

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

**BEFORE: SHRI AMIT SHUKLA, JUDICIAL MEMBER
&
MS PADMAVATHY S, ACCOUNTANT MEMBER**

**ITA No.3170/Mum/2022
(Assessment Year :2012-13)**

DCIT-1(3)(1), Mumbai Room No.535, 5 th Floor, Aayakar Bhavan M.K.Road, Mumbai-400020	Vs.	M/s.Quantum Advisors Pvt.Ltd. 503, Regent Chambers Nariman Point Mumbai - 400 021
PAN/GIR No.AAACQ0281C		
(Appellant)	..	(Respondent)

Assessee by	Shri Niraj Sheth
Revenue by	Ms. Mahita Nair
Date of Hearing	27/04/2023
Date of Pronouncement	27/04/2023

आदेश / O R D E R

PER AMIT SHUKLA (J.M):

The aforesaid appeal has been filed by the Revenue against the order dated 12/10/2022 for the A.Y.2012-13.

2. In the grounds, Revenue has challenged deletion of penalty of Rs.77,60,325/- u/s. 271(1)(c) of the Act on the disallowance of research fees paid by the assessee to its group companies amounting to Rs.2,39,18,400/-.

3. At the outset Id. Counsel submitted that in the quantum proceedings, the Tribunal has deleted the addition and therefore, penalty levied by the Id. AO cannot be sustained and Id. CIT (A) has rightly deleted the penalty. In this case addition/disallowance was made on account of research marketing services fee amounting to Rs.2,39,18,400/- by the Id. AO on the ground that it is excessive and accordingly, addition was made. We find that Tribunal in ITA No.3989/Mum/2017 in assessee's own case has deleted the addition after observing as under:-

“5. In the present case, the assessee has brought on record the facts that the subsidiary company QAMC generated an aggregate income of Rs. 13,13,72,237/- by way of research fees during the previous year, which includes the fees of Rs. 2,99,18,400/- paid by the assessee. QAMC has offered the entire amount of research fees, to tax and paid the same rate of tax as was applicable to the assessee. On the other hand, the revenue has failed to point out as to how the assessee evaded payment of tax by making unreasonable payment to its subsidiary for research services. Further, as has been held by the Hon'ble Bombay High Court in the case of CIT vs. Vs. Dempo & Company Pvt. Ltd. (supra), only a Director of a company, partner of a firm or member of the association or any family or any relative of such Director, partner or member is a related person under sub- clause (ii) of clause (b) of sub-section (2) of section 40. A subsidiary company of the assessee is not a related person ITA Nos. 3989 & 4259/MUM/2017 Assessment Year: 2012-13 within the meaning of section 40A (2), the provisions of section 40A(2) do not attract in the present case. Since, the issue involved in the present case are similar to the issue involved in the aforesaid case, it can safely be concluded that the provisions of section 40A(2) do not apply in the present case.

4. It has been further informed by the ld. Counsel that in A.Y.2013-14 and 2014-15, the ld. AO himself has dropped the penalty. In view of the aforesaid fact, that once quantum has been deleted, penalty levied u/s. 271(1)(c) has no legs to stand and accordingly, the order of the ld. CIT(A) is upheld.

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

Order pronounced on 27th April, 2023 in the open Court.

Sd/-
(PADMAVATHY S)
ACCOUNTANT MEMBER
Mumbai; Dated 27/04/2023
KARUNA, *sr.ps*

Sd/-
(AMIT SHUKLA)
JUDICIAL MEMBER

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar)

ITAT, Mumbai