IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH: KOLKATA

Before: **Shri P. M. Jagtap, Vice President and**
Shri S.S. Viswanethra Ravi, Judicial Member

I.T.A No.1235 & 1237/Kol/2016
(Assessment Year: 2011-12 & 2012-13)

TCG Lifesciences Pvt. Ltd. Appellant
[PAN: CALCO 3085 F]

Vs

ITO, Ward-59(4)(TDS), Kolkata Respondent

For the Appellant : Shri A. K. Tibrewal, FCA
For the Respondent : Shri C. J. Singh, Sr. Dr, JCIT

Date of hearing : 20.12.2018
Date of pronouncement : 19.03.2019

ORDER

PER Shri S.S. Viswanethra Ravi, JM:

These two appeals by the assessee against the common order dated 04.03.2016 passed by the Commissioner of Income Tax (Appeals)-24, Kolkata ['CIT(A)'] for Assessment Years 2011-12 & 2012-13 wherein he confirmed the penalty order imposed by the Assessing Officer.

2. Heard both parties and perused the materials available on record. The ld. AR submits that the issues are in both the appeals are similar and the facts involving the issues are identical and therefore requested to take both the appeals together. With the consent of both the parties, we proceed to hear the appeal in ITA No.1235/Kol/2016 as base case.

3. The assessee raised as many as five grounds challenging the action of the CIT(A) in confirming the penalty imposed by the Assessing Officer partly. Therefore, the only issue is to be decided as to whether CIT(A) is justified in confirming the penalty partly as imposed by the Assessing Officer u/s 271C of the Act.

4. The brief facts of the case involving the issue on hand, that the assessee is a company and claimed exemption of Rs.29,51,709/- paid to different employees towards car running and maintenance expenses. According to the Assessing Officer, the assessee failed to establish it corroborative supporting evidences that those expenses were made towards reimbursement of car expenses for official duties. The Assessing Officer held that the assessee being deductor had defaulted in allowing exemption to the tune of Rs.29,51,709/- while deducting TDS during calculating taxable salary income of the employees. Accordingly the said amount was added to the total income of the assessee. The assessee challenged the said addition before the CIT(A) and the CIT(A) has confirmed the addition made by the Assessing Officer. Further, the assessee failed to succeed before the Tribunal in second appellate proceeding and the ld. AR placed on record, the said order dated 20.06.2018 in ITA Nos.1234 & 1236/Kol/2016 for Assessment Years 2011-12 & 2012-13.

5. On perusal of the said order the impugned contention of the assessee that the expenditure incurred towards employees car running and maintenance is not covered by the definition of perquisite as contemplated in section 17(2) of the Act. The Tribunal in its order in Para No.5 did not accept the submissions and while rejecting the same, the Tribunal held that the assessee failed to maintain a complete detail of journey undertaken for official purpose which may include the date of journey, destination, mileage and the amount of expenditure incurred thereon. Further the assessee failed to give a certificate to that effect that the said expenditure has incurred wholly and exclusively for the performance of official duty in terms of Clause (B) (sub-Rule 2 of Rule 3 of Income Tax Rules 1962) and confirmed the order of CIT(A). The relevant portion of which is reproduced hereinbelow:

> *"5. We have heard the arguments of both the sides and also perused the relevant material available on record. Besides reiterating the submissions made before the authorities below on behalf of the assessee, the learned counsel for the assessee has contended that the amount in question paid by the assessee company to its employees towards car running and maintenance expenses is not covered*

by the definition of 'perquisite' given in section 17(2) of the Income Tax Act, 1961. We are unable to accept this contention of the learned counsel for the assessee. As per Clause (viii) of sub-section (2) of section 17, perquisite includes the value of any other fringe benefit or amenity as may be prescribed. Such other fringe benefits or amenities as mentioned in Clause (viii) of sub-section (2) of section 17 are prescribed in rule 3 of Income Tax Rule, 1962 and even the method of valuation thereof is prescribed. The method of valuation of perquisite provided by way of use of motor car to an employee is given in sub-rule (2A) of rule 3 in tabular form and as per serial no 2 of the said table, where the employee owns a motor car but the actual running and maintenance charges are met and reimbursed to him by the employer, this perquisite will have no value if such reimbursement is for the use of vehicle wholly and exclusively for official purposes provided that the documents specified in Clause (B) of this sub-rule are maintained by the employer. As per Clause (B) of sub-rule (2) of rule 3, the employer has to maintain a complete detail of journey undertaken for official purpose which may include date of journey, destination, mileage and the amount of expenditure incurred thereon. Further, the employer has to give a certificate to the effect that expenditure was incurred wholly and exclusively for the performance of official duty."

