

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "H", MUMBAI**

**BEFORE SHRI C.N. PRASAD, HON'BLE JUDICIAL MEMBER AND
SHRI RAJESH KUMAR, HON'BLE ACCOUNTANT MEMBER**

ITA.No. 4437/MUM/2016 (A. Y: 2006 – 07)

M/s. Anshul Specialty Molecules Limited
(Now known as Anshul specialty
Molecules Private Limited)
13, Aradhana Industrial Development
Corporation, Near Virwani Industrial
Estate, Goregaon (E), Mumbai – 400 063

v.

D.C.I.T.
Central Circle – 6(3)
(Erstwhile A.C.I.T,
Central Circle – 38)
Air India, Nariman Point,
Mumbai – 400 021

PAN No: AABCA 4003 H

(Appellant)

(Respondent)

Assessee by	:	Shri Kirit Kamdar
Revenue by	:	Shri M.C. Omi Ningshen
Date of Hearing	:	14.05.2018
Date of Pronouncement	:	03.08.2018

ORDER

PER C.N. PRASAD (JM)

1. This appeal is filed by the assessee against the order of the Learned Commissioner of Income Tax (Appeals) – 52 Mumbai dated 22.03.2016 for the Assessment Year 2006-07 in sustaining the penalty levied u/s.271(1)(c) of the Act in respect of the addition made towards deemed dividend u/s. 2(22)(e) of the Act.

2. Learned Counsel for the assessee submitted that similar issue arose in the Assessment Years 2004-05 & 2007-08 and the Tribunal by order in ITA.No.405/MUM/2014 & ITA.No. 6787/MUM/2013 dated 24.11.2017 deleted the penalty taking note of the decision of the Hon'ble Bombay High Court in the case of CIT v. Universal Medicare Pvt Ltd., [324 ITR 263], since a view can be taken that the provisions of section 2(22)(e) can only apply to shareholder and the deemed dividend can be taxed only in the hands of the shareholder. It is further submitted that the Tribunal also considered the decision of the Hon'ble Bombay High Court in the case of CIT v. Shri Samson Perinchery [ITA.No. 1154, 953. 1097 & 1226 of 2014], as it is not clear from the notice/ penalty order / Assessment Order that the penalty was imposed for either for concealment of income or for furnishing inaccurate particulars of income. Copy of the order is placed on record.

3. However, Ld. DR vehemently supported the orders of the authorities below in levying penalty u/s. 271(1)(c) of the Act on the addition made towards deemed dividend u/s. 2(22) (e) of the Act.

4. We have heard the rival submissions, perused the orders of the authorities below and the case laws relied on. We have perused the notice issued u/s. 274 r.w.s. 271 of the Act and observed that the

Assessing Officer did not specify the limb for which the penalty is proposed to be levied. In the Assessment Order it is stated by the Assessing Officer that the penalty u/s. 271(1)(c) is initiated for furnishing inaccurate particulars of income leading to concealment of income and in the penalty order it is stated that he is satisfied that the assessee has concealed income and has furnished inaccurate particulars of income and committed a clear default within the meaning of section 271(1)(c) of the Act and therefore it is a fit case for levying the penalty. On reading of notice, Assessment Order as well as the penalty order, it is not clear as to for which limb the penalty was levied by the Assessing Officer. We also notice that this Tribunal considered similar situation in assessee's own case for the Assessment Years 2004-05 & 2007-08 and deleted the penalty both on technical ground as well as on merits of the addition observing as under: -

"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). Para 3 to 9 page 27-29."

5. Facts being identical, we respectfully following the said decision, delete the penalty levied u/s. 271(1)(c) of the Act for the Assessment Year 2006-07. Ground raised by the assessee is allowed.

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

Order pronounced in the open court on the 03rd August, 2018.

Sd/-
(RAJESH KUMAR)
ACCOUNTANT MEMBER

Mumbai / Dated 03/08/2018
Giridhar, Sr.PS

Sd/-
(C.N. PRASAD)
JUDICIAL MEMBER

Copy of the Order forwarded to:

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

//True Copy//

BY ORDER,

(Asst. Registrar)
ITAT, Mum