

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH: 'G' NEW DELHI**

**BEFORE MS SUCHITRA KAMBLE, JUDICIAL MEMBER  
AND  
SH. PRASHANT MAHARISHI, ACCOUNTANT MEMBER**

**I.T.A. No. 6952/DEL/2017 (A.Y 2013-14)**

**(THROUGH VIDEO CONFERENCING)**

ACIT Circle-22(2) Room No. 226A, 2 <sup>nd</sup> Floor, C. R. Building, I. P. Estate, New Delhi <b>(APPELLANT)</b>	Vs	Saveer Biotech Ltd. 1442, Wazir Nagar, Kotla Mubarakpur, New Delhi AAACS3271N <b>(RESPONDENT)</b>
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<b>Appellant by</b>	<b>Sh. Prakash Dueby, SR. DR</b>
<b>Respondent by</b>	<b>Dr. Rakesh Gupta, Adv</b>

<b>Date of Hearing</b>	<b>16.09.2021</b>
<b>Date of Pronouncement</b>	<b>23.09.2021</b>

**ORDER**

**PER SUCHITRA KAMBLE, JM**

This appeal is filed by the Revenue against the order dated 30/08/2017 passed by CIT(A)-8, New Delhi for assessment year 2013-14.

2. The grounds of appeal are as under:

*“Whether the Ld. CIT(A) has erred in deleting the penalty of Rs. 58,97,366/- levied by the AO u/s 271(1)(c) on account of deduction u/s 35(2AB) as the assessee not voluntarily disclosed the fact of not receiving DSIR Certificate for, deduction u/s 35(2AB). In fact, the revised computation was filed by the assessee only after AO questioned him on deduction u/s 35(2AB) during the assessment proceedings.”*

3. The assessee company is engaged in business of biotechnology in manufacture and installation of green house / growth and various electrical instruments for green house / growth house / growth chamber, which are used by research institutions for research purposes, where a particular level of temperature is required to be maintained, irrespective of temperature outside the green house. Appellant has filed its return of income on 24.09.2013 for AY 2013-14, declaring loss of Rs. (-) 27,76,517/-, apart from declaring book profits of Rs. 2,20,45,910/- u/s 115JB of the Act. For assessment year under consideration, tax payable on return income under normal provisions of the Act, was less than tax payable on book profits u/s 115JB of the Act therefore return of income was filed, declaring tax payable under section 115JB of the Act. The case was taken up for scrutiny and assessment u/s 143(3) of the Act was completed by assessing officer on 05.02.2016, determining assessed income at Rs. 1,92,00,408/- under normal provisions of Act. The Assessing Officer passed the assessment order on 05.02.2016 thereby making addition / disallowance under the heads (i) disallowance of weighted deduction claimed u/s 35(2AB) of the Act (ii) addition of Rs. 4,37,244/- u/s 2(24)(x) read with section 36(l)(va) of the Act, on account of delayed payment of employees contribution to PF and (iii) disallowance of Rs. 10,229/- u/s 14A of the Act read with Rule 8D. While computing total income for AY 2013-14, the Assessing Officer allowed revenue expenses incurred by the Assessee of Rs. 1,92,15,317/- for undertaking in-house research & development on DSIR recognized in-house R & D facility. While finalizing scrutiny assessment on 05-02-2016, penalty proceedings u/s 271(l)(c) of the Act, were also initiated by the Assessing Officer, for furnishing inaccurate particulars of income. During the penalty proceedings, the Assessing Officer issued penalty notice dated 05.02.2016 fixing the hearing date on 14.04.2016 and another penalty show cause notice was issued on 12-08-2016 fixing the date of hearing on 19.08.2016. In response to penalty show cause notice(s), no reply was

submitted on behalf of the assessee, therefore placing reliance on judicial pronouncements mentioned in penalty order, the Assessing Officer held that the assessee has not furnished accurate particulars of its income to the extent of Rs. 1,96,57,885/-. The Assessing Officer also held that this is a fit case for levy of penalty for furnishing of inaccurate particulars of income. The Assessing Officer levied penalty of Rs. 58,97,366/- vide penalty order dated 31.08.2016.

4. Being aggrieved by the assessment order, the assessee filed appeal before the CIT(A). The CIT (A) has allowed the appeal of the assessee.

5. The Ld. DR relied upon the assessment order and the order of the CIT(A).

6. The Ld. AR relied upon the order of the CIT(A).

7. We have heard both the parties and perused the material available on record. The CIT(A) has give a categorical finding that the assessee was under the genuine belief that approval will be granted by the appropriate authority i.e. DSIR and accordingly made the claim for deduction u/s 35(2AB) of the Act for the Assessment Year under consideration. But the approval was granted by DSIR w.e.f. 01.04.2013 and, therefore, the assessee withdrawn the weighted deduction claim by filing revised computation of income before the Assessing Officer in ongoing assessment proceedings. This cannot be termed as concealing income or furnishing inaccurate particulars of income. Besides this, the assessee has also given explanation before the Assessing Officer as relates to revised computation of income. Thus, in light of the decision of the Hon'ble Apex Court in case of CIT Vs. Reliance Petro Products Pvt. Ltd. (2010) 322 ITR 158 Delhi. Thus, there is no need to interfere with the findings of the CIT(A). The appeal of the Revenue is dismissed.

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

**Order pronounced in the Open Court on this 23<sup>rd</sup> Day of September, 2021**

**Sd/-**

**(PRASHANT MAHARISHI)  
ACCOUNTANT MEMBER**

**Sd/-**

**(SUCHITRA KAMBLE)  
JUDICIAL MEMBER**

Dated: 23/09/2021

*R. Naheed \**

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR  
ITAT NEW DELHI