

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'A' BENCH
MUMBAI**

**BEFORE: SHRI VIKAS AWASTHY, JM
&
SHRI M.BALAGANESH, AM**

**ITA No.5682/Mum/2019
(Assessment Year :2011-12)**

ACIT, Circle-2(1)(1) Mumbai, Room No.561, 5 th Floor Aayakar Bhavan M.K. Road, Mumbai – 400 020	Vs.	M/s. Astee Lifescience Ltd., 3 rd Floor, Godrej One Eastern Express Highway Pirojsha Nagar Vikhroli (E) Mumbai – 400 709
PAN/GIR No.AACA4832D		
(Appellant)	..	(Respondent)

**CO No.24/Mum/2021
(Arising out of ITA No.5682/Mum/2019)
(Assessment Year :2011-12)**

ACIT, Circle-2(1)(1) Mumbai, Room No.561, 5 th Floor Aayakar Bhavan M.K. Road, Mumbai – 400 020	Vs.	M/s. Astee Lifescience Ltd., 3 rd Floor, Godrej One Eastern Express Highway Pirojsha Nagar Vikhroli (E) Mumbai – 400 709
PAN/GIR No.AACA4832D		
(Appellant)	..	(Respondent)

Revenue by	Shri Vinod K Bhaskaran
Assessee by	Shri Akram Khan
Date of Hearing	15/03/2021
Date of Pronouncement	19/03/2021

आदेश / ORDER

PER M. BALAGANESH (A.M):

This appeal in ITA No.5682/Mum/2019 & CO No.24/Mum/2021 for A.Y.2011-12 arise out of the order by the Id. Commissioner of Income Tax (Appeals)-4, Mumbai in appeal No.CIT(A)-4/e-file-17/JCIT (OSD)-2(1)91/2018-19 dated 10/06/2019 (Id. CIT(A) in short) in the matter of imposition of penalty u/s.271(1)(c) of the Income Tax Act, 1961.

2. We have heard rival submissions and perused the materials available on record. We find that assessee is engaged in manufacturing of wide range of agro chemicals and pharmaceuticals intermediaries. The return of income for the A.Y.2011-12 was filed by the assessee declaring business loss of Rs.1,76,80,439/- under normal provisions of the Act and book profit of Rs.6,92,77,918/- u/s.115JB of the Act. We find that assessee had made certain purchases of raw materials(chemicals) amounting to Rs.3,08,77,082/- from Kotsons Impex Pvt. Ltd., and had made corresponding sales thereon to Saileela Trading Pvt. Ltd., to the tune of Rs.3,09,00,626/-. The assessee furnished the copy of invoices for these transactions before the Id. AO together with the relevant bank statements evidencing payments made thereon and amounts received thereon. The assessee also filed an indemnity bond for transactions undertaken with Kotsons Impex Pvt. Ltd., and Saileela Trading Pvt. Ltd., confirming that raw materials purchased from Kotsons Impex Pvt. Ltd., on consignment basis were directly delivered to Saileela Trading Pvt. Ltd., and thus, no physical delivery of goods was taken by the assessee. The assessee submitted that though the only profit earned in these transactions was Rs.23,544/- (Rs.3,09,00,626/- - Rs.3,08,77,082/-),

however, in order to purchase peace, the assessee came forward to offer 5% as its profit margin in these transactions and accordingly, vide letter dated 03/02/2014 filed before the Id. AO, offered a sum of Rs.15,45,000/- to be brought to tax as profit embedded in these transactions. This sum was accordingly taxed by the Id. AO. No appeal against the quantum proceedings was preferred by the assessee. Subsequently, the Id. AO levied penalty u/s.271(1)(c) on this taxed sum. We find that the Id. CIT(A) had categorically given a finding in para 6.12 of his order that the addition had been ultimately made only on an estimated basis by placing reliance on the decision of the Hon'ble Delhi High Court in the case of CIT vs. Aero Traders Pvt. Ltd., in ITA No.1097/2009 dated 25/01/2010; on the decision of the Hon'ble Chhattisgarh High Court in the case of CIT vs. Vijaykumar Jain dated 19/04/2010; decision of Hon'ble Gujarat High Court in the case of CIT vs. Subhash Trading Co., reported in 221 ITR 110; decision of Hon'ble Punjab and Haryana High Court in the case of CIT vs. Harigopal Singh reported in 255 ITR 85; and the decision of Hon'ble Rajasthan High Court in the case of CIT vs. Mahendra Singh Khedla in ITA No.174/2010, the Id. CIT(A) held that no penalty u/s.271(1)(c) of the Act could be levied on an estimated addition and accordingly, deleted the penalty. We do not find any infirmity in the said order of the Id. CIT(A) deleting the penalty on an estimated addition. Accordingly, the ground raised by the Revenue is dismissed.

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

4. We find that assessee has also preferred cross objections before us on the ground that the show-cause notice issued u/s.274 r.w.s. 271(1)(c) of the Act did not mention whether the assessee has concealed particulars of his income or had furnished inaccurate particulars of

income. We also find that yet another ground raised in the cross objections of the assessee is that no penalty u/s.271(1)(c) of the Act could be levied where the income is assessed to tax u/s.115JB of the Act. Since, we have already dismissed the appeal of the Revenue hereinabove, we do not deem it fit to get into other grounds raised by the assessee in its cross objections as they would be purely academic in nature. Accordingly, the cross objections raised by the assessee are dismissed as infructuous.

5. In the result, appeal of the Revenue is dismissed and Cross Objection of the assessee is dismissed.

Order pronounced on 19/03/2021 by way of proper mentioning in the notice board.

Sd/-
(VIKAS AWASTHY)
JUDICIAL MEMBER

Sd/-
(M.BALAGANESH)
ACCOUNTANT MEMBER

Mumbai; Dated 19/03/2021
KARUNA, *sr.ps*

Copy of the Order forwarded to :

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

//True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai