

IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCHES "C": DELHI

BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER  
AND  
SHRI O.P. KANT, ACCOUNTANT MEMBER

ITA.No.5538/Del./2015  
Assessment Year 2008-2009

|                                                                                                                                                                             |      |                                         |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------|-----------------------------------------|
| M/s. Bharat<br>Immunological &<br>Biological Corporation<br>Ltd., Bulandshahr<br>PAN AABCB4550C<br>C/o. RRA TAXINDIA,<br>D-28, South Extension,<br>Part-I, New Delhi-110049 | vs., | The Dy. CIT,<br>Circle,<br>Bulandshahr. |
| (Appellant)                                                                                                                                                                 |      | (Respondent)                            |

|                |                                                            |
|----------------|------------------------------------------------------------|
| For Assessee : | Dr. Rakesh Gupta, And<br>Shri Somil Aggarwal,<br>Advocates |
| For Revenue :  | Smt. Rinku Singh, Sr. D.R.                                 |

|                         |            |
|-------------------------|------------|
| Date of Hearing :       | 29.04.2019 |
| Date of Pronouncement : | 29.04.2019 |

**ORDER**

**PER BHAVNESH SAINI, J.M.**

This appeal by Assessee has been directed against the Order of the Ld. CIT(A), Ghaziabad, Dated 29.06.2015, for the A.Y. 2008-2009, challenging the levy of penalty under section 271(1)(c) of the I.T. Act, 1961.

2. In this case, the assessee filed return of income declaring loss of Rs.5.75 crores. The A.O. noted that provision for bad debt of Rs.1,01,81,411/- was debited to P & L account. The A.O. noted that such provision is not allowable unless it is ascertained liability. The A.O. accordingly made addition of the amount and assessed the net loss at Rs.4.74 crores. The A.O. on the aforesaid addition levied the penalty under section 271(1)(c) of the I.T. Act, 1961. The Ld. CIT(A) dismissed the appeal of assessee.

3. Learned Counsel for the Assessee referred to the chart to show that assessee has been suffering loss continuously. Learned Counsel for the Assessee referred to several replies filed with the Income Tax Authorities as well as to the concerned Department of the Government of India for release of the amount in question. He has referred to PB-79 which is show cause notice issued before levy of the penalty, in which A.O. has not mentioned anything as to for which limb of Section 271(1)(c) of the I.T. Act, penalty have been proposed against the assessee. He has also referred to show cause notice dated 27.12.2010 under section 274 read

with section 271(1)(c) of the I.T. Act issued prior to levy of the penalty, in which the A.O. has stated as under :

*“have concealed the particulars of your income or .....  
furnished inaccurate particulars of such income.”*

3.1. Learned Counsel for the Assessee, therefore, submitted that A.O. has not pointed-out as to for which limb of Section 271(1)(c) of the I.T. Act penalty have been initiated. Therefore, levy of penalty is illegal and bad in law and in support of the contention relied upon several decisions of the Tribunal and Judgment of the Hon'ble Supreme Court in the case of CIT & Another vs. M/s. SSAs Emerald Meadows reported in 73 taxmann.com 248.

4. On the other hand, Ld. D.R. relied upon the Orders of the authorities below.

5. After considering the rival submissions, we are of the view that penalty is not leviable in the matter. The A.O. issued show cause notice dated 27<sup>th</sup> December, 2010 before levy of the penalty against the assessee. However, the A.O.

in its show cause notice failed to specify in which limb of Section 271(1)(c) of the Act, the penalty proceedings had been initiated i.e., whether for concealment of particulars of income or furnishing inaccurate particulars of income, as rightly pointed-out by the Learned Counsel for the Assessee. The entire penalty proceedings are, therefore, vitiated and no penalty is leviable. On this score itself similar view is taken by Hon'ble Karnataka High Court in the case of CIT vs. M/s. SSAs Emerald Meadows 73 taxmann.com 241. This decision is confirmed by the Hon'ble Supreme Court reported in 73 taxmann.com 248. In this view of the matter, the orders of the authorities below are set aside and penalty is cancelled.

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

Order pronounced in the open Court.

Sd/-  
(O.P. KANT)  
ACCOUNTANT MEMBER

Sd/-  
(BHAVNESH SAINI)  
JUDICIAL MEMBER

Delhi, Dated 29<sup>th</sup> April, 2019

VBP/-

Copy to

|    |                     |
|----|---------------------|
| 1. | The appellant       |
| 2. | The respondent      |
| 3. | CIT(A) concerned    |
| 4. | CIT concerned       |
| 5. | D.R. ITAT "C" Bench |
| 6. | Guard File          |

//By Order//

Asst. Registrar : ITAT : Delhi Benches :  
Delhi.