

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

**BEFORE: SHRI M.BALAGANESH, ACCOUNTANT MEMBER
&
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER**

**ITA No. 1565/Mum/2019
(Assessment Year :2009-10)**

DCIT-9(3)(2) R.No.418, 4 th Floor Ayakar Bhawan Churchgate Mumbai	Vs.	M/s.Gentech Laboratories Ltd., Unit No.803, 8 th Floor Lodha Supremus, S.B.Marg, Lower Parel (W) Mumbai – 400 013
PAN/GIR No.AAACG1889N		
(Appellant)	..	(Respondent)

Revenue by	Shri Avinash Tiwari
Assessee by	Mrs. Renu Kapoor
Date of Hearing	09/05/2022
Date of Pronouncement	19/05/2022

आदेश / O R D E R

PER M. BALAGANESH (A.M):

This appeal in ITA No.1565/Mum/2019 for A.Y.2009-10 arises out of the order by the Id. Commissioner of Income Tax (Appeals)-16, Mumbai, Mumbai in appeal No.CIT(A)-16/ACIT-9(3)(2)/IT-04/2017-18 dated 24/12/2018 (Id. CIT(A) in short) in the matter of imposition of penalty u/s.271(1)(c) of the Act (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 deleting 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 rival submissions and perused the materials available on record. We find that return of income for A.Y.2009-10 was electronically filed by the assessee company on 26/09/2010 declaring total income of Rs.7,60,76,388/- consisting of long term capital gains for transfer of development rights. The assessee is engaged in the business of marketing of pharmaceutical healthcare products. Originally the assessment was completed u/s.143(3) of the Act on 24/05/2011 determining total income of the assessee at Rs.7,66,64,200/-. Later, the assessment was sought to be reopened and re-assessment was completed u/s.143(3) r.w.s. 147 of the Act on 22/09/2014 determining total income of the assessee at Rs.7,68,67,940/-. In the said re-assessment, addition has been made on account of bogus purchases to the tune of Rs.2,03,736/-. Penalty proceedings u/s.271(1)(c) of the Act were initiated and penalty was levied by the Id. AO on the said addition made on account of bogus purchases. The assessee also raised the ground before the Id.CIT(A) that in the notice issued for initiating penalty proceedings issued by the Id. AO, there was no clarity with regard to specific mistake committed by the assessee as to whether the assessee has concealed the particulars of income or furnishing inaccurate particulars of income. The Id. CIT(A) had granted relief to the assessee on the said legal ground by placing reliance on addition of various High Courts. We find that the very same issue is no longer res integra in view of the Full Bench decision of the Hon'ble Jurisdictional High Court in the case of Mohd. Farhan A Shaikh vs. DCIT reported in 434 ITR 1 (Bom). The relevant head notes of the said judgement is reproduced below:-

“Section 271(1)(c), read with section 274 of the Income-tax Act, 1961 - Penalty - For concealment of income (Recording of satisfaction) - Whether where assessment order clearly records satisfaction for imposing penalty on one or other, or both grounds mentioned in section 271(1)(c), a mere defect in notice-not

striking off irrelevant matter would vitiate penalty proceedings - Held, yes - Whether since penalty proceedings culminate under a different statutory scheme that remains distinct from assessment proceedings, therefore, assessee must be informed of grounds of penalty proceedings only through statutory notice - Held, yes - Whether even if notice contains no caveat that inapplicable portion be deleted, it is in interest of fairness and justice that notice must be precise, it should give no room for ambiguity - Held, yes [Paras 181 and 188][In favour of assessee]”

3.1. In view of the same, we do not find any infirmity in Id. CIT(A) deleting the levy of penalty. Accordingly, the appeal of the Revenue is dismissed.

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

Order pronounced on 19/05/2022 by way of proper mentioning
in the notice board.

(RAHUL CHAUDHARY)
JUDICIAL MEMBER

(M.BALAGANESH)
ACCOUNTANT MEMBER

Mumbai; Dated 19/05/2022
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