

IN THE INCOME TAX APPELLATE TRIBUNAL “D” BENCH MUMBAI

BEFORE MS. KAVITHA RAJAGOPAL, JUDICIAL MEMBER

AND

SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER

ITA No.964/MUM/2024

Assessment Year: 2010-11

Deputy Commissioner of Income Tax, Central Circle – 7(1), Mumbai	Vs.	Maneesh Pharmaceuticals Ltd., 29-33, Ancillary Industrial Plots, Near M Ward, Govandi, Mumbai – 400 043 (PAN : AAACM3635Q)
(Appellant)		(Respondent)

Present for:

Assessee : Shri Jaypraksh Bairagra, CA
Revenue : Smt. Sanyogita Nagpal, CIT, DR

Date of Hearing : 20.06.2024

Date of Pronouncement : 08.08.2024

ORDER

PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:

This appeal filed by the Revenue is against the order of Id. CIT(A)-49, Mumbai vide order no. ITBA/APL/S/250/2023-24/1059145011(1), dated 28.12.2023, passed against the assessment order by the Deputy Commissioner of Income Tax, Central Circle-7(1), Mumbai, u/s. 271(1)(c) of the Income-tax Act (hereinafter referred to as the “Act”), dated 31.03.2022 for Assessment Year 2010-11.

2. Grounds taken by the Revenue are reproduced as under:

1. On the facts and in the circumstances of the case and in law, the Ld CIT(A) erred in deleting the penalty u/s 271(1)(c) on the ground that no penalty u/s. 271(1)(c) of the Act is leviable in respect of the excess deduction u/s. 10B of the Act claimed by the assessee.

2. On the facts and in the circumstances of the case and in law, the Ld CIT(A) erred in deleting the penalty u/s 271(1)(c) on the ground that the alleged excess claim of deduction u/s. 10B of the Act made by the assessee has had no impact on the tax liability of the appellant company for the year under consideration,

whereas the fact is that the penalty u/s 271(1)(c) was initiated in the original assessment order for furnishing inaccurate particulars of income on some issues and also for concealment of income on some other issues.

3. On the facts and in the circumstances of the case and in law, the Ld CIT(A) erred in deleting the penalty u/s 271(1)(c) on the ground that mere disallowance of claim of deduction cannot be considered as furnishing inaccurate particulars about income.

4. On the facts and in the circumstances of the case and in law, the Ld CIT(A) erred that the amount of tax sought to be evaded by the assessee for the year under consideration cannot be determined in the manner provided in Explanation 4 to Section 271(1) of the Act.”

3. Present appeal is the result of set aside order passed by the Coordinate Bench of ITAT, Mumbai in assessee's own case in ITA No. 2545/Mum/2022 dated 17.01.2023, whereby the matter was remanded on the issue of levy of penalty in relation to deduction claimed by the assessee u/s.10B of the Act, for adjudication on merits since on the earlier occasion, the levy of penalty was deleted on account of defect in the notice issued u/s 274 r.w.s. 271(1)(c) without specifying the specific charge as to which limb was invoked for the imposition of penalty.

3.1. Ld. Assessing Office had imposed a penalty of Rs.2,85,23,354/- u/s. 271(1)(c) vide order dated 31.03.2022. The said penalty was levied in respect of transfer pricing adjustment of Rs.7,46,225/- and disallowance of deduction u/s.10B amounting to Rs.8,31,70,675/-. The Coordinate Bench of ITAT, Mumbai in assessee's case (supra) had deleted the penalty in respect of transfer pricing adjustment. However, the matter was remanded back to the file of ld. CIT(A) on the issue of levy of penalty for furnishing inaccurate particulars of income in relation to deduction claimed u/s.10B of the Act, for adjudication on merits. Specific direction given by the Coordinate Bench in this respect as contained in para 16 is extracted below:

*“Accordingly, we set aside the issue of levy of penalty for **furnishing of inaccurate particulars of income** in relation to deduction claimed*

under section 10B of the Act back to the file of CIT(A) for adjudication on merits.”

[emphasis supplied by us by bold and underline]

4. Brief facts of the case are that assessee had filed its original return of income on 14.10.2010, reporting net loss of Rs.10,45,965/- and a book profit of Rs.4,74,58,199/-. A search action u/s. 132(1) of the Act took place on the assessee on 29.08.2011 pursuant to which assessment was completed u/s.143(3) r.w.s. 153A, determining total assessed income at Rs.47,41,48,240/- which included addition towards disallowance of deduction u/s.10B of the Act of Rs.8,31,70,675/-.

4.1. Assessee had claimed deduction u/s.10B of the Act at Rs.8,83,74,822/-. However, while completing the assessment, ld. AO allowed the deduction to the extent of Rs.52,04,147/- only. According to the ld. AO, assessee had claimed excess deduction of Rs.8,31,70,675/- u/s.10B of the Act. Assessee has three manufacturing units out of which one unit is 100% export-oriented unit (EOU) for which deduction u/s.10B was claimed. Ld. AO observed that in the profit and loss account, certain common expenses have been claimed which could not be directly identified with other units and were allocated in certain predetermined ratio by the assessee. Explanations were called for in respect of basis of allocation of expenses which were furnished by the assessee. For justifying higher rate of gross profit in the EOU unit, assessee submitted that there was no excise duty component, raw material was purchased duty free and there was no VAT on export sales nor any octroi duty was payable. However, ld. AO did not accept these submissions of the assessee and apportioned the expenses in proportion to the turnover of the units, thereby restricting the claim of deduction u/s.10B to Rs.52,04,147/-.

4.2. Assessee had also contended that in the return filed in response to the notice u/s.153A, assessee had declared a loss of Rs.9,59,47,663/-. According to it, though the claim was made in the return, it did not impact the tax liability of the assessee in any way as there was no positive income. It was also submitted that assessee had incurred loss over the years and carried forward losses were available with it for set off. Assessee had consistently made losses till Assessment Year 2016-17 and therefore according to it, question of adjusting the loss for the impugned year did not arise. According to the assessee, it cannot be said that it had claimed the excess deduction with a view to reduce its tax liability. Mere disallowance of claim of deduction cannot be treated as furnishing of inaccurate particulars of income for which it placed strong reliance on the decision of Hon'ble Supreme Court in the case of CIT vs. Reliance Petroproducts Pvt. Ltd. 322 ITR 158 (SC). According to the assessee, ld. AO has only estimated the expenditure on the turnover without rejecting the contention of facts.

5. Ld. CIT(A) by accepting the contentions of the assessee deleted the penalty so imposed. He held that assessee had decided not to press the ground of appeal taken against disallowance of deduction u/s.10B in the quantum appeal, for the reason that there was no positive income and therefore allowance or otherwise of the deduction could not have had any impact on the amount of tax payable by it. He also noted the fact that after giving effect to the order of ld. CIT(A) in the quantum appeal, the income finally assessed is a negative figure. Accordingly, not pressing the disallowance of deduction u/s.10B in the quantum appeal cannot be a ground of levy of penalty, observed the ld. CIT(A).

5.1. He further held that claim of excess deduction cannot be a basis for levy of penalty unless it is established that the assessee had claimed

such excess deduction deliberately with the intention of reducing his tax liability. In the given set of facts, assessee already had carried forward business losses which continued in the subsequent years and thus there was no occasion for it to reduce its tax liability by claiming higher deduction u/s.10B of the Act. It is a case where allocation of certain expenses has been re-apportioned by the ld. AO on the basis of turnover of each of the units by disregarding the basis adopted by the assessee. He thus, by placing reliance on the decision of Hon'ble Supreme Court in the case of Reliance Petroproducts Pvt. Ltd. (supra) held that mere disallowance of claim of deduction cannot be considered as furnishing of inaccurate particulars of income.

5.2. Ld. CIT(A) further dealt with Explanation 4 to section 271(1)(c) which deals with the expression "the amount of tax sought to be evaded" and observed that merely because assessee was found to have made excess claim of deduction u/s.10B, it cannot be said that it had sought to evade taxes since penalty cannot be levied on hypothetical figures of income under clause (a) and clause (c) of Explanation 4. He thus, directed to delete the penalty so imposed in respect of excess deduction u/s.10B disallowed by the ld. AO.

6. Ld. Sr. DR placed reliance on the order of the AO, to claim that penalty has been rightly imposed, since assessee had claimed excess deduction u/s.10B by allocating more expenses towards units generating taxable income vis-à-vis EOU. She further submitted that assessee had accepted the re-apportionment of the expenses made by the ld. AO, resulting in a restricted claim of deduction u/s.10B in the quantum appeal which justifies the imposition of penalty.

7. We have heard both the parties and perused the material on record. Admittedly, it is undisputed fact on record that assessee had filed its return with loss having carried forward business losses. We find that in the assessment order, on the issue relating to allocation of expenses and deduction u/s 10B, ld. Assessing Officer noted in para 5.1 that assessee has three manufacturing units out of which one is an 10% EOU. According to him, the EOU is a priority unit because all profits earned from this unit are exempt from taxation. He further stated that assessee had filed unit wise P&L account for the year. He noted that common expenses which could not be directly identified with any of the units were allocated in certain pre-determined ratio. It was submitted by the assessee that in the past, no disallowance was made out of claim u/s 10B which establishes that the criterion used by it had received acceptance by the Department. However, ld. Assessing Officer concluded in para 5.5 to apportion these common expenses to the EOU on the basis of turnover of each unit. Accordingly, this apportionment of expenses worked out to Rs. 9,24,11,861/- as reallocation for the EOU. Claim u/s 10B was thus reworked by him, restricting it to Rs. 52,04,147/- as against assessee's claim of Rs. 8,83,74,822/-. Penalty was imposed for this disallowance by charging the assessee with the charge of 'furnishing of inaccurate particulars of income.'

7.1. The scheme of section 271(1)(c) visualizes imposition of penalty when the assessee has concealed particulars of income or when the assessee has furnished inaccurate particulars of income. We are not concerned with the merits of the case for the claim made by the assessee u/s 10B of the Act, but all that is necessary to be examined for our purposes is whether making such a claim can be said to be furnishing of inaccurate particulars of income. As already noted, claim of the assessee has been restricted to Rs. 52,04,147/- by reapportionment of

certain expenses by the ld. Assessing Officer. There is no dispute on the genuineness of the expenses incurred by the assessee. It is only a matter of their apportionment between the normal units and the EOU. Reduction in the claim of exemption u/s 10B on account of reapportionment has been treated as furnishing of inaccurate particulars of income by the ld. Assessing Officer.

7.2. The expression 'furnishing of inaccurate particulars of income' has been compendiously dealt by the coordinate bench of ITAT Pune in the case of Kanbay Software India (P.) Ltd. v. DCIT [2009] 31 SOT 153 (Pune) while dealing with similar issue of penalty on similar set of facts relating to claim u/s 10A of the Act. Para 61 of the said order is extracted below:

“The expression 'furnishing of inaccurate particulars of income' has also not been defined in the Act. The expression 'inaccurate' refers to 'not in conformity with the fact or truth' and that is the meaning which, in our considered view, is relevant in the context of 'furnishing of inaccurate particulars'. The expression 'particulars' refers to 'facts, details, specifics, or information about someone or something'. Therefore, the plain meaning of the expression 'furnishing of inaccurate particulars of income' implies furnishing of details or information about income which are not in conformity with the facts or truth. The details or information about income deal with the factual details of income and this cannot be extended to areas which are subjective such as the status of taxability of an income, admissibility of a deduction and interpretation of law. The furnishing of inaccurate information thus relates to furnishing of factually correct details and information about income. In the present case, however, what has been treated as furnishing of inaccurate particulars is making of a claim which was not admitted by the Assessing Officer an action not contested by the assessee. The admission or rejection of a claim is a subjective exercise and whether a claim is accepted or rejected has nothing to do with furnishing of inaccurate particulars of income. The authorities below have apparently proceeded to treat assessee's making an incorrect claim of income as furnishing of inaccurate particulars. What is a correct claim and what is an incorrect claim is a matter of perception. In our considered view, raising a legal claim, even if it is ultimately found to be legally unacceptable, cannot amount of furnishing of inaccurate particulars of income. 'Inaccurate', as we have noted above, is something factually incorrect and interpretation of law can never be a factual aspect. Just because an Assessing Officer does not accept an interpretation, such an interpretation is not rendered incorrect. Even the judgments of Hon'ble Supreme Court are reversed by the larger

Bench of Hon'ble Supreme Court. The development of law is a dynamic process which is affected by the innumerable factors, and it is always an ongoing exercise. In such circumstances, a bona fide legal claim by the assessee being visited with penal consequences only because it has not been accepted thus far by the tax authorities or judicial authorities is an absurdity. In any event, as we have noted above, the connotations of expression 'particulars of income' do not extend to the issues of interpretation of law and as such making a claim, which is found to be unacceptable in law, cannot be treated as furnishing of inaccurate particulars of income. In this view of the matter, the case of the assessee cannot be said to be a case of 'furnishing of inaccurate particulars of income', in its natural sense, either."

7.3. Hon'ble Supreme Court in the case of Reliance Petroproducts Pvt. Ltd. (supra) dealt with similar issue with detailed exposition on the expressions "inaccurate particulars" for the purpose of imposition of penalty when claim made by the assessee is not accepted or not acceptable to the revenue. Relevant extracts from the said decision are as under:

"A glance at this provision would suggest that in order to be covered, there has to be concealment of the particulars of the income of the assessee. Secondly, the assessee must have furnished inaccurate particulars of his income. Present is not the case of concealment of the income. That is not the case of the Revenue either. However, the Learned Counsel for Revenue suggested that by making incorrect claim for the expenditure on interest, the assessee has furnished inaccurate particulars of the income. As per Law Lexicon, the meaning of the word "particular" is a detail or details (in plural sense); the details of a claim, or the separate items of an account. Therefore, the word "particulars" used in the Section 271(1)(c) would embrace the meaning of the details of the claim made. It is an admitted position in the present case that no information given in the Return was found to be incorrect or inaccurate. It is not as if any statement made or any detail supplied was found to be factually incorrect. Hence, at least, prima facie, the assessee cannot be held guilty of furnishing inaccurate particulars. The Learned Counsel argued that "submitting an incorrect claim in law for the expenditure on interest would amount to giving inaccurate particulars of such income". We do not think that such can be the interpretation of the concerned words. The words are plain and simple. In order to expose the assessee to the penalty unless the case is strictly covered by the provision, the penalty provision cannot be invoked. By any stretch of imagination, making an incorrect claim in law cannot tantamount to furnishing inaccurate particulars. In Commissioner of Income Tax, Delhi Vs. Atul Mohan Bindal [2009(9) SCC 589], where this Court was considering the same provision, the Court observed that the Assessing Officer has to be satisfied that a person has concealed the particulars of his income or furnished inaccurate particulars of such income. This Court referred to another decision of this Court in Union of India Vs. Dharamendra Textile Processors [2008(13) SCC 369], as also, the decision in Union of India Vs. Rajasthan Spg. & Wvg. Mills [2009(13) SCC 448] and reiterated in para 13 that:-

"13. It goes without saying that for applicability of Section 271(1)(c), conditions stated therein must exist."

