



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

BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER AND
SHRI N.K. PRADHAN, ACCOUNTANT MEMBER

ITA no.2849/Mum./2019
(Assessment Year : 2010-11)

Firmenich Aromatics India Pvt. Ltd.
9th Floor, Arena Space
CTS 20, New Shyam Nagar Road
Behind Majas Bus Depot
Jogeshwari (E), Mumbai 400 060
PAN - AAACF1621M

..... Appellant

v/s

Dy. Commissioner of Income Tax
Circle-9(3)(1), Mumbai

..... Respondent

Assessee by : None
Revenue by : Shri Sushil Kumar Mishra

Date of Hearing - 04.11.2020

Date of Order - 06.11.2020

ORDER

PER SAKTIJIT DEY, J.M.

The aforesaid appeal has been filed by the assessee challenging the order dated 27th February 2019, passed by the learned Commissioner of Income Tax (Appeals)-16, Mumbai, confirming penalty of ₹ 10,99,467, imposed under section 271(1)(c) of the Income Tax Act, 1961 (for short "*the Act*") for the assessment year 2010-11.

2. Brief facts are, the assessee, a resident company, filed its return of income for the impugned assessment year on 12th October 2010, declaring total income of ₹ 14,31,65,917. In the course of assessment proceedings, the Assessing Officer noticed that the assessee has debited an amount of ₹ 99,04,000, towards expenditure incurred on repairs and maintenance. After calling for necessary details and verifying them, the Assessing Officer disallowed an amount of ₹ 32,34,670, out of such expenditure by treating it as capital in nature. Of course, the Assessing Officer allowed depreciation on the expenditure disallowed as capital expenditure. Thereby, he made net disallowance of ₹ 29,11,203. That apart, he made a further disallowance of ₹ 6,18,000 towards claim of bad debt. While considering the issues in appeal, learned Commissioner (Appeals), though, sustained the disallowance of capital expenditure, however, he deleted the disallowance made towards claim of bad debt. On the basis of disallowance made on account of capital expenditure amounting to ₹ 32,34,678, the Assessing Officer initiated proceeding for imposition of penalty under section 271(1)(c) of the Act and ultimately passed an order imposing penalty of ₹. 10,99,467 alleging furnishing of inaccurate particulars of income. Though, the assessee challenged the penalty order so passed before the first appellate authority, however, it was unsuccessful.

2. When the appeal was called for hearing no one was present on behalf of the assessee to represent the case. There is no application seeking adjournment either. In view of the above and considering the nature of dispute, we proceed to dispose off the appeal ex-parte qua the assessee after hearing the learned Departmental Representative and on the basis of material available on record.

3. We have heard the learned Departmental Representative and perused the material on record. As could be seen from the facts on record, the assessee had claimed expenditure of ₹ 99,04,000, towards repairs and maintenance. In the course of assessment proceedings, the Assessing Officer after examining the details furnished allowed a part of the expenditure while disallowing an amount of ₹ 32,34,670, by treating it as capital expenditure. Thus, as could be seen, the fact that the assessee had incurred the expenditure has not been disputed by the Assessing Officer. The dispute is only with regard to the nature of expenditure, whether capital or revenue. Whether a particular expenditure is a capital or revenue in nature is a highly debatable issue. It is a fact on record that the assessee has furnished full particulars of the expenditure claimed and no facts relating to such expenditure has been held back by the assessee. After examining the nature of expenditure, the Assessing Officer was of the view that a part of the expenditure would be in the nature of capital expenditure.

However, it is also a fact on record that the Assessing Officer has allowed depreciation to the assessee on such expenditure. Therefore, what it means in other words is, instead of assessee claiming the expenditure in one go, it has to be allowed to the assessee by way of depreciation over a period of time until the written down value becomes nil. Thus, either way the assessee is entitled to claim the expenditure, though, there may be a timing difference. Thus, in the aforesaid circumstances, it cannot be said that the assessee has furnished inaccurate particulars of income so as to attract levy of penalty under section 271(1)(c) of the Act. In view of the above, we delete the penalty amounting to ₹.10,99,467, imposed under section 271(1)(c) of the Income Tax Act. Grounds raised by the assessee are allowed.

4. In the result, appeal is allowed.

Order pronounced in the open court on 06.11.2020

Sd/-
N.K. PRADHAN
ACCOUNTANT MEMBER

Sd/-
SAKTIJIT DEY
JUDICIAL MEMBER

MUMBAI, DATED: 06.11.2020

Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The CIT(A);*
- (4) *The CIT, Mumbai City concerned;*
- (5) *The DR, ITAT, Mumbai;*
- (6) *Guard file.*

Pradeep J. Chowdhury
Sr. Private Secretary

True Copy
By Order

Assistant Registrar
ITAT, Mumbai