

आयकर अपीलीय अधिकरण, C/'SMC' न्यायपीठ, चेन्नई ।

IN THE INCOME TAX APPELLATE TRIBUNAL  
C/"SMC" BENCH, CHENNAI

श्री. चंद्र पूजारी लेखा सदस्य, के समक्ष ।

BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER

**I.T.A.No.778/Mds./2017**

(Assessment Years : 2012-13)

**M/s.Fourrts (India) Labs Pvt Ltd.,**  
Plot No.1,Fourrts Avenue,  
Anna Indira Nagar, Okkiyam,  
Thoraipakkam, Chennai 600 096.

**PAN AAACF 0467 F**

(अपीलार्थी /Appellant)

**Vs.** DCIT,  
Corporate Circle-2(1),  
Chennai.

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से / Appellant by

: None

प्रत्यर्थी की ओर से/Respondent by

: Mr.P.Suresh Rao, JICIT, D.R

सुनवाई की तारीख/ Date of hearing

: 12.06.2017

घोषणा की तारीख /Date of Pronouncement

: 05.07.2017

**आदेश / O R D E R**

**PER CHANDRA POOJARI, ACCOUNTANT MEMBER:**

This appeal is filed by the assessee, aggrieved by the order of the Learned Commissioner of Income Tax(A)-6, Chennai dated 17.01.2017 pertaining to assessment year 2012-13.

2. The assessee has raised the following grounds for adjudication.

1. The Honorable Commissioner of Income Tax was wrong to have not accepted appellant submissions.
2. The Deputy Commissioner of Income Tax (DC) was wrong to have added back ₹4,28,59,543/- contending that the said payment was penal in nature, violating Government Order.
3. The Honorable Commissioner of Income Tax (appeal) ought to have applied the ratio of decisions. Dr.Reddy Lab Ltd vs. Additional Commissioner of Income Tax (ITA NO. 1605/HYD/20 10) wherein it was held that payment made to NPPA was not in the nature of penalty.
4. The CIT failed to note that the said payment was towards excess price charged and for bringing the price to the level fixed by the said order.
5. The payment was to be treated as reduction in the sale under business conditions and cannot be treated as business commitment and not as penal in nature.
6. The CIT overlooked the point that the departmental order never stated that it was penal in nature and it was only a direction to deposit the excess price charged with them.
7. The DC was also wrong to add back a sum of ₹1,17,17,667/- being interest paid on the above said amount as also penal in nature.
8. The interest was paid towards delayed remittance due and it should have been treated as overdue interest in the course of trade and not as penalty based on judicial pronouncements.

9. On the above grounds and on such other grounds that may be advanced at the time of appeal, the appellant prays that the additions made by DC be deleted.

3. The facts of the issue are that the Assessee is a private limited company, engaged in the business of Manufacturing Pharmaceutical Formulations and filed its Return of Income for the Assessment year 2012-13 returning an Income of ₹14,69,29,707/-. Some products of the appellants are covered by Drug Pricing Control Order (DPCO) of the Government and Government fixed basic prices for certain products. National Pharmaceutical Pricing Authority (NPPA) oversees pricing practices and in case of excess price, it directs the concerned company to deposit the excess charged with the authority. During the previous year ended 31st March 2012, NPPA had charged a sum of ₹ 4,28,59,543/- as pricing difference and a sum of ₹ 1,17,17,667/- as interest under Section 7A of Essential Commodities Act, 1955. The Appellant claimed it as expenses in their accounts.

3.1 The AO by his order dated 25.03.2015 ascertained that the amount consisted of two parts viz. (i) amount of ₹ 4,28,59,543/- for

overcharging the prices notified by the Government under Para 13 of DPCO and (ii) interest of ₹ 1,17,17,667/- for overcharged amount @ 15% per annum u/s.7A of the Essential Commodities Act, 1955 and had held that both these amounts totaling to ₹ 5,45,77,209/- were in nature of penalty for violation of the provisions of Central Act, and hence were not allowable as per the provisions of Explanation to Sec.37(1) of the Act. Aggrieved, the assessee preferred an appeal before the CIT(A).

3.2 On appeal, before the Ld.CIT(A) the Id.A.R cited judicial decisions which supported its claim. After discussing the case laws briefly, the Ld.CIT(A) observed that the facts and circumstances of the assessee's case are radically different from the cases cited by the Id.A.R. Ld.CIT(A) endorsed the view of the Id. Assessing Officer with this following observations.

*"It is also apparent that intention behind such a stringent policy and regulation on the drug manufacturers is to protect the larger public good, and also prevent monopolistic practices. The selling of drugs and pharmaceuticals at price higher than the ceiling fixed by NPPA is prohibited by law (Section 3 of Drug Pricing Control Order, 1995), and clearly falls within the ambit of Explanation to Sec.37(1) of the Act."*

Against the order of Ld.CIT(A), now the Assessee is in appeal before us.

4. I proceed to decide the issue after hearing the Id.D.R and perusing the material on record. Admittedly, the assessee is engaged in the business of Manufacturing Pharmaceutical Formulations. Some products of the appellants are covered by Drug Pricing Control Order (DPCO) of the Government and Government fixed basic prices for certain products. National Pharmaceutical Pricing Authority (NPPA) oversees pricing practices and in case of excess price, it directs the concerned company to deposit the excess charged with the authority. During the assessment year, NPPA had charged ₹ 4,28,59,543/- for overcharging the prices and interest of ₹ 1,17,17,667/- for overcharged amount @ 15% per annum u/s.7A of the Essential Commodities Act, 1955. The assessee claimed it as an expenditure in its accounts, but the lower authorities found these business expenses by invoking the provisions of Explanation to Sec.37(1) of the Act.

4.1 After going through the facts of the case, I find that the payment made by the assessee is refund of excess price paid by the assessee

to NPAA. Hence, there is no violation and infringement of any law or Government's order. The assessee has been kept on representing before the lower authorities that it is not a penalty for any violation of law and it is only a refund of excess fund collected by the assessee and interest thereon and interest is a compensatory nature for holding the amount, which is an excess price collected by the assessee. In my opinion, it is allowable as revenue expenditure u/s.37(1) of the Act and it cannot be considered as a penalty so as to disallow the same. Accordingly, I am inclined to deleted the addition on this count and allow the appeal of assessee.

5. In the result, the appeal of assessee is allowed.

Order pronounced in the open court on 05<sup>th</sup> July, 2017.

Sd/-

(चंद्र पूजारी)

(CHANDRA POOJARI)

लेखा सदस्य /ACCOUNTANT MEMBER

Chennai,

Dated the 05<sup>th</sup> July, 2017.

K s sundaram.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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|--------------------------|------------------------------|-------------------------|
| 1. अपीलार्थी/Appellant   | 3. आयकर आयुक्त (अपील)/CIT(A) | 5. विभागीय प्रतिनिधि/DR |
| 2. प्रत्यर्थी/Respondent | 4. आयकर आयुक्त/CIT           | 6. गार्ड फाईल/GF        |