

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'D' अहमदाबाद ।
IN THE INCOME TAX APPELLATE TRIBUNAL
“D” BENCH, AHMEDABAD

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

आयकर अपील सं./I.T.A. No. 2098/Ahd/2016

(निर्धारण वर्ष / Assessment Year : 2002-03)

DCIT Cir. 3(1)(1), Ahmedabad	बनाम/ Vs.	M/s. Nabros Pharma Pvt. Ltd. Nabros Tower, Opp-Art Gallery, Law Garden, Ellisbridge, Ahmedabad - 380006
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAACN7886N		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी ओर से /Appellant by :	Shri Vinod Tanwani, Sr. DR
प्रत्यर्थी की ओर से / Respondent by :	Smt. Urvashi Shodhan, A.R.

सुनवाई की तारीख / Date of Hearing	29/03/2019
घोषणा की तारीख /Date of Pronouncement	29/03/2019

आदेश/ORDER

PER PRADIP KUMAR KEDIA - AM:

The captioned appeal has been filed at the instance of the Revenue against the order of the Commissioner of Income Tax (Appeals)-9, Ahmedabad ('CIT(A)' in short), dated 20.06.2016 arising in the penalty order dated 27.03.2015 passed by the Assessing Officer (AO) under S. 271(1)(c) of the Income Tax Act, 1961 (the Act).

2. The relevant ground of appeal raised by the Revenue reads as under:

“1. The Ld. CIT(A) has erred in law and on facts in deleting the penalty of Rs.84,50,000/- levied u/s. 271(1)(c) of the Act on account of disallowance of commission expenses and deduction u/s.80HHC of the Act.”

3. When the matter was called for hearing, the learned AR for the assessee in Revenue's appeal intervene and submitted at the outset that the penalty was imposed by the AO on two grounds namely (i) disallowance of commission expenses of Rs.1,36,59,714/- & (ii) denial of deduction towards FDRs interest amounting to Rs.99,75,974/- for the purposes of computation of eligible deduction under s.80HHC of the Act. As regards disallowance of commission expenses, the learned AR referred to the decision of the co-ordinate bench of Tribunal in ITA No. 1179 & 1604/Ahd/2013 order dated 05.01.2017 in relation to quantum proceedings in its case and submitted that the aforesaid addition stands deleted by the co-ordinate bench in quantum proceedings and therefore the very basis for imposition of penalty is obliterated. As regards inclusion or otherwise of interest on FD for the purposes of computation of deduction under s.80HHC of the Act, the learned AR submitted that the issue has been set aside by the co-ordinate bench to the file of the AO and therefore the basis of imposition of penalty for this item also does not presently survive. The learned AR further canvassed that despite the second issue having been set aside to the file of the AO, all the relevant facts and particulars in relation to the computation of 80HHC and interest on FDRs were admittedly present before the lower authorities. The issue involved for consideration of FD interest for the purposes of 80HHC of the Act is purely legal as well as debatable and therefore, penalty in any case is not exigible for such additions. The learned AR accordingly submitted that the CIT(A) has justifiably deleted penalty.

4. The learned DR, on the other hand, relied upon the order of the AO.

5. We have considered the rival submissions. In view of the plea canvassed on behalf of the assessee as noted above in detail and on perusal of the order of the CIT(A), we find no reason for interference with the order of the CIT(A), whereby the action of the AO for imposition of penalty on aforesaid issue was reversed.

6. In the result, appeal of the Revenue is dismissed.

This Order pronounced in Open Court on 29/03/2019

Sd/-
(MAHAVIR PRASAD)
JUDICIAL MEMBER
Ahmedabad: Dated 29/03/2019

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 ।