

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "A" MUMBAI**

**BEFORE SHRI MAHAVIR SINGH (JUDICIAL MEMBER) AND
SHRI N.K. PRADHAN (ACCOUNTANT MEMBER)**

**ITA No. 405/MUM/2014
Assessment Year: 2004-05**

Anshul Specialty Molecules Ltd. 13, Aradhana Industrial Development Corporation, Near Virwani Industrial Estate, Goregaon (E) Mumbai-400063. PAN No. AABCA4003H Appellant	Vs.	DCIT-3(2), Aayakar Bhavan, Mumbai-400020. Respondent
--	-----	--

**ITA No. 6787/MUM/2013
Assessment Year: 2007-08**

Anshul Specialty Molecules Ltd.13, Aradhana Industrial Development Corporation, Near Virwani Industrial Estate, Goregaon (E) Mumbai-400063. PAN No. AABCA4003H Appellant	Vs.	ACIT-38, Aayakar Bhavan Mumbai-400020. Respondent
---	-----	---

Assessee by : Ms. Vasanti Patel, AR
Revenue by : Mr. Rajesh Kumar Yadav, DR

Date of Hearing : 09/11/2017
Date of pronouncement : 24/11/2017

ORDER

PER N.K. PRADHAN, A.M.

The captioned appeals filed by the assessee are directed against the order of the Commissioner of Income Tax (Appeals)-39/41, Mumbai and arises out of the penalty order u/s 271(1)(c) of the Income Tax Act 1961, (the 'Act'). As common issues are involved, we are proceeding to dispose off these appeals by a consolidated order.

2. The ground raised by the assessee in this appeal is that the Ld. CIT(A) erred in confirming penalty to the extent of Rs.23,76,620/- for AY 2004-05 and Rs.10,42,303/- for AY 2007-08 in respect of addition of deemed dividend u/s 2(22)(e) of the Act.

3. Facts being similar, we begin with the assessment year 2004-05. Briefly stated, the facts of the case are that the Assessing Officer (AO) noticed during the course of assessment proceedings that the assessee had received loan from the group concern M/s Utkarsh Chemicals Pvt. Ltd. (lender company) during the year. Shri Ashwin C. Shroff, who is having shareholding of 27.88% in the assessee-company, is also holding 84.67% shares in the lender company. The lender company has accumulated profit of Rs.66,24,724/- as on 31.03.2004. During the year the assessee- company has received Rs.21,83,75,000/- in the form of loans and advances from M/s Utkarsh Chemicals Pvt. Ltd. The AO treated the amount of Rs.66,24,724/- as income of the assessee u/s 2(22)(e) and added it to the total income of the assessee under the head 'income from other sources'.

Then the AO imposed a minimum penalty of Rs.23,76,620/- on the above amount u/s 271(1)(c).

4. In AY 2007-08, the AO found that the assessee-company had taken loan of Rs.18.38 crores and Rs.5.66 crores from M/s Utkarsh Chemicals Pvt. Ltd. Shri Ashwin Shroff had shareholding of 89% in the lender company and also had substantial interest in the loanee company i.e. assessee-company (28% of shareholding). The accumulated profit of the donor company as on 31.03.2007 was Rs.1,37,02,106/-. The AO treated the above amount of Rs.1,37,02,106/- as deemed dividend u/s 2(22)(e) in the hands of the assessee and made an addition of the same to the total income of the assessee. Then the AO imposed a minimum penalty of Rs.46,60,580/- u/s 271(1)(c).

5. Aggrieved by the order of the AO, the assessee filed an appeal before the Ld. CIT(A). The Ld. CIT(A) was not convinced with the submission of the assessee and confirmed the penalty of Rs.23,76,620/- for the A.Y. 2004-05 and restricted the penalty to Rs.10, 42,303/- for the A.Y. 2007-08.

6. Before us, the Ld. counsel of the assessee submits that in the assessment order, the AO has initiated the penalty u/s 271(1)(c) for furnishing inaccurate particulars of income whereas in the penalty order he has imposed the penalty on the reason that the assessee had concealed the particulars of income. Thus it is stated by him that the issue is covered in favour of the assessee by the judgment of the Hon'ble Bombay High Court in *CIT vs. Shri Samson Perinchery* (ITA No. 1154, 953, 1097 & 1226 of 2014). On merit, reliance is placed by him on the

decision in the case of *CIT vs. Universal Medicare Pvt. Ltd.* 324 ITR 263 (Bom).

Also it is stated by him that neither the assessee has concealed the income nor furnished inaccurate particulars of such income in respect of the taxability of deemed dividend.

7. On the other the Ld. DR supports the order passed by the Ld. CIT(A).

8. We have heard the rival submissions and perused the relevant materials on record. The reasons for our decisions are given below.

We find that in the assessment order for the AY 2004-05 dated 30.12.2011 (para 14 of page 7), the AO has initiated the penalty u/s 271(1)(c) for furnishing inaccurate particulars of income. Whereas in the penalty order for the above assessment year dated 22.06.2012 (para 9 of page 7) the AO has imposed the penalty on the reason that the assessee has concealed the particulars of income.

Also we find that in the assessment order for the AY 2007-08 dated 25.11.2009 (para 7 of page 4), the AO has initiated the penalty u/s 271(1)(c) for furnishing inaccurate particulars of income. Whereas in the penalty order for the above assessment year dated 30.03.2012 (para 7 of page 6), the AO has imposed the penalty on the reason that the assessee has concealed the particulars of income.

In the case of *Shri Samson Perinchery* (supra), the Hon'ble Bombay High Court held:

“Therefore, the satisfaction of the Assessing Officer with regard to only one of the two breaches mentioned under section 271(1)(c) of the Act, for initiation of penalty proceedings will not warrant/permit being imposed for the other breach. This is more so, as an assessee would respond to the ground on which the penalty has been initiated/notice issued. It must, therefore, follow that the order imposing penalty has to be made only on the ground of which the penalty proceedings has been initiated, and it cannot be on a fresh ground of which the assessee has no notice.”

8.1 Also we find merit in the contentions of the Ld. counsel that as per the decision of Hon’ble Bombay High Court in *Universal Medicare Pvt. Ltd.* (supra), a view can be taken that the provisions of section 2(22)(e) can only apply to a shareholder and the deemed dividend can be taxed only in the hands of the shareholder.

9. In view of the ratio laid down in *Shri Samson Perinchery* (supra) & *Universal Medicare Pvt. Ltd.* (supra), we delete the penalty of Rs.23,76,620/- in AY 2004-05 and Rs.10,42,303/- in AY 2007-08 confirmed by the Ld. CIT(A).

10. In the result, the appeals are allowed.

Order pronounced in the open Court on 24/11/2017.

Sd/-
(MAHAVIR SINGH)
JUDICIAL MEMBER

Sd/-
(N.K. PRADHAN)
ACCOUNTANT MEMBER

Mumbai;

Dated: 24/11/2017

Rahul Sharma, Sr. P.S.

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A)-
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai