

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES "A", MUMBAI**

BEFORE SHRI RAJESH KUMAR (AM) AND SHRI RAM LAL NEGI (JM)

**ITA No. 2895/MUM/2017
Assessment Year: 2011-12**

Ankur Drugs & Pharma Ltd., C- 306, Crystal Plaza, Andheri Link Road, Andheri (West), Mumbai - 400053 PAN: AACCA2062M	Vs.	The Assistant Commissioner of Income Tax, Central Circle - 20, Mumbai
(Appellant)		(Respondent)

Assessee by: None

Revenue by : Shri Rajiv Harit (CIT DR)

Date of Hearing: 05/03/2020

Date of Pronouncement: 20/04/2020

ORDER

PER RAM LAL NEGI, JM

This appeal has been filed by the assessee against the order dated 17.01.2017 passed by the Commissioner of Income Tax (Appeals) -51 (for short 'the CIT (A) Mumbai, for the assessment year 2011-12, whereby the Ld. CIT (A) has partly allowed the appeal filed by the assessee against the order passed u/s 271(1)(c) of the Income Tax Act, 1961 (for short the 'Act').

2. Brief facts of the case are that the assessee a public limited company carrying on business of contract manufacturing of pharmaceuticals formulation and products at his factories at Daman and Baddi, filed its return of income declaring nil income and unabsorbed depreciation of Rs. 103,65,30,317/-. Since, the case was selected for scrutiny, the AO issued notice u/s 143 (2) and 142 (1) of the Act calling for various details. The assessee later on revised the return and reduced the unabsorbed depreciation to 74,00,17,005/-. AO passed the assessment order u/s 143(3) of the Act and

made addition of Rs. 32,64,09,115/- on account of excess claimed and Rs. 15,10,060/- u/s 50C of the Act in respect of a property, stamp value was more than the sale agreement to value. Accordingly, the assessee was allowed to carry forward the unabsorbed depreciation of Rs. 41,15,20,627/-. On the basis of the said additions, the AO levied penalty u/s 271 (1) (c) of the Act amounting to Rs. 10,89,26,551/-. The assessee challenged the penalty order before the Ld. CIT (A). The Ld. CIT (A) confirmed the penalty on addition on account of disallowance of depreciation and deleted the penalty in respect of addition u/s 50C of the Act. Still aggrieved, the assessee is in appeal before the Tribunal.

3. The assessee has challenged the impugned order passed by the Ld. CIT (A) on the following effective grounds:-

1.0 *“The order passed by the learned Commissioner of Income –Tax (Appeals)-51, Mumbai, partly confirming the assessment order passed u/s 271 (1) (c) of the Income Tax Act, 1961, is both bad-in-law and bad –in-facts.*

2.0 *The Commissioner of Income Tax (Appeals) erred in law as well in facts in partially confirming the penalty order passed by the assessing officer on the basis of invalid notice issued u/s 274 r.w. section 271 (1) (c) of the Income Tax Act, 1961.*

Penalty U/s 271 (1) (c) : Rs. 10,84,24,947/-

3.0 *The Commissioner of Income Tax (Appeals) erred in confirming the penalty of Rs. 10,84,24,947/- u/s 271 (1) (c) of the Income Tax Act, 1961.”*

4. This appeal was fixed for hearing on 05.03.2020. However, none appeared on behalf of the assessee on the said date. We notice that this appeal has been adjourned for more than five times due to none-appearance of the appellant/assessee. From the conduct of the assessee, we are convinced that the assessee is no longer interested in pursuing its appeal. Hence, we decided to dispose of the present appeal on the basis of material on record after hearing the Ld. Departmental Representative (DR). Accordingly, we asked the Ld. DR to argue on behalf of the revenue.

5. The Ld. DR supporting the order passed by the Ld. CIT (A) submitted that since the assessee had concealed the income by furnishing inaccurate

particulars, the Ld. CIT (A) has rightly confirmed the penalty levied by the AO in respect of excess claim of depreciation amounting to Rs. 32,64,09,115/- made by the assessee. The Ld. DR further pointed out that the Ld. CIT (A) has deleted the penalty in respect of addition of Rs. 15,10,060/- u/s 50C holding that since the addition u/s 50C is a technical addition, the assessee is not liable for penalty u/s 271 (1) (c). The Ld. DR accordingly submitted that there is no infirmity in the order passed by the Ld. CIT (A) to interfere with.

6. We have perused the material on record including the submissions made by the assessee before the Ld. CIT (A). The assessee has challenged the impugned order *inter alia* on the ground that the Ld. CIT (A) has wrongly confirmed the penalty in respect of addition on account of disallowance of depreciation ignoring that the AO has passed the penalty order on the basis of invalid notice issued u/s 274 r.w.s. 271 (1) (c) of the Act. We notice that the Ld. CIT (A) rejected this ground of appeal and decided the issue on merits and partly allowed the appeal of the assessee. The findings of the Ld. CIT (A) are as under:-

“20. I have considered the facts of the case, contentions and submissions of the assessee as also the order of the AO. It is gathered that the assessee had sold a land at Daman for Rs. 9,50,62,800/- during the year. However, the stamp valuation of the sale was Rs. 9,65,72,860/-. Therefore difference of Rs. 15,10,060/- was added by the AO u/s 50C of the Act. The AO has further levied penalty u/s 271 (1) (c) of the Act on the difference amount of Rs. 15,10,060/- which is the subject matter of the present appeal. In this regard I would like to clarify that the addition u/s 50C is purely a technical addition. This is not the case of the assessee that he actually received higher amount of Rs. 9,65,72,860/- and offered only Rs. 9,50,62,800/- towards sale of the property, thus making him liable for concealment penalty. There is no evidence to effect, that either the assessee under reported the consideration or furnish any inaccurate particulars. In fact there is no material to that effect, nor any such material is brought on the record, by the AO. In fact addition u/s 50C is a technical addition and in my considered view, does not make assessee liable to penalty u/s 271 (1) (c). In any case to levy the penalty under this

section, the AO need to establish that the assessee either concealed the income or furnish inaccurate particulars of income, which is not the position in present case. Therefore, considering the facts of the case and various case laws relied upon by the assessee, the penalty u/s 271 (1) (c) on this issue is directed to be deleted.

21. In view of the above facts and legal position, penalty levied in respect of excess claim of depreciation to the tune of Rs. 32,64,09,115/- is upheld. At the same time, the penalty in respect of addition of Rs. 15,10,060/- u/s 50C is directed to be deleted. The AO will compute the quantum of penalty accordingly.”

7. The Ld. CIT (A) has decided the appeal of the assessee on merits on the basis of evidence on record and in accordance with the principles of law laid down by the Courts of Law and the decisions of the various Benches of the ITAT. We do not find any material on record to establish that the findings of the Ld. CIT (A) are factually or legally incorrect. Further we do not find any material on record to hold that the notice issued by the u/s 274 r.w.s. 271 (1) (c) of the Act was invalid. Accordingly, we do not find any reason to interfere with the well-reasoned order of the Ld. CIT (A). We therefore uphold the findings of the Ld. CIT (A) and dismiss the assessee’s appeal.

In the result, appeal filed by the assessee for assessment year 2011-2012 is dismissed.

Order pronounced on 20th April, 2020 under rule 34 (4) of the Income Tax Appellate Tribunal Rules, 1963.

Sd/-
 (RAJESH KUMAR)

ACCOUNTANT MEMBER

Sd/-
 (RAM LAL NEGI)
 JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated: 20/04/2020

Alindra, PS

आदेश प्रतिलिपि अग्रेषित/ Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त (अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई /
DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

**उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai**