

**IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD "D" BENCH, AHMEDABAD**

**BEFORE SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER AND
Ms. MADHUMITA ROY, JUDICIAL MEMBER**

(Conducted through Virtual Court)

**ITA Nos.1317 & 1318/Ahd/2019
Assessment Years: 2012-13 & 2013-14**

Gujarat Fluorochemicals Ltd., vs. D.C.I.T., Circle-1(1)(1),
2nd Floor, ABS Towers, Baroda.
Old Padra Road,
Race Course,
Vadodara (Gujarat)
[PAN – AAACG 6725 H]
(Appellant) (Respondent)

Appellant by : Shri S.N. Soparkar, Sr. Advocate &
Shri Parin Shah, A.R.
Respondent by : Shri Purushottam Kumar, Sr. D.R.

Date of hearing : 10.11.2021
Date of pronouncement : 12.11.2021

ORDER

PER PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER :

The captioned appeals have been filed by the assessee challenging imposition of penalty amounting to Rs.85,000/- for Assessment Year (A.Y.) 2012-13 and Rs.9,25,000/- for A.Y. 2013-14.

2. When the matter was called for hearing, the learned Counsel for the assessee straight away pointed out that the total income assessed for A.Y. 2012-13 under normal provisions of the Act stands at loss of Rs.63,94,19,136/-. However, the income which has been subjected to tax is at book profit of Rs.7,01,62,08,886/- under section 115JB of the Income Tax Act, 1961 (the Act in short) being higher of the two.

3. Similarly, with reference to A.Y. 2013-14, the total income under the normal provisions stands at Rs.55.77 Crores as against the book profit assessed at Rs.592.25 Crores. Having regard to tax collected under MAT provisions, being higher than normal provisions, the additions/disallowances under normal provisions would not invite penalty under section 271(1)(c) of the Act. The learned Counsel for the assessee further pointed out that additions and disallowances have been carried out by way of transfer pricing adjustments which have not been challenged by the assessee in the quantum proceedings owing to smallness of the amount. Such act, however, would not reflect poorly upon the bonafide conduct of the assessee. In this background, learned Counsel submitted that where the additions/disallowances have been carried out under the normal provisions of the Act, but the assessment was ultimately made on the income computed under section 115JB of the Act and the tax has been paid on the income so computed under the MAT provisions, the alleged concealment did not lead to tax evasion *per se*. Therefore, no penalty could have been imposed on the assessee under the normal provisions of the Act. For this purpose, a reference was made to the judgment in the case of CIT vs. Nalwa Sons Investment Limited (2010) 327 ITR 543 (Delhi). A reference was further made to the CBDT Circular No.25/2015 wherein the Board has clarified that in respect of cases prior to assessment year 2016-17, no penalty under section 271(1)(c) of the Act needs to be imposed where the additions/disallowances were made under normal provisions of the Act but tax was levied under MAT provisions under section 115JB/115JC of the Act. A decision of the Hon'ble Delhi High Court in Unison Hotels Ltd. vs. DCIT 40 taxmann.com 237 (Delhi) (2013) and CIT vs. Cadila Pharmaceuticals Ltd. was also referred to support the proposition that no penalty can be imposed where the tax has been collected based on book profit.

4. Having regard to the settled position of law by various judgements referred to and relied upon on behalf of the assessee and the position also having been endorsed by the CBDT Circular, we find substantial force in the plea of the assessee for reversal of penalty imposed in the circumstances as merited hereinabove. Consequently, the appellate order of the CIT(A) is set aside and the penalty imposed by the A.O. in both the assessment years are cancelled.

5. In the result, both the appeals of the assessee are allowed. Pronounced in the open Court on this 12th day of November, 2021.

Sd/-
(MADHUMITA ROY)
Judicial Member

Sd/-
(PRADIP KUMAR KEDIA)
Accountant Member

Ahmedabad, the 12th day of November, 2021

*PBN/**

Copies to:

- (1) *The appellant*
- (2) *The respondent*
- (3) *CIT*
- (4) *CIT(A)*
- (5) *Departmental Representative*
- (6) *Guard File*

By order

*Assistant Registrar
Income Tax Appellate Tribunal
Ahmedabad benches, Ahmedabad*