

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "D": NEW DELHI**

**BEFORE
SHRI G.D. AGRAWAL, HON'BLE PRESIDENT
AND
SHRI AMIT SHUKLA, JUDICIAL MEMBER**

ITA No.:- 4454/Del/2015
Assessment Year: 2009-10

Naturence Cosmetic Pvt. Ltd., 7/8, Sarva Priya Vihar, New Delhi PAN AAACN7134K	Vs.	ITO Ward 13(1) New Delhi.
(Appellant)		(Respondent)

Appellant by:	Shri R.S. Singhvi, Advocate
Respondent by :	Shri Amit Jain, Sr. DR
Date of Hearing	19/06/2018
Date of pronouncement	25/06/2018

ORDER

PER AMIT SHUKLA, J.M.

The aforesaid appeal has been filed by the assessee against impugned order dated 27.5.2015, passed by Ld. CIT (Appeals)-6, New Delhi in relation to the penalty proceedings u/s 271(1)(c) for the assessment year 2009-10. The assessee is aggrieved by levy of penalty of Rs. 7,31,244/- on account of disallowance of deduction u/s 80 IC while computing the book profit u/s 115JB.

2. The facts in brief are that the assessee company is engaged in the business of manufacturing and sale of cosmetic products on which it has claimed deduction u/s 80IC. The said claim has been allowed in the assessment order dated 29.12.2011 passed u/s 143(3), except disallowing the interest on FDs while computing the deduction u/s 80IC. The AO however noted that the assessee has shown 'NIL' book profit u/s 115JB after claiming deduction u/s 80IC. He held that there is no such provision u/s 115JB to reduce the income exempt u/s 80IC from the book profit. In support, he relied upon the judgment of Hon'ble Uttarakhand High Court in the case of Sidcul Industrial Association v. State of Uttarakhand (2011) 199 Taxman 75. Accordingly, the tax was determined on book profit computed u/s 115JB by denying the deduction of Rs. 77,45,746/- claimed u/s 80IC.

3. From the stage of first appeal the addition/disallowance made by the AO stands confirmed which had attained finality.

4. Based on this disallowance of claim of deduction u/s 80IC in the computation of book profit, AO has levied the penalty of Rs. 7,31,244/- u/s 271(1)(c) which was the tax calculated on such book profit. This penalty has been confirmed by the Ld. CIT (A) also on the ground that said claim is not allowable in the computation of income u/s 115JB and therefore, it amounts to furnishing of inaccurate particulars of income.

5. Before us the Ld. Counsel for the assessee submitted that the claim of deduction u/s 80IC in the computation of book profit u/s 115JB was made by the assessee based on the certificate issued by the Chartered Accountant in Form No. 29B which has worked out the tax payable u/s 115JB at NIL. It was based on this certificate that assessee has shown NIL book profit. Here in this case it is not a case of furnishing of inaccurate particulars *albeit* can be said that there is a mistake in the computation of book profit, because the assessee has computed the book profit strictly in accordance with the certificate given by the auditor. The second limb of his argument was that AO while issuing the show cause notice u/s 274, has not specified the charge under which the limb of section 271(1)(c) he has initiated the penalty proceedings. Such vague notice without specifying the charge vitiates the entire penalty order; and it has been held so in various judgements of Hon'ble High Court and Tribunal. Thus, he submitted that the penalty levied by the AO sustained by the Ld. CIT (A) under the facts and circumstances of the case cannot be sustained.

6. On the other hand, Ld. DR strongly relied upon the order of Ld. CIT (A) and submitted that the claim of deduction u/s 80IC while computing the income u/s 115JB was clearly not allowable in law and therefore, it does amount to making of false claim and consequently furnishing of inaccurate particulars of income.

7. We have heard the rival submissions and perused the relevant finding given in the impugned order. The only reason for levy of penalty is that the assessee while computing the book profit u/s 115JB, assessee has shown nil income after claiming deduction u/s 80IC in the said computation. It is an undisputed fact that under the normal provisions the assessee is eligible for benefit u/s 80IC. At the time of filing of return of income and the assessee has computed the book profit on the basis of certificate issued by the Chartered Accountant in Form 29B, a copy of which has been placed before us at page 11 to 13 of the paper book. If assessee has shown the book profit and tax payable u/s 115JB based on certificate issued by the Chartered Accountant, then it cannot be held that the assessee's claim was not bonafide or it has furnished inaccurate particulars of income. The entire particular of the profit and loss account as per the Companies Act under Schedule VI has been given wherein the entire particulars have been disclosed. The judgment of Hon'ble Uttrakhand High Court as referred and relied upon by the AO in the course of the assessment proceedings for taking adverse view on such computation of book profit was rendered in the year 2011, whereas the return of income was filed by the assessee on 30.9.2009. Thus, it cannot be held that assessee's claim based on certificate issued by the professional Chartered Accountant was not bonafide at the time of computing the book profit and disclosing the same in the return of

income. Thus, it cannot be held that assessee has furnished any kind of inaccurate particulars of income and accordingly, penalty levied by the AO is directed to be deleted.

8. In the result the appeal of the assessee is allowed.

Order pronounced in the Open Court on 25th June, 2018.

sd/-
(G.D. AGRAWAL)
PRESIDENT

sd/-
(AMIT SHUKLA)
JUDICIAL MEMBER

Dated: 25/06/2018

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Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi