

**IN THE INCOME TAX APPELLATE TRIBUNAL
“D” BENCH, MUMBAI**

**BEFORE SHRI AMIT SHUKLA, JM &
SHRI S. RIFAUR RAHMAN, AM**

आयकरअपीलसं./ I.T.A. No. 2021 & 2022/Mum/2020
(निर्धारणवर्ष / Assessment Year: 2014-15 & 2015-16)

De Dietrich Process Systems India Pvt. Ltd. R. No. 548/549, Road No. 16, TTC Indl. Area, MIDC Rabale, Navi Mumbai-400 701	बनाम/ Vs.	DCIT-19(3)(1), Mumbai Aayakar Bhavan, Mumbai-400 020
स्थायीलेखासं ./जीआइआरसं ./PAN No. AACCD8576D		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)
अपीलार्थीकीओरसे/ Appellant by	:	Shri Sanjay R. Parikh, Ld. AR
प्रत्यर्थीकीओरसे/ Respondent by	:	Shri Mahita Nair, Ld. DR
सुनवाईकीतारीख/ Date of Hearing	:	13.07.2022
घोषणाकीतारीख / Date of Pronouncement	:	10.10.2022

आदेश / O R D E R

Per Amit Shukla, Judicial Member:

The aforesaid appeals have been filed by the assessee against the separate impugned order of even date 24.12.2019, passed by Ld. CIT(A)-16, Mumbai in relation to the penalty proceedings u/s 271(1)(c) for AY 2014-15 and 2015-16.

2. Since the grounds raised as well as issues involve in both the appeals are common and are arising identical set of facts, therefore the same were heard together and disposed of by way of this consolidated order.

3. In various grounds of appeal, the assessee has mainly challenged levy and confirmation of penalty u/s 271(1)(c) on various additions /disallowances made in the assessment order and the same are as under:-

In AY 2014-15

- i) Addition on account of provision of doubtful debts.
- ii) Disallowance of management fees u/s 40a(ia).
- iii) Addition on provision for travelling expenses for commission on project under misc. expenses.
- iv) Disallowance u/s 43B
- v) Addition on account of interest and penalty under misc. expenses.

In AY 2015-16

- i) Addition on account of provision of doubtful debts.
- ii) Disallowance of management fees u/s 40a(ia).

iii) Addition towards loss of sale of fixed assets.

4. Besides this, assessee has also challenged the very initiation and levy of penalty u/s 271(1)(c) on the ground that AO has not specified the charge at the time of initiation penalty and the notice u/s 274.

5. Since most of the issues are common in both the appeals, therefore our findings in AY 2014-15 will apply mutatis mutandis in appeal filed for AY 2015-16 also.

6. The facts in brief are that, assessee is engaged in the business of providing process equipment, engineered systems, process solutions, and glass lined equipment for fine chemical, pharmaceuticals and allied industries. Assessee has filed its return declaring total loss of Rs. 1,55,68,321/-. Thereafter assessment was completed u/s 143(3) and income was computed at a loss of Rs. 70,06,206/- after making the following additions vide order dated 09.12.2016:-

1. Provision for Doubtful Debts (Glenmark Pharma Ltd)-Rs. 7,89,100/-

2. Disallowance of Management Fees u/s. 40(a)(ia) Rs. 6,93,643/-

3. *Interest and Penalty under Misc. Expenses of Rs. 4,200/-*
4. *Provision for Travelling Expenses for Commissioning on Project under Misc. Expenses Rs. 7,60,000/-*
5. *Disallowance u/s. 43B for Statutory Liability default Rs. 63,15,172/-*

Total Rs. 85,62,115/-

7. Now on this addition, penalty has been levied by the AO u/s 271(1)(c) of the Act for furnishing inaccurate particulars of income.

8. Ld. CIT(A) too has confirmed the penalties after following the judgment of Hon'ble Supreme Court in the Case of **Union of India Vs. Dharmendra Textile processors (2008) 13 SCC 369 (SC)**.

9. We have heard the rival submissions and perused the relevant findings given in the impugned order as well as material placed on record. In so far as disallowance /addition on account of provision for doubtful debts, it was submitted that the said provision has been made in respect of M/s Glenmark Pharma Ltd. However, the same was not disallowed in the computation of return filed. The assessee had accepted the said facts during the course of

assessment proceedings and not appeal was filed against the said addition.

10. Similarly, addition on account of management fees of Rs. 6,93,643/-, it is not in dispute that TDS was not deducted nor added back to the computation of income and this fact has been accepted by the assessee during the course of assessment proceedings and not appeal has been filed against the said addition.

11. With regard to addition of commissioning project of Rs. 7,60,000/- which was mostly travelling expenses of service engineers for commissioning of dispatched equipment was contended to be allowable expenditure and in fact, the provision was made against expenses has already incurred during the relevant year by the concerned person. However, the bills and supporting documents were presented for the final entries in the month of April of next final year.

12. With regard to issue on account of interest and penalty of Rs. 4200/-, it was stated that the same was not towards infraction of law.

13. Lastly, the AO has made addition u/s 43B of Rs. 63,15,172/- on the basis of information provided in Form 3CD for 'non-payment of statutory liabilities on or before furnishing of return of income' which included levy of encashment, property tax, legal paid tax and bonus and ex-gratia payment.

14. Before us, Ld. Counsel for the assessee submitted that in the show cause notice issued by the AO u/s 274 r.w.s. 271(1)(c) dated 01.06.2017, the AO has not specified the limb under which he intended to initiate the levy of penalty. Further, the notice sent by the AO could not be received by the assessee. Thus, such levy of penalty is bad in law. In support of it, he relied on the judgment of Hon'ble Bombay High Court in the case of **Mohd. Farhan A. Shaikh 92021) 434 ITR 1 (Bom)**.

15. On the other hand, Ld. DR submitted that AO has specifically mentioned in the assessment order that he is intending the penalty proceedings for furnishing of inaccurate particulars of income and has also levied the penalty on account of furnishing of inaccurate particulars of income. Moreover all the additions and disallowances have been accepted by the assessee and no appeal was filed.

16. Having heard the rival submission and on perusal of notice issued u/s 274, the copy of which has been placed in the paper book at page 72, we find that nowhere the AO has specified the charge as to under which limb he intended to levy the penalty nor the relevant part has been highlighted that is whether the show cause notice is for concealment of income or furnishing of inaccurate particulars of income. Now this issue stands covered by the full Bench of Hon'ble Bombay High Court in **Mohd. Farhan A. Shaikh Vs. Dy.CIT (2021) 125 taxmann.com 253 (Bom)** has considered this very issue. Answering the question in affirmative, the Full Bench held that a defect in notice of not striking the relevant words vitiates the penalty even though the AO had properly recorded the satisfaction for imposition of penalty in the order u/s 143(3) of the Act. In another judgment, the Hon'ble Bombay High Court in **Pr.CIT Vs. Golden Peace Hotels and Resorts (P.) Ltd. (2021) 124 taxmann.com 248 (Bom)** also took similar view that where inapplicable portions were not struck off in the penalty notice, the penalty was vitiated. The SLP of the Department against this judgment has recently been dismissed by the Hon'ble Supreme Court in **Pr.CIT Vs. Golden Peace Hotels and Resorts (P.) Ltd. (2021)**

124 taxmann.com 249 (SC). In view of the overwhelming position, it is clear that where the charge is not properly set out in the notice u/s 274 viz., both the limbs stand therein without striking off of the inapplicable limb, but the penalty has been, in fact, levied for one of the two, such a penalty order gets vitiated. Thus, the aforesaid propositions are squarely applicable to this case. Accordingly, the penalty levied by AO is bad in law and the same is quashed.

17. Since, we have already decided the similar issue in appeal filed for AY 2014-15, therefore the same will apply mutatis mutandis in appeal filed for AY 2015-16 also.

18. In the net result, both the appeals filed by the assessee are **allowed.**

Orders pronounced in the open court on 10th October, 2022.

Sd/-
(S. Rifaur Rahman)
Accountant Member
मुंबई Mumbai;दिनांक Dated : 10/10/2022
Sr.PS. Dhananjay

Sd/-
(Amit Shukla)
Judicial Member

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/सहायकपंजीकार (Dy./ Asstt.Registrar)
आयकरअपीलीयअधिकरण, मुंबई/ ITAT, Mumbai