

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

**BEFORE: SHRI M. BALAGANESH, AM
&
SHRI PAVAN KUMAR GADALE, JM**

**ITA No.5429/Mum/2019
(Assessment Year :2012-13)**

M/s. Alchemie Dye Chem Pvt. Ltd., 71, 2 nd Floor, Udyog Kshetra, Mulund Goregaon Link Road Off. LBS Road, Mulund (W), Mumbai-400080	Vs.	DCIT-15(1)(1), Room No.470, 4 th Floor Aayakar Bhavan Maharshi Karve Road, Churchgate Maharashtra-400020
PAN/GIR No. AAACA3921F		
(Appellant)	..	(Respondent)

Assessee by	Shri Bhavin Dedhia
Revenue by	Shri Brajendra Kumar
Date of Hearing	19/04/2021
Date of Pronouncement	20/04/2021

आदेश / O R D E R

PER M. BALAGANESH (A.M.):

This appeal in ITA No.5429/Mum/2019 for A.Y.2012-13 arises out of the order by the Id. Commissioner of Income Tax (Appeals)-24, Mumbai in appeal No.CIT(A)-4/DCIT-15(1)(1)/IT-101/2018-19 dated 22/05/2019 (Id. CIT(A) in short) in the matter of imposition of penalty u/s.271(1)(c) of the Income Tax Act, 1961 (hereinafter referred to as Act).

2. The only issue to be decided in this appeal is as to whether the Id. CIT(A) was justified in confirming the levy of penalty u/s.271(1)(c) of the Act in the facts and circumstances of the instant case.

3. We have heard the rival submissions and perused the materials available on record. We find that assessee is primarily engaged in the business of finance and investment activity. The return of income for the A.Y.2012-13 was filed by the assessee declaring total income of Rs.58,88,990/- and assessment was completed u/s.143(3) of the Act on 21/03/2015 determining total income at Rs.66,74,200/-. We find that the Id. AO had made disallowance of interest u/s.36(1)(iii) of the Act in the sum of Rs.7,85,206/-. We find that the Id. AO had levied penalty u/s.271(1)(c) of the Act in respect of this disallowance of interest.

3.1. Both the parties before us fairly agreed that this Tribunal in the quantum appellate proceedings had set aside the matter to the file of the Id. AO with certain directions in ITA No.7386/Mum/2017 dated 03/04/2019. The operative portion of the said tribunal decision is reproduced hereunder:-

“12. Therefore, considering the above propositions as laid down as well as considering the submissions of the assessee that AO had failed to appreciate that assessee had sufficient interest free own funds of Rs. 2.28 crores which have been advanced to M/s Aarti Drugs. Thus, interest only to the extent as attributable to balance amount be subject to disallowance u/s 36(1)(iii) of the Act. We set aside the order of Ld. CIT(A) and remit the matter back to the file of AO with a direction to pass afresh order as per the decision of Hon’ble Bombay High Court in the case of Reliance Utilities 18 DTR 1 (Mumbai) (2009). It is needless to mention that before passing afresh order of assessment, the AO shall provide sufficient opportunity of hearing to the assessee.

13. Before parting, we may make it clear that our decision to restore the matter back to the file of AO shall in no way be construed as having any reflection or expression on the merits of the dispute, which shall be adjudicated by the AO independently in accordance with law. With these directions, this ground of appeal raised by the assessee is allowed for statistical purposes.”

3.2. Since the quantum appeal has been remanded to the file of the Id. AO, the penalty levied u/s.271(1)(c) of the Act would be premature and have no legs to stand at this moment. Accordingly, we have no hesitation in cancelling the levy of penalty u/s. 271(1)(c) of the Act. Hence, the grounds raised by the assessee are allowed.

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

Order pronounced on 20/04/2021 by way of proper mentioning in the notice board.

Sd/-
(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Sd/-
(M.BALAGANESH)
ACCOUNTANT MEMBER

Mumbai; Dated 20/04/2021

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