8. Therefore, it is obvious that it must be shown that the conditions under Section 271(1)(c) must exist before the penalty is imposed. There can be no dispute that everything would depend upon the Return filed because that is the only document, where the assessee can furnish the particulars of his income. When such particulars are found to be inaccurate, the liability would arise. In *Dilip N. Shroff Vs. Joint Commissioner of Income Tax, Mumbai & Anr.* [2007(6) SCC 329], this Court explained the terms "concealment of income" and "furnishing inaccurate particulars". The Court went on to hold therein that in order to attract the penalty under Section 271(1)(c), mens rea was necessary, as according to the Court, the word "inaccurate" signified a deliberate act or omission on behalf of the assessee. It went on to hold that Clause (iii) of Section 271(1) provided for a discretionary jurisdiction upon the Assessing Authority, inasmuch as the amount of penalty could not be less than the amount of tax sought to be evaded by reason of such concealment of particulars of income, but it may not exceed three times thereof. It was pointed out that the term "inaccurate particulars" was not defined anywhere in the Act and, therefore, it was held that furnishing of an assessment of the value of the property may not by itself be furnishing inaccurate particulars. It was further held that the assessee must be found to have failed to prove that his explanation is not only not bona fide but all the facts relating to the same and material to the computation of his income were not disclosed by him. It was then held that the explanation must be preceded by a finding as to how and in what manner, the assessee had furnished the particulars of his income. The Court ultimately went on to hold that the element of mens rea was essential. It was only on the point of mens rea that the judgment in *Dilip N. Shroff Vs. Joint Commissioner of Income Tax, Mumbai & Anr.* was upset. In *Union of India Vs. Dharamendra Textile Processors* (cited supra), after quoting from Section 271 extensively and also considering Section 271(1)(c), the Court came to the conclusion that since Section 271(1)(c) indicated the element of strict liability on the assessee for the concealment or for giving inaccurate particulars while filing Return, there was no necessity of mens rea. The Court went on to hold that the objective behind enactment of Section 271(1)(c) read with Explanations indicated with the said Section was for providing remedy for loss of revenue and such a penalty was a civil liability and, therefore, willful concealment is not an essential ingredient for attracting civil liability as was the case in the matter of prosecution under Section 276-C of the Act. The basic reason why decision in *Dilip N. Shroff Vs. Joint Commissioner of Income Tax, Mumbai & Anr.* (cited supra) was overruled by this Court in *Union of India Vs. Dharamendra Textile Processors* (cited supra), was that according to this Court the effect and difference between Section 271(1)(c) and Section 276-C of the Act was lost sight of in case of *Dilip N. Shroff Vs. Joint Commissioner of Income Tax, Mumbai & Anr.* (cited supra). However, it must be pointed out that in *Union of India Vs. Dharamendra Textile Processors* (cited supra), no fault was found with the reasoning in the decision in *Dilip N. Shroff Vs. Joint Commissioner of Income Tax, Mumbai & Anr.* (cited supra), where the Court explained the meaning of the terms "conceal" and "inaccurate". It was only the ultimate inference in *Dilip N. Shroff Vs. Joint Commissioner of Income Tax, Mumbai & Anr.* (cited supra) to the effect that mens rea was an essential ingredient for the penalty under Section 271(1)(c) that the decision in *Dilip N. Shroff Vs. Joint Commissioner of Income Tax, Mumbai & Anr.* (cited supra) was overruled.

9. *We are not concerned in the present case with the mens rea. However, we have to only see as to whether in this case, as a matter of fact, the assessee has given inaccurate particulars. In Webster's Dictionary, the word "inaccurate" has been defined as:-*

"not accurate, not exact or correct; not according to truth; erroneous; as an inaccurate statement, copy or transcript".

We have already seen the meaning of the word "particulars" in the earlier part of this judgment. Reading the words in conjunction, they must mean the details supplied in the Return, which are not accurate, not exact or correct, not according to truth or erroneous. We must hasten to add here that in this case, there is no finding that any details supplied by the assessee in its Return were found to be incorrect or erroneous or false. Such not being the case, there would be no question of inviting the penalty under Section 271(1)(c) of the Act. A mere making of the claim, which is not sustainable in law, by itself, will not amount to furnishing inaccurate particulars regarding the income of the assessee. Such claim made in the Return cannot amount to the inaccurate particulars.

