned penalty on the ground that the disallowance was made in the assessment order. As already discussed above, penalty u/s. 271(1)(c) of the Act cannot be levied on this ground alone. For deciding the issue of levy of penalty under the section, the points discussed in para 20(d) above are to be considered. In the instant case, the appellant's contention is that all the facts were disclosed in the return filed and, hence, there was no concealment or furnishing of inaccurate particulars of income, and, accordingly, no penalty can be levied on him u/s.271(1)(c).

9.10 I even find that the assessment being a search assessment the A.O. had jurisdiction to making addition only on the basis of any incriminating material found as a result of search even the assessment order do not reflect any incriminating mater based on which disallowance was made by the Ld. A.O. Thus, in a case where the disallowances itself are not valid, in my view, even the penalty could not be levied of such disallowance.

9.11. Under these circumstances penalty u/s 271(1)(c) cannot be sustained. Therefore, I direct the A.O. to delete penalty levied u/s. 271(1)(c) of the Act of Rs. 16,29,677/-. Accordingly appeal on this ground is ALLOWED.

6. After hearing both the parties and on perusal of the impugned orders and material placed before us, it is seen that here in this case assessment u/s.153A was made as jurisdiction was acquired u/s.153C based on search conducted in case of some other person. Nowhere, in the assessment order it had been stated that there were some incriminating material found to prove that claim of expenses by the assessee are not genuine or not for the purpose of business. First of all, such adhoc disallowance itself was outside the purview of the assessment u/s.153C / 143(3). because it was an unabated assessment year. Secondly, these expenses have been duly shown in the profit and loss account and declared in the return of income and such details and information furnished alongwith return has neither been found to be incorrect or false. Nor explanation of the assessee has been found to be incorrect or false. Nowhere, the ld. AO in the assessment order has stated how these disallowances are justified on the facts and has simply made adhoc disallowance. Accordingly, no penalty can be levied on such adhoc disallowance as firstly, it does not tantamount to furnishing of inaccurate particulars of income and secondly, the addition itself was beyond the scope of assessment u/s.153C. Accordingly, the penalty deleted by the ld. CIT (A) is confirmed and the appeal of the Revenue is dismissed.

7. Since Cross Objection of the assessee has raised certain other legal grounds which are purely academic in view of the fact that penalty has already been deleted and the same is dismissed as infructuous.

8. In the result, appeal of the Revenue and Cross Objection of the assessee are dismissed.

Order pronounced on 21st July, 2025.

Sd/-
(RENU JAUHRI)
ACCOUNTANT MEMBER
Mumbai; Dated 21/07/2025
KARUNA, sr.ps

Sd/-
(AMIT SHUKLA)
JUDICIAL MEMBER

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai