IN THE INCOME TAX APPELLATE TRIBUNAL, 'B' BENCH MUMBAI

BEFORE: SHRI AMIT SHUKLA, JUDICIAL MEMBER
&
SHRI OMKARESHWAR CHIDARA, ACCOUNTANT MEMBER

ITA No.574/Mum/2007
(**Assessment Year :2001-02**)

Deputy Commissioner of Income Tax, Circle 3(1) Large Tax Payer Unit Centre-1, 29th Floor World Trade Centre Cuffe Parade Mumbai – 400 005	Vs.	M/s. Bajaj Holdings & Investment Ltd. (Formerly known as M/s. Bajaj Auto Ltd.) 226, Bajaj Bhavan 2nd Floor, Jamnlal Bajaj Marg, Nariman Point Mumbai – 400 021
PAN/GIR No.AAACB3370K		
(Appellant)	..	**(Respondent)**

CO No.120/Mum/2007
(Arising out of ITA No.574/Mum/2007)
(**Assessment Year :2001-02**)

M/s. Bajaj Holdings & Investment Ltd. (Formerly known as M/s. Bajaj Auto Ltd.) 226, Bajaj Bhavan 2nd Floor, Jamnlal Bajaj Marg, Nariman Point Mumbai – 400 021	Vs.	Deputy Commissioner of Income Tax, Circle 3(1) Large Tax Payer Unit Centre-1, 29th Floor World Trade Centre Cuffe Parade Mumbai – 400 005
PAN/GIR No.AAACB3370K		
(Appellant)	..	**(Respondent)**

Assessee by	Ms. Vasanti Patel
Revenue by	Shri S. Srinivasu
Date of Hearing	**10/06/2024**
Date of Pronouncement	**06/09/2024**

आदेश / O R D E R

PER AMIT SHUKLA (J.M):

The aforesaid appeal has been filed by the Revenue and Cross Objection by the assessee against order dated 16/10/2006 passed by CIT(A) XXVII, Mumbai in relation to the penalty proceedings u/s.271(1)(c) for the A.Y.2001-02.

2. Before us, Revenue has raised the following grounds:-

1 "On the facts and circumstances of the case and in law, the Ld. CIT(A) erred in deleting the penalty levied by the AO u/s 271(1)(c) of the IT Act on the disallowance of claim of 80-0 deduction amounting to Rs 13,819/- without appreciating the fact that wrong claim of deduction made by the assessee which assessee could not substantiate tantamounts to filing of inaccurate particulars of income as per provision of explanation 1 to section 271(1)(c) ".

2 "On the facts and circumstances of the case and in law, the Ld CIT(A) erred in deleting the penalty levied by the AO u/s 271(1)(c) of the IT Act on a sum of Rs 17,70,92,101/- being disallowance of process know how expenses without appreciating the fact that unsubstantiated claim made by the assessee of these expenses amounts to concealment of income in view of explanation 1 to section 271(1)(c)".

3 "The appellant prays that the order of the CIT(A) on the above ground be set aside and that of the Assessing Officer be restored "

4 "The appellant craves leave to amend or alter any ground or add a new ground which may be necessary"

3. In so far as levy of penalty on disallowance of Rs.13,890/-, it has been stated that this was with regard to deduction u/s.80-O being the 40% of the amount of Rs.30,370/- being royalty under a technical know-how agreement with M/s. Autotechnica, Columbia. This ground has been deleted by the Tribunal and therefore, penalty on this amount should be deleted.

4. In so far as the penalty of disallowance of Rs.17,70,92,101/- for obtaining process know-how from M/s. Kawasaki Heavy Industries Ltd. Japan. Assessee's contention had been that it had made full disclosure in item 'D' of note no.5 of the notes to computation of income enclosed alongwith return of income, which reads as under:-

The amount of Rs. 17,70,92,101/- has been incurred for obtaining technical Know-how from M/s Kawasaki Heavy Industries Ltd. Japan. In this connection it is submitted as under-

The company is in the business of manufacture of two wheelers and three wheelers over three decades

The assembly line for various two wheeler models are always dedicated lines i.e single model line

Due to change in market condition, increase in competition, the company has developed many models However, to accommodate many models with dedicated lines for production involves huge capital outlay and would be expensive due to idle time

Hence, to optimize the operation costs and interest on capital outlay, the company decided to lay a new line for motorcycles under the concept of multimodel assembly line

Since the company did not possess the expertise to introduce the concept of multimodel assembly line the services of M/s Kawasaki Heavy Industries Ltd. Japan were utilised to understand and effect the multimodel assembles line For this purpose the company entered into an agreement with M/s. Kawasaki Heavy Industries Lad, Japan.

The agreement in substance is envisaged in Article 1.02, which reads as under: -

"The total per day production capacities to be implemented have been finalised at 600 units per day of two shifts of 8 hours each. 480 units of BR100/110 series and 120 per day of BN175 series are planned."

The above would make it clear that the purpose of the expenditure is to achieve efficiency in operations. Hence, the said expenditure of Rs. 17,70 92,101/- has been claimed an allowable deduction relying on the decision of the Supreme Court in the case of Alembic Chemical Works Co. Ltd. V/s CIT (177 ITR 377)".

5. However, in the quantum proceedings, the ld. AO held that once expenditure is being incurred for technical Know-how, the same amounts to capital expenditure however, he allowed depreciation on the said amount. It has been submitted that from the stage of the Tribunal, the claim of the assessee for the amount incurred on obtaining process knowhow from M/s. Kawasaki Heavy Industries Ltd. Japan has been held to be 'capital expenditure'. The relevant observation of the Tribunal while confirming the view of the ld. AO reads as under:-

"65. On a careful consideration, we are of the view, the case law relied by the assessee are distinguishable to the facts in the present case. What is relevant is whether the new process acquired by the assessee will have an enduring benefit and whether this new process falls within the definition of Know-how. As per the definition given under section 35AB the Know-how means any industrial information or technique likely to assist in the manufacture or processing of goods or in the working of a mine, oil well or other sources of mineral deposits. From the above definition it is very clear that any industrial information or technique likely to assist in the manufacture or processing of any goods covers within the definition of know-how.

66. In the given case, assessee has acquired a new technique in order to assist in manufacture / assemble of multi model in the same manufacturing / assembly line. This is a new information or technique acquired by the assessee from M/s. Kawasaki Heavy Industries Limited, Japan. This clearly shows that assessee has acquired a new method of manufacturing of multi models of scooters in one dedicated manufacturing or assembly line instead of several dedicated lines for each model. This shows that it is not an ITA NO.4236 & 4372/MUM/2005 (A.Y: 2001-02) M/s. Bajaj Auto Limited improvement of existing manufacturing process. Certain improvements can also be made in the existing line or may be certain process were readjusted to improve the efficiency of the manufacturing line. However, in this case it is completely new process technique acquired by the assessee and it is relevant to note that assessee also paid a huge sum to acquire the above technique and in books of accounts also assessee has recognized that assessee has a new technique and claimed as deferred revenue expenditure. Further, as held in the case of M/s.Bharat Gears Limited v. CIT (supra), the expenses incurred by the assessee is nothing but capital expenditure and assessee has an option to claim either differed revenue expenditure or depreciation as allowed by the Assessing Officer. After considering the overall facts on record, we do not find any reason to disturb the findings of the Ld. CIT(A). Accordingly, Ground No. 6 raised by the assessee is dismissed.

6. The ld. CIT(A) held that assessee had made full disclosure in respect of the said issue in the return of income and assessee's claim was based on various judgments also. His relevant finding while deleting the penalty reads as under:-

"I have considered the facts of the case and the submissions made by the AR. It is apparent that the appellant had made a full disclosure in respect of the said issue in the return of income and that the stand taken by the appellant was duly supported by a decision of the Supreme Court. Penalty proceedings are quasi criminal proceedings and to levy penalty under section 271(1)(c), conscious concealment is necessary. In the instant case the appellant has given a full disclosure in the return of income itself and has also relied on a decision of the Supreme Court to support the claim

There are innumerable cases where an expenditure treated as revenue expenditure by an assessee is treated as capital expenditure by the AO. But not all cases imply that the assessee has concealed particulars of income. In the instant case, not only has the appellant given a full disclosure, but has also quantified the amount and explained, in detail, the reason for incurring the expense and the basis for claiming the same as a deduction. As discussed during the hearing, the expenditure was incurred to achieve efficiency in operations by introducing a concept of multimodel assembly line in the same existing business of manufacture of two wheelers. The said expenditure was not for any new business line Merely because the action of the AO has been upheld by the CIT(A), it does not mean that penalty is automatically leviable. Therefore the AO is directed to delete the penalty levied in respect of process know-how expenses amounting to Rs 17,70,92,101/-."

7. Before us, ld. DR submitted that firstly, the claim was based on the decision of the Hon'ble Supreme Court in the case of Alembic Chemical Works Co. Ltd. are based on different facts and secondly, now this issue stands covered against the assessee by the decision of the Tribunal wherein it

was held that it was a capital expenditure, therefore, the claim of the assessee itself was not sustainable.

8. On the other hand, ld. Counsel for the assessee relied upon the order of the ld. CIT(A) and submitted that once assessee has made full and true disclosure, then in view of the principle laid down by the Hon'ble Supreme Court in the case of Reliance Petro Products Ltd. reported in 322 ITR 158, it was held that assessee had furnished any inaccurate particulars of income.

9. We have heard both the parties and also perused the relevant material placed before us. The assessee has capitalised during the year sum of Rs.17,70,92,101/- and during the year it has claimed 1/6th amounting to Rs.2,95,15,350/-. The Tribunal stated that the amount was incurred for obtaining the process