6. On perusal of the order of penalty passed by the Assessing Officer, it is noted that the assessee filed written submissions before the Assessing Officer to keep the penalty proceedings in abeyance till disposal of quantum appeal. As discussed above, the assessee failed to succeed in quantum appeal before the Tribunal which confirmsed the view of Assessing Officer in initiating the proceedings u/s 271C of the Act and imposing penalty a sum equal to the amount of tax which the assessee failed to deduct any part of tax as required under the provisions of Chapter XVII-B. The CIT(A) while deciding the issue regarding the liability for penalty proceedings held that the assessee failed to show the said sum was not salary and exempt from taxation. Further, the assessee also failed to show the reasons which caused for non-deduction of TDS. The relevant portion of which is reproduced hereinbelow:

"3.1 As regards liability determined u/s 201/section 192 on payments of salary amounting to Rs.29,51,709/-, the appeal order dated 04.03.2016 No.1271 & 1273 has rejected the grounds of the appellant and liability has been held correctly levied by the A.O. The appellant failed to show that said sum was not salary and that the said sum was exempt from taxation. The appellant thus failed to deduct TDS it ought to have deducted. It failed to show that it had reasonable cause not to deduct. The penalty levied to the extent of Rs.8,58,885/- is thus confirmed."

7. Before us, the ld. AR placed reliance on the ratio of Hon'ble Supreme Court in the case of Reliance Petroproducts Pvt. Ltd. reported in 322 ITR 158 and Price Waterhouse Coopers (P) Ltd. reported in 25 taxmann.com 400 (SC). On perusal of the judgment in the case of

Reliance Petroproducts Pvt. Ltd., the assessee claimed expenditure for paying interest on the loans incurred by it by which amount the assessee purchased some IPL shares by way of its business policy. Admittedly, the assessee did not earn any income by way of dividend from its shares. The claim of disallowance of expenditure was rejected and the penalty proceedings initiated thereon for making wrong claim, the Hon'ble Supreme Court held itself not constitute a liability of penalty u/s 271C of the Act, there was no concealment, nor were any inaccurate particulars submitted by the assessee. In our view, the facts and circumstances in the case of Reliance Petroproducts Pvt. Ltd. are entirely different on the facts of the case on hand. Therefore, the decision of Hon'ble Supreme Court is not applicable to the present case.

8. In the case of Price Watherhouse Coopers (P) Ltd., the Hon'ble Supreme Court held that initiation of penalty proceedings on an inadvertent and bona fide error committed by the assessee is not maintainable as it had not intended to or attempt to either conceal of its income or furnish inaccurate particulars. We find in this case, the assessee claimed a provision for payment of gratuity and which is not allowable u/s 40A(7) of the Act. The Supreme Court observed that inadvertent mistake and bona fide error in making computation in the return of income does not constitute a liability in penalty proceedings. Therefore, in our view, the facts and circumstances in the present case are entirely different from the case of Price Watherhouse Coopers (P) Ltd. and principle laid down by the Hon'ble Supreme Court is not applicable in the present case.

9. As discussed above, in the aforesaid mentioned paragraphs regarding the order of this Tribunal in quantum appeal of assessee for both the Assessment Years 2011-12 & 2012-13, this Tribunal held that requisite details as specified in Clause (B) sub-Rule 2 of Rule 3 of Income Tax Rules 1962) were not maintained by the assessee in support of its claim. Perquisite provided by way of use of motor car to its employees in the form of reimbursement is chargeable to tax and the assessee is liable

to deduct tax at source. Therefore, initiation of penalty proceedings therein in our view by the Assessing Officer and confirmed by the CIT(A) are justified. Therefore, we find no infirmity in the order of CIT(A) and it is justified. Grounds raised by the assessee are dismissed.

10. We find the assessee raised similar issue in these appeals. We have taken a view on similar issue in assessee's own appeal for Assessment Year 2011-12 in ITA No.1235/Kol/2016 confirming the order of CIT(A) against the assessee in the aforementioned paragraphs. The view taken by us in the aforementioned paragraphs is applicable in this appeal in ITA No.1237/Kol/2016 also. Therefore, grounds raised by the assessee in this appeal also dismissed.

11. In the result, both these appeal of the assessee are dismissed.

Order pronounced in the open court on 19.03.2019.

Sd/-	**Sd/-**
[P. M. Jagtap]	**[S.S. Viswanethra Ravi]**
Vice President	**Judicial Member**

Dated : 19.03.2019
Place : Kolkata
RS, Sr.PS

Copy of the order forwarded to:

1. Appellant – TCG Lifesciences Pvt Ltd., Block-BN, Plot-7, Sector-V, Salt Lake Electronics Complex, Kolkata – 700 091.
2. Respondent – ITO, Ward-59(4) (TDS), Kolkata.
3. The CIT(A), Kolkata
4. CIT , Kolkata
5. DR, Kolkata Benches, Kolkata

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By order,

Assistant Registrar,
ITAT, Kolkata