10. It was tried to be suggested that Section 14A of the Act specifically excluded the deductions in respect of the expenditure incurred by the assessee in relation to income which does not form part of the total income under the Act. It was further pointed out that the dividends from the shares did not form the part of the total income. It was, therefore, reiterated before us that the Assessing Officer had correctly reached the conclusion that since the assessee had claimed excessive deductions knowing that they are incorrect; it amounted to concealment of income. It was tried to be argued that the falsehood in accounts can take either of the two forms; (i) an item of receipt may be suppressed fraudulently; (ii) an item of expenditure may be falsely (or in an exaggerated amount) claimed, and both types attempt to reduce the taxable income and, therefore, both types amount to concealment of particulars of one's income as well as furnishing of inaccurate particulars of income. We do not agree, as the assessee had furnished all the details of its expenditure as well as income in its Return, which details, in themselves, were not found to be inaccurate nor could be viewed as the concealment of income on its part. It was up to the authorities to accept its claim in the Return or not. Merely because the assessee had claimed the expenditure, which claim was not accepted or was not acceptable to the Revenue, that by itself would not, in our opinion, attract the penalty under Section 271(1)(c). If we accept the contention of the Revenue then in case of every Return where the claim made is not accepted by Assessing Officer for any reason, the assessee will invite penalty under Section 271(1)(c). That is clearly not the intendment of the Legislature"

7.4. In the present case, there is no dispute that all the relevant facts material to the computation of total income are duly furnished by the assessee and no deficiencies in furnishing of such facts are pointed out by the authorities below. In respect of claim u/s 10B, assessee had explained the facts in detail vide its submissions dated 18.03.2020, 15.02.2021 and 15.09.2021 before the ld. Assessing Officer as to the

number of manufacturing divisions run by it and how the business expenditure incurred is bifurcated towards each division. The explanation of the assessee has not been found to be false. The onus of proving that the explanation is false is on the revenue and there is no finding in this direction at all. Claim made by the assessee is an allowable claim though quantum of the same has been reworked by the ld. Assessing Officer by applying a different arithmetic.

7.5. All the details and justifications of claim have been set out in the return of income itself. There was a detailed note giving rationale and computation of the claim along with facts relating to carried forward losses available with the assessee which even after set off are available in the subsequent assessment years. There is nothing on record brought by the revenue to negate the availability of carried forward losses. Thus, the amount of tax sought to be evaded as required in explanation 1 to section 271(1)(c) is indeterminable for the imposition of penalty as rightly observed by the ld. CIT(A).

8. The fact that the assessee has not carried in appeal the reduction of its claim by the Assessing Officer is sought to be used against the assessee's claim of *bona fides*. We are unable to see any rationale in this. The decision to go in litigation or not does not depend on the merits alone. Merely because an assessee does not challenge a particular addition or disallowance in appeal does not mean that the claim for such exclusion from income or deduction lacked *bona fides*. The decision to go or not to go into litigation is dependent on a variety of factors, and the merits of the legal issue involved is only one such factor. In our considered view, therefore, the decision of the assessee to pursue or not to pursue legal remedy against rejection of its stand is not the safe indicator about *bona fides* of such a stand. We do not ascribe to

the submission made by the ld. CIT DR that merely because the assessee has accepted the stand of the Assessing Officer, so far as reduction of assessee's claim was concerned, it would show that action of the assessee lacked *bona fides*. It is a scenario where addition is made to the income by reducing the claim made by the assessee and it can be reasonably inferred, that assessee's conduct and explanation is *bona fide*.

8.1. Considering the facts on record, submission made and discussed in detail as narrated above, judicial precedents relied upon, we do not find any reason to interfere with the observations and findings arrived at by the ld. CIT(A) in deleting the penalty imposed on the reduction of claim u/s 10B of the Act. Effective grounds taken by the revenue in this respect are dismissed.

9. In the result, appeal of the revenue is dismissed.

Order is pronounced in the open court on 08 August, 2024

Sd/-
(Kavitha Rajagopal)
Judicial Member

Sd/-
(Girish Agrawal)
Accountant Member

Dated: 08 August, 2024

MP, Sr.P.S.

Copy to :

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BY ORDER,

(Dy./Asstt.Registrar)
ITAT, Mumbai