

IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "K", MUMBAI

BEFORE SHRI R.C.SHARMA, ACCOUNTANT MEMBER  
AND  
SHRI VIKAS AWASTHY, JUDICIAL MEMBER

ITA NO.3781/MUM/2016(A.Y. 2008-09)

Dy. Commissioner of In come Tax  
Large Tax Payer Unit)-1,  
World Trade Centre, Centre-1,  
29<sup>th</sup> Floor, Cuffe Parade,  
Mumbai – 400 005

..... Appellant

Vs.

M/s. Johnson & Johnson Ltd.  
30, Forjett Street, Post Box No.9301,  
Mumbai 400 036.  
PAN:AAACJ0866E

..... Respondent

ITA NO.4253/MUM/2016(A.Y. 2008-09)

M/s. Johnson & Johnson Ltd.  
30, Forjett Street, Post Box No.9301,  
Mumbai 400 036.  
PAN:AAACJ0866E

..... Appellant

Vs.

Dy. Commissioner of In come Tax  
Large Tax Payer Unit)-1,  
World Trade Centre, Centre-1,  
29<sup>th</sup> Floor, Cuffe Parade,  
Mumbai – 400 005

..... Respondent

Revenue by : S/Shri Anand Mohan&Azhar Zain  
Respondent by : S/ Shri Rajan R. Vora& Pranay Gandhi

Date of hearing : 02/12/2019  
Date of pronouncement : 20/12/2019

ORDER

PER VIKAS AWASTHY, JM:

These cross appeals by the Revenue and the assessee are directed against the order of Commissioner of Income Tax (Appeals)-1, [in short 'the CIT(A)'] dated 18/03/2016 for assessment year 2008-09.

2. Brief facts of the case as emanating from the records are:

The assessee company is engaged in manufacturing and marketing of various pharmaceutical, consumer care, health care and diagnostic products. Assessment order under section 143(3) r.w.s.144C of the Income Tax Act, 1961 [ in short 'the Act'] was passed on 31/10/2012 inter-alia making additions/disallowances on following counts:-

- (i) Disallowance of provision for bonus under section 43B of the Act
- (ii) Addition on account of profits of overseas branch at Sri Lanka.

Penalty under section 271(1)(c) of the Act were initiated for furnishing inaccurate particulars of income in respect of the aforesaid additions/disallowances. The Assessing Officer vide order dated 30/09/2014 levied penalty of Rs.81,39,619/- under section 271(1)(c) of the Act r.w Explanation-1 in respect of the above said two additions. Aggrieved by the order levying penalty under section 271(1)(c) of the Act, the assessee filed appeal before CIT(A). The first appellate authority deleted the penalty levied qua disallowance of provision for bonus. Whereas, in respect of non-disclosure of profits from overseas branch at Sri Lanka, the penalty levied under section 271(1)(c) of the Act was confirmed. Hence, the present appeals by the Revenue and the assessee.

**ITA NO.3781/MUM/2016(A.Y. 2008-09)**

3. The Revenue in its appeal has assailed the finding of CIT(A) in deleting the penalty levied under section 271(1)(c) of the Act in respect of provision for bonus claimed under section 43B of the Act by the assessee.

4. Shri Rajan R. Vora appearing on behalf of the assessee submitted at the outset that similar disallowance was made in the assessment year 2001-02, however, the same was allowed by the Tribunal. The CIT(A) has deleted the penalty in respect of aforesaid addition by placing reliance on the decision of the Tribunal in assessee's own case in assessment year 2001-02.

5. Per contra, Shri Anand Mohan representing the Department vehemently defended the levy of penalty under section 271(1)(c) of the Act on account of disallowance of provision for bonus.

6. We have heard the submissions made by rival sides and have perused the orders of authorities below. The Revenue in appeal has assailed deleting of penalty in respect of provision for bonus. We find that the first appellate authority has placed reliance on the decision of Tribunal in assessee's own case for assessment year 2001-02 decided on 28/06/2013, wherein the penalty levied under section 271(1)(c) of the Act was deleted on similar set of facts. The Id.Departmental Representative has not placed on record any material to show any change in facts in the assessment year under appeals or to distinguish the findings of the Tribunal in assessee's own case for earlier year. The order of CIT(A) on this issue is well reasoned, hence, we find no reason to interfere with the

same. Accordingly the appeal of the Revenue is dismissed being devoid of any merit.

7. We further observe that tax effect involved in the present appeal is less than the monetary limit prescribed vide CBDT Circular No.17/2019 dated 08/08/2019. Therefore, the appeal of the Revenue is liable to be dismissed on account of low tax effect as well.

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

**ITA NO.4253/MUM/2016 (A.Y. 2008-09):**

9. This appeal by the assessee is directed against confirming levy of penalty under section 271(1)(c) of the Act in respect of addition of profits attributable to Sri Lanka branch of the assessee company.

10. The Id. Authorized Representative of the assessee submitted that the assessee in computation of income had disclosed the profits earned from overseas branch at Sri Lanka. To support his contention he referred to computation of income at page-1 of the Paper Book and pointed that in the computation of income the assessee has reduced profit of Sri Lanka branch from the profits before tax as per P&L Account for the financial year ended 31/03/2008. The Id. Authorized Representative of the assessee further submitted that the assessee was under bonafide belief that profits of the overseas branch are taxable in the host country and has offered the same to tax in the country where the branch is established i.e. Sri Lanka. The assessee has permanent establish in the said country. The Id. Authorized Representative of the assessee submitted that a perusal of documents on record clearly establishes that it is not a case of concealment or furnishing of inaccurate particulars of income. It is a case of difference in opinion. Under such circumstances provisions of section 271(1)(c) of the Act are not attracted. In

support of his contentions Id. Authorized Representative of the assessee placed reliance on the following decisions:

(i) CIT vs. Reliance Petro Products Pvt. Ltd. 323 ITR 158(SC)

(ii) DCIT vs. Indian Overseas Bank in ITA No.1990 & 1991/Mad/2011 A.Y 2006-07 and 2007-08 decided on 14/2/2013.

10.1 The Id. Authorized Representative of the assessee further submitted that the issue whether profits of foreign branch are liable to be taxed in India is a debatable issue. The Mumbai Bench of Tribunal in the case of DCIT vs. Essar Oil Ltd. for assessment year 2003-04 reported as 13 taxmann.com 151 has held that the profits of overseas branch are not taxable in India. The Co-ordinate Bench in the case of same assessee i.e., Essar Oil Ltd. for assessment years 2004-05 and 2005-06 reported as 42 taxmann.com 21 (Mum-Trib) has taken a contrary view and has held that the profits of overseas branch are taxable in India. The assessee therein carried the issue in appeal before the Hon'ble Bombay High Court in Income Tax appeal No.227 of 2014 titled Essar Oil Ltd. vs. Addl.CIT. The Hon'ble Court has admitted the substantial question of law i.e. whether the profits earned by overseas branch are required to be included in the total income of the assessee/appellant (Essar Oil Ltd.) in India. The Id. Authorized Representative of the assessee submitted that where the question of law has been admitted by the Hon'ble High court it become a debatable issue and hence no penalty is leviable on such issues. To buttress his submissions, the Id. Authorized Representative of the assessee placed reliance on the following decisions:

(i) CIT vs. Nayan Builders & Developers, 368 ITR 722(Bom)

(ii) CIT vs. M/s. Advaita Estate Development Pvt. Ltd. , Income Tax appeal No.1498 of 2014 decided on 17/02/2017.

11. On the other hand, the Id. Departmental Representative vehemently defended the impugned order in confirming penalty levied under section 271(1)(c) of the Act in respect of non-disclosure of profits of Sri Lanka branch by the assessee. The Id. Departmental Representative submitted that it is a clear case of furnishing inaccurate particulars of income by the assessee.

12. We have heard the submissions made by rival sides and have perused the orders of authorities below. The only issue in appeal by the assessee is whether addition on account of profits of Sri Lanka branch is consequent to furnishing inaccurate particulars of income and hence, triggers penal provisions under section 271(1)(c) of the Act. A perusal of computation of income for the assessment year 2008-09 at page-1 of Paper Book reveal that the assessee has disclosed total profits before tax as per profits and loss accounts for the year ended 31/03/2008. This profit includes profit from Sri Lanka branch as well. Thereafter, the assessee has reduced the profits & losses of the overseas branch at Sri Lanka and Bangladesh, respectively. The contention of the assessee is that the assessee was under bona-fide belief that the profits of the overseas branches are taxable in the host country as the assessee is having permanent establishment in the said country. This belief of the assessee is further substantiated by the fact that the assessee has offered income from said overseas branch to tax in the host country. The DRP has given benefit of the tax credit to the assessee for the taxes paid overseas.

13. The second contention of the assessee is that the issue whether the profits of foreign branch are liable to be taxed in India, is debatable. We find that in the case of DCIT vs. Essar Oil Ltd.(supra), the Tribunal has held

that income from overseas branch is taxable in the country where branch is established. In the immediately succeeding assessment year, the Co-ordinate Bench of Tribunal in the case of very same assessee i.e. Essar Oil Ltd. vs. Addl. CIT (supra) has held that the profits of overseas branch are taxable in India. These two divergent views by two different benches of the Tribunal has made the issue debatable. The matter has travelled to the Hon'ble Bombay High Court in Income Tax Appeal No.227 of 2014(supra). The Hon'ble Bombay High Court has admitted substantial question of law on the issue of place of taxability of profits earned by the overseas. It is a trait law that where the issue is debatable no penalty under section 271(1)(c) of the Act is leviable. We further observe that the assessee in computation of income has already disclosed profits of Sri Lanka branch though, the same were subsequently reduced from the total taxable income by the assessee. Merely for the reason that the claim made by the assessee under bona-fide belief is not accepted by the Department penalty under section 271(1)(c) of the Act cannot be levied. Our this view is fortified by the decision rendered in the case of CIT vs. Reliance Petroproducts Ltd. (supra).

14. Thus, for the reasons given above, we find merit in the contentions raised by assessee. In our considered view it is not a fit case for levy of penalty under section 271(1)(c) of the Act. Consequently, the penalty levied in respect of non-disclosure of profits of Sri Lanka branch is deleted and the appeal of the assessee is allowed.

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

16. To sum-up, the appeal of Revenue is dismissed and that of assessee is allowed.

Order pronounced in the open court on Friday the 20<sup>th</sup> day of December, 2019.

Sd/-  
(R.C.SHARMA)  
ACCOUNTANT MEMBER

Sd/-  
(VIKAS AWASTHY)  
JUDICIAL MEMBER

Mumbai, Dated 20/12/2019  
Vm, Sr. PS(O/S)

**Copy of the Order forwarded to :**

1. The Appellant ,
2. The Respondent.
3. The CIT(A)-
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Dy./Asstt. Registrar)  
**ITAT, Mumbai**