

IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'SMC' BENCH,
NEW DELHI

BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER

ITA No. 2385/DEL/2018
[Assessment Year: 2013-14]

Midway Pharmaceuticals Pvt Ltd
1916, 2nd Floor, Chuna Mandi
Paharganj, Delhi

Vs.

The I.T.O
Ward 16(4)
New Delhi

PAN: AAECM 0032 H

[Appellant]

[Respondent]

Date of Hearing : 27.11.2018
Date of Pronouncement : 27.11.2018

Assessee by : Shri Ajay Gupta, CA

Revenue by : Shri S.L. Anuragi, Sr. DR

ORDER

PER N.K. BILLAIYA, ACCOUNTANT MEMBER:

This appeal by the assessee is preferred against the order of the Commissioner of Income Tax [Appeals]-15, Delhi dated 29.01.2018 pertaining to assessment year 2013-14.

2. The solitary grievance of the assessee is that the ld. CIT(A) erred in confirming the penalty levied u/s 271(1)(c) of the Income-tax Act, 1961 [hereinafter referred to as 'the Act'] by the Assessing Officer.

3. At the very outset, the ld. AR of the assessee stated that the Assessing Officer has levied the penalty by an ex parte order without considering the reply filed by the assessee on 02.05.2016.

4. The ld. AR further pointed out that even the first appellate authority has confirmed the penalty levied by the Assessing Officer by an ex parte order

5. I have carefully considered the orders of the authorities below as well as the penalty order dated 13.09.2016. Though the Assessing Officer has mentioned that a show cause notice was issued and served upon the assessee on 29.03.2016 requesting the assessee to furnish its reply dated 28.04.2016, the Assessing Officer observed that the assessee neither

furnished any reply nor gave any information. On the contrary, I find that on 02.05.2016, the assessee had filed a reply in response to the notice issued u/s 274 r.w.s 271(1)(c) of the Act. It appears that the Assessing Officer has completely ignored this reply of the assessee, which is exhibited at pages 5 to 7 of the paper book. In my considered opinion, the Assessing Officer should have considered this reply of the assessee. The first appellate authority has simply confirmed the levy of penalty.

6. In the interest of justice and fair play, I deem it fit to restore this issue to the file of the Assessing Officer. The Assessing Officer is directed to decide this issue afresh after giving reasonable and proper opportunity of being heard to the assessee. The assessee is directed to file necessary details before the Assessing Officer. The Assessing Officer will decide the issue afresh in accordance with law.

9. In the result, the appeal filed by the assessee in ITA No. 2385/DEL/2018 is treated as allowed for statistical purposes.

The order is pronounced in the open court on 27.11.2018.

Sd/-

**[N.K. BILLAIYA]
ACCOUNTANT MEMBER**

Dated: 27th November, 2018

VL/

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar,
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr.PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	