

आयकर अपीलीय अधिकरण “ए” न्यायपीठ मुंबई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
“A” BENCH, MUMBAI

माननीय श्री विकास अवस्थी, न्यायिक सदस्य एवं
माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।
BEFORE HON’BLE SHRI VIKAS AWASTHY, JM AND
HON’BLE SHRI MANOJ KUMAR AGGARWAL, AM
(Hearing through Video Conferencing Mode)

आयकरअपील सं./ I.T.A. No.812/Mum/2020
(निर्धारण वर्ष / Assessment Year: 2011-12)

DCIT Circle – 1 6 th floor, Ashar IT Park R. No. 22, B-Wing Wagle Indl. Estate Road No. 16Z, Thane(W) Pin-400 604	बनाम / Vs.	M/s Advance Enzyme Technologies Ltd (formerly known as Advance Biochemicals Ltd.) A-Wing, 5th floor, Sun Magnetica LIC Service Road, Louis Wadi Thane-400 604
स्थायीलेखासं. /जीआइआरसं. /PAN/GIR No. AABCA-4555-E		
(अपीलार्थी/Appellant)	:	(प्रत्यर्थी / Respondent)

Revenue by	:	Shri Brajendra Kumar – Ld. Sr. DR
Assessee by	:	Ms. Dinkle Haria – Ld. AR

सुनवाई की तारीख/ Date of Hearing	:	28/09/2021
घोषणा की तारीख / Date of Pronouncement	:	01/10/2021

आदेश / O R D E R

Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid appeal by revenue for Assessment Year [AY] 2011-12 arises out of order of Ld. Commissioner of Income-Tax (Appeals)-1, Mumbai [CIT(A)] dated 18/11/2019 which has deleted the penalty of Rs.292.30 Lacs as levied by Ld. Assessing Officer (AO) u/s 271(1)(c) vide penalty order dated 26/03/2018.

2. The Ld. AR, at the outset, submitted that substantial quantum additions, against which penalty was levied, has been deleted by the Tribunal and therefore, the penalty would otherwise not survive. The copy of Tribunal order ITA Nos. 866 & 1531/Mum/2017 dated 04/03/2020 has been placed on record. Regarding other small additions, Ld. AR relied on the impugned order deleting the penalty. The Ld. Sr. DR could not controvert the aforesaid submissions. In the above background, our adjudication would be as given in succeeding paragraphs.

3.1 Upon perusal of penalty order, it could be seen that the major addition against which the penalty has been levied is denial of deduction u/s 35(2AB) for Rs.1754.48 Lacs. Upon perusal of cited order of the Tribunal, it could be seen that deduction has finally been allowed to the assessee by the Tribunal. There is nothing on record which would show that the aforesaid order has been reversed, in any manner. Therefore, since the quantum addition has been deleted by the Tribunal, penalty levied by Ld. AO against the same would not otherwise survive. We order so.

3.2 The second addition against which penalty has been levied is disallowance of provisions for bad debts for Rs.2.67 Lacs. The assessee claimed the provision for Rs.18.26 Lacs but the same was denied by Ld. AO. Upon further appeal, Ld. CIT(A) reduced the same to Rs.2.67 Lacs since the balance amount was already added back in earlier years. Consequently, the penalty was levied by Ld. AO on Rs.2.67 Lacs. The Ld. CIT(A) noted that there was bona fide mistake in the computation of income and therefore, no penalty was to be levied as per the decision of

Hon'ble Apex Court in **CIT V/s Price Waterhouse Coopers (P) Ltd. (348 ITR 306).**

3.3 The third addition against which the penalty has been levied is disallowance u/s 36(i)(va) for Rs.5,618/- for delayed payment of Provident fund and ESIC. The Ld. CIT(A) deleted the same by observing that it was not the case that the assessee failed to furnish the details. There was only late payment but the genuineness and validity of the claim was not under doubt.

Aggrieved, the revenue is in further appeal before us

3.4 On the issue of penalty on addition of provision for doubtful debts as well as disallowance u/s 36(i)(va), we concur with the observation of Ld. CIT(A) that there was bona-fide mistake on the part of the assessee to claim the same. Further, the nature of disallowances is not such that it could be said that there was concealment of income or furnishing of inaccurate particulars of income by the assessee. Therefore, finding no infirmity in the impugned order, we dismiss the appeal.

4. The appeal stand dismissed.

Order pronounced on 1st October, 2021.

Sd/-

(Vikas Awasthy)

न्यायिक सदस्य / **Judicial Member**

Sd/-

(Manoj Kumar Aggarwal)

लेखा सदस्य / **Accountant Member**

मुंबई Mumbai; दिनांक Dated : 01/10/2021
Sr.PS, Dhananjay

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT- concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकरअपीलीयअधिकरण, मुंबई / ITAT, Mumbai.