IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD "C" BENCH

Before: Ms. Annapurna Gupta, Accountant Member
And Ms. Madhumita Roy, Judicial Member

ITA No. 431/Ahd/2017
Assessment Year 1999-2000

Sun Pharmaceutical Industries Ltd. 'SPARC' Tandalija Road, Vadodara PAN No: AADCS3124K (Appellant)	Vs	The ACIT, Circle-2(1)(1), Baroda (Respondent)

Appellant by: Shri Bandish Soparkar,
Shri Parin Shah, A.R.
Respondent by : Shri A. P. Singh, CIT/D.R.

Date of hearing : 28-06-2022
Date of pronouncement : 07-09-2022

आदेश/ORDER

PER : ANNAPURNA GUPTA, ACCOUNTANT MEMBER:-

The present appeal has been filed by the Assessee against the order passed by the Commissioner of Income Tax (Appeals)-2, Vadodara, (in short referred to as CIT(A)), dated 30-11-2016, u/s. 250(6) of the Income Tax Act, 1961(hereinafter referred to as the "Act") pertaining to Assessment Year (A.Y) 1999-2000 confirming the levy of penalty u/s 271(1)(c) of the Act.

2. At the outset itself, it was pointed out that the grievance of the assessee in the present appeal is with respect to levy of penalty for concealing/furnishing inaccurate particulars of income pertaining to excess deduction claimed by the assessee amounting to Rs.50,17,054/- u/s 80IA of the Act on account of non allocation of R&D expenses of the same amount to its unit in Silvassa eligible to such deduction. It was pointed out that the assessee is in the business of manufacturing pharmaceutical products and its unit in Silvassa was eligible for and had claimed deduction of its profits u/s 80IA of the Act. The quantum of deduction so claimed had been reduced by allocation of R&D expenses of Rs.50,17,054 /- to the said units in the assessment framed for the impugned year u/s 143(3) of the Act. This was upheld in appeal upto the ITAT and penalty levied thereon u/s 271(1)(c) of the Act which was confirmed in appeal by the Ld.CIT(A).

3. Grounds were raised before us challenging the levy of penalty on merits in Ground No.3 -3.4 as under:

> *3. Re: Levy of penalty on reduction in deduction u/s 80IA:*
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> *3.1 On the facts and in the circumstances of the case and in law, the learned CIT(A) grossly erred in upholding the penalty levied by the Assessing Officer on account of non-allocation of R&D expenditure to undertakings eligible for deduction u/s 80IA.*
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> *3.2 The CIT(A) failed to appreciate that the disallowance on which penalty was sought to be levied is a legal and debatable matter and hence no penalty ought to be levied on the same.*
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> *3.3 The CIT (A) also failed to consider that the R&D expenditure has been allocated on adhoc / estimated basis. Further, the CIT(A) also ought to have appreciated expenditure incurred on R&D is futuristic and it has no connection with the profits of the current year of the eligible undertaking.*

3.4 The CIT(A) further ought to have appreciated that there was no nexus between the R&D expenses incurred and eligible undertakings, on account of which the Appellant did not allocate R&D expenses to eligible units and that several courts have later on affirmed the principle on which the Appellant has relied on for non-allocation of R&D expenditure to the eligible units."

4. The arguments of the Ld.Counsel for the assessee were to the effect-

- That all particulars of the R&D expenses incurred were truly disclosed by the assessee, its claim for not allocating any expenses was bonafide being in accordance with judicial decisions in this regard to the effect that in the absence of direct nexus established between the said expenses and manufacturing activity no expenses can be allocated. Reference was made to the decision of the Hon'ble Bombay High Court in the case of Zandu Pharmaceuticals Works Ltd. v Commissioner of Income Tax (2013) 350 ITR 366 (Bom).
- That in any case it was a debatable issue.
- that on the matter of allocation of R&D expenses, which is a mere estimation, there can be no levy of penalty for concealing or furnishing inaccurate particulars of income. He relied upon the following case laws in this regard:

- CIT, Central-III, Mumbai vs Mirc Electronics Ltd. [2017] 77 taxmann.com 67 (Bombay)
- Income-tax Officer 25(1)(4) Mumbai vs. Bio-Vet Industries [2017] 88 taxmann.com 844 (Mumbai- Trib.)

5. Ld. D.R. per contra contended that the above contentions of the assessee that its claim was bonafide and was in any case an estimation only were all unfounded since the assessee's own expert had given an

opinion that 10% of R&D expenses should be treated as pertaining to the formulation business in assessment framed for A.Y 1995-96 and based on the same the appeals for A.Y. 1995-96 & 1997-98 were finalized and not pressed by the assessee and accepted before the Hon'ble ITAT in their appeals for these years. In the impugned year also therefore the same ratio was applied and there was no reason or cause to differ or deviate from the considered stand taken in earlier years. In this regard, he drew our attention to the findings of the Ld. CIT(A) at Para 4.6 & 4.6.1 is as under:

> *4.6. Ground No. 5 pertains to levy of penalty on reduction of deduction claimed u/s. 80IA by Rs.50,17,034/- on account of allocation of R&D expenses to the eligible units. Undisputedly, the appellant company was carrying out R&D and incurred huge expenses thereon. The R&D activities were pertaining to the production of bulk drugs formulation business carried out in the units eligible for deduction u/s. 80IA. Accordingly, the assessee's own expert in A.Y. 1995-96 had given an opinion that 10% of R&D expenses should be treated as pertaining to formulation business. However, the appellant with clear cut intention to claim more deduction u/s. 80IA has not debited any R&D expenses in eligible unit. The Assessing Officer has allocated R&D expenses of Rs.50,17,034/- to eligible unit located in Silvassa and reduced the deduction u/s. 80IA. From this factual position, it is clear that there was no dispute regarding incurring of expenses on R&D pertaining to eligible units, yet the appellant did not debit any R&D expenses in the eligible units, consciously with a view to reduce taxable income of non-eligible units and increase the deduction u/s. 80IA in the eligible units. Accordingly, I hold that the appellant has furnished inaccurate particulars in this regard.*
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> *4.6.1. The Ld. Authorized Signatory has submitted that there was no direct nexus between the R&D expenses and profit earned from eligible unit. This argument is not acceptable because the R&D expenses were incurred even for formulation business conducted in eligible unit. Had the appellant allocated a part of expenses to eligible unit, then any variation therein by the Assessing Officer could have been a case of mere estimate. However, by not allocating any part of expenses incurred on R&D pertaining to formulation business of eligible units, the appellant has furnished inaccurate particulars consciously. Hon'ble ITAT in the case of ITO Vs. R.K. Bros (2003) 87 ITD 649 (All.) has held that when concealment of income is apparent from the record, penalty u/s. 271(l)(c) can be imposed even on the basis of estimate of income. It is also worthwhile to mention*

that this disallowance has also increased the book profit u/s. 115JA. In this case, the Return of Income was filed at Rs.3,63,23,970/-- u/s. 115JA and assessment was made on income of Rs.5,10,02,030/- u/s. 115JA since the income assessed under regular provisions was lower. The book profit u/s. 115JA was increased by reducing the deduction claimed u/s. 80IA as deduction claimed u/s. 80IA was to be reduced from the book profit. It is an established legal position that when tax is charged on the basis of book profit u/s. 115JA, the addition/disallowances made to book profit are liable for imposition of penalty u/s, 271(l)(c). In this regard reliance is placed on the decision in the cases of SBI DFHI Ltd, Vs. ACIT (2016) 71 taxmann.com 178 (Mum-ITAT), Shri Gokulam Hotels India Pvt. Ltd, Vs. ACIT (201.4) 49 taxrnann.com 543 (Mad-HC) and CIT Vs. Citi Tiles Ltd. (2014) 46 taxmann.com 344 (Guj-HC). Accordingly, the penalty imposed by the Assessing Officer for furnishing of inaccurate particulars of income in respect of disallowance of deduction u/s. 80IA at Rs.50,17,034/- is confirmed. Hence, Ground No. 5 is dismissed.

6. We have heard both the parties. Penalty for concealing/furnishing inaccurate particulars of income in the present case has been levied on account of the assessee having not allocated R&D expenses of Rs. 50 17,054/- to its units eligible to deduction of their profits u/s 80IA of the Act.

7. The fact that the assessee had disclosed R&D expenses truly and correctly is not denied. Moreover there is merit in the contention of the assessee that its claim was not totally unfounded in law considering that the Hon'ble Bombay High Court had held that only when nexus between R&D expenses/activities and manufacturing units is established the same can be allocated to the said units. That where R&D expenses were in relation to new drugs and there was nothing to indicate that in the event of assessee deciding to commercially exploit benefits of R&D work, products would be manufactured by the said units, there was no nexus established

to allocate such expenses. In the present case we find that the allocation is not based on any such nexus being directly and clearly established but merely on the basis of admission of a technical person of the assessee that too to the effect that 10% of the R&D expenses can be said to have been incurred for the formulation activity. Of course the assessee has since then accepted allocation of R&D expenses to this extent. But despite all the above it cannot still be said that the assesses claim was found to be totally unfounded. Mere statement of a technical person is not sufficient to hold the claim of the assessee as being totally incorrect in law. The same has to be established from the facts of the case whether the R&D expenses actually had nexus with the manufacturing activity of the units. For the same reason the acceptance by the assessee of the allocation in preceding years does not establish that its claim was totally unfounded. Further even the said technical personnel has only stated that 10% expenses are in relation to formulation activity. As per the decision of the Hon'ble Bombay high court this in itself is not sufficient to allocate such expenses to the Sivassa Unit. Moreover it is ultimately only an estimation of expenses to be allocated and not a finding of actual expenses so incurred not claimed by the assessee.

8. The assessee therefore having furnished all particulars of the R&D expenses , the allocation of such expenses to units eligible to deduction u/s 80IA of the Act by the Revenue not having been done on the parameters laid down by judicial decisions , there being no factual basis for establishing that the expenses needed to be allocated and the expenses so allocated

being only estimated, the assesses claim of not allocating such expenses to the eligible units cannot be said to have been proved to be not bonafide. The assessee cannot therefore, in such circumstances be charged with having concealed/furnished any inaccurate particulars of income so as to attract levy of penalty u/s 271(1)(c) of the Act.

9. It is simply a case where all particulars of income have been truly disclosed and it is only the assesses claim which has been denied ,which cannot be the basis for levying penalty u/s 271(1)(c) of the Act as laid down by the Hon'ble apex court in the case of CIT vs Reliance Petro Products (2010) 322 ITR 158(SC).

The penalty so levied is directed to be deleted.

10. Since we have deleted the penalty on merits we are not dealing with the other grounds raised by the assessee.

11. The appeal of the assessee stands allowed in above terms.

Order pronounced in the open court on 07-09-2022

Sd/-	**Sd/-**
(MADHUMITA ROY)	**(ANNAPURNA GUPTA)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Ahmedabad : Dated 07/09/2022