

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'G', NEW DELHI**

**BEFORE SH. N. K. BILLAIYA, ACCOUNTANT MEMBER  
AND  
SH. YOGESH KUMAR US, JUDICIAL MEMBER**

ITA No.1747/Del/2018  
Assessment Year: 2009-10

<b>DCIT Circle-1, LTU, New Delhi</b>	<b>Vs</b>	<b>M/s. SRF Ltd. The Galleria, DLF Mayur Vihar, Unit No.236, 237, Second Floor, Mayur Place, Noida Link Road, Mayur Vihar, Phase- I, Extension, Delhi-10091 PAN No.AAACS0206P</b>
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>

Appellant by	Sh. Anuj Garg, Sr DR
Respondent by	Sh. A. T. Panda, Advocate

Date of hearing:	25/07/2023
Date of Pronouncement:	27/07/2023

**ORDER**

**PER N. K. BILLAIYA, AM:**

This appeal by the revenue is preferred against the order of the CIT(A)-22, New Delhi dated 12.12.2017 pertaining to A.Y. 2009-10.

2. The grievance of the revenue read as under :

1. *On the facts and in the circumstances of the case and in law, Ld. CIT (A) has erred in deleting the penalty imposed by Assessing Officer u/s 271(1)(c) of the I.T.Act, 1961 against addition/ disallowance of Rs. 36,03,975/- on account of order u/s 92CA(3) by Transfer Pricing Officer for undercharging interest on foreign currency loan to AE by assessee company.*

2. *On the facts and in the circumstances of the case and in law, Ld. CIT (A) has erred in deleting the penalty on disallowance of Rs. 1,52,38,000/- made by the A.O. on Excess Claim u/s 35(2AB).*

3. *The appellant craves leave to, add to, alter, amend or vary from the above grounds of appeal at or before the time of hearing.*

3. A perusal of the aforestated grounds show that the first cause for the levy of penalty was the addition/ disallowance of Rs.36,03,975/-.

4. The quantum addition travelled up to the Tribunal and this Tribunal in ITA No.774/Del/2017 order dated 10.01.2023 considered the addition/ disallowance of Rs.36,03,975/- vide ground No.2 of the appeal and held as under :-

*“23. Before us, Revenue has not pointed to any distinguishing feature in the facts of the case in the year under consideration and that of the earlier years. Revenue has also not placed any material on record to demonstrate that the order of Tribunal in assessee’s own case for A.Y. 2010-11 & 2014-15 has been stayed/set aside/overruled by higher judicial forum. We, therefore, following the order of Tribunal in assessee’s own case for A.Y. 2014-15 and for similar reasons hold that no adjustment on account of interest is called for in the present case. We, therefore, direct its deletion. Thus the ground of assessee is allowed.”*

5. Since the quantum addition/ disallowance has been deleted the penalty to this extent does not survive and, therefore, the findings of the CIT(A) cannot be faulted with.

6. The second reason for the levy of penalty was the disallowance of Rs.15238000/- being excess claim u/s.35 (2AB) of the Act. The underlying facts in this issue are that as per the audit report the assessee claimed deduction u/s. 35 (2AB) of the

Act at Rs.783.88 lacs. The claim of R & D expenditure was approved by DSIR at Rs.631.42 lacs. The assessee could not revise the claim because the period for filing the revised return of income had elapsed. While scrutinizing the return of income and on the basis of the approval by DSIR the AO allowed the claim of deduction at Rs.631.42 lacs and disallowed excess claim of Rs.15238000/-. Penalty proceedings were separately initiated u/s. 271 (1)(c) of the Act.

7. We find that during the course of the assessment proceedings itself the assessee has intimated the claim of expenditure approved by DSIR, this letter is at page-74 of the paper book. Vide letter dated 05.02.2013 the assessee further explained the bifurcation of the claim of expenditure as approved by the prescribed authority i.e. DSIR. This letter is at page 75 and 76 of the paper book.

8. On identical set of facts this Tribunal in ITA No.3848/Del/2013 for A.Y.2006-07 has deleted the levy of penalty levied on similar excess claim u/s. 35 (2AB) of the Act.

9. Be that it may the claim of the assessee at the time of filing of the return was a bonafide claim supported by the relevant provisions of the law. As soon as a lesser claim was approved by the DSIR the assessee intimated the AO and because the return could not be revised accepted the disallowance made by the AO by not contesting the same in the appeal. Ratio laid down by the Hon'ble Supreme Court in the case of Reliance Petro Products 322 ITR 158 squarely apply.

10. Respectfully following the decision of the coordinate Bench (supra) in the light of the ratio laid down by the Hon'ble Supreme Court (supra) we do not find any error or infirmity in the findings of the CIT(A). The appeal of the revenue is accordingly dismissed.

Order pronounced in the open court on 27.07.2023.

Sd/-

**[YOGESH KUMAR US]**  
**JUDICIAL MEMBER**

Dated:27.07.2023

\*Neha\*

Copy forwarded to:

1. Appellant
2. Respondent
3. CITi
4. CIT(A)
5. DR

Sd/-

**[N.K. BILLAIYA]**  
**ACCOUNTANT MEMBER**

Asst. Registrar  
ITAT, New Delhi