

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'SMC' अहमदाबाद ।

**IN THE INCOME TAX APPELLATE TRIBUNAL
"SMC" BENCH, AHMEDABAD**

**BEFORE SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER
& SHRI MAHAVIR PRASAD, JUDICIAL MEMEBR**

आयकर अपील सं./I.T.A. No. 1855/Ahd/2017

(निर्धारण वर्ष / Assessment Year : 2010-11)

M/s. Fine Food Industries Survey No. 158-159, Haripara Road, Post: Taveda, Tal.: Mahuva, Dist: Bhavnagar	बनाम/ Vs.	The ITO Ward – 2(4), Bhavnagar
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AABFF6886G		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी ओर से /Appellant by :	Shri A. C. Shah, A.R.
प्रत्यर्थी की ओर से/Respondent by :	Shri Uma Shankar Prasad, Sr.D.R.

सुनवाई की तारीख / Date of Hearing	31/01/2019
घोषणा की तारीख /Date of Pronouncement	31/01/2019

आदेश/ORDER

PER PRADIP KUMAR KEDIA - AM:

The captioned appeal has been filed at the instance of the Assessee against the order of the CIT(A)-6, Ahmedabad ('CIT(A)' in short), dated 26.05.2017 arising in the penalty order dated 30.03.2016 passed by the Assessing Officer (AO) under s.

271(1)(c) of the Income Tax Act, 1961 (the Act) concerning AY 2010-11.

2. As per grounds of appeal, the assessee has challenged the jurisdiction of the AO under s. 271(1)(c) of the Act as well as imposition of penalty of Rs.94,820/- on merits.

3. When the matter was called for hearing, the learned AR for the assessee pointed out that the penalty has been imposed on denial of deduction under s.80IB of the Act towards insurance claim received Rs.1,29,927/-; subsidy received Rs.85,300/-; duty drawback claim received Rs.31,109/- and addition on account of accrued interest from PGVCL Rs.60,530/- not recognized by the assessee.

4. It is ostensible from the record that AO has denied the deduction under s.80IB of the Act in respect of certain items on the ground that such income does not bear nexus with the manufacturing activity. The expenditure claimed has not been disputed *per se*. It is well settled that incorrect claim of expenditure would not amount to giving inaccurate particulars of income as held by the Hon'ble Gujarat High Court in the case of CIT vs. Amol Dicalite Ltd. [2015] 55 taxmann.com 419 (Guj). Needless to say, the imposition of penalty on additions/disallowances is not automatic. The bonafides in the action of the assessee is not disputed *per se*. Such erroneous claim on the part of the assessee in our view would not invite the rigors of Section 271(1)(c) of the Act. Thus, penalty imposed by the AO is deleted on merits. We do not seek to deal with the legal

aspects as the same were not pressed in the course of hearing. The AO is accordingly directed to delete the penalty so imposed.

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

This Order pronounced in Open Court on 31/01/2019

Sd/-
(MAHAVIR PRASAD)
JUDICIAL MEMBER
Ahmedabad: Dated 31/01/2019

Sd/-
(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER

True Copy

S. K. SINHA

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. राजस्व / Revenue
2. आवेदक / Assessee
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद /
DR, ITAT, Ahmedabad
6. गार्ड फाइल / Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण, अहमदाबाद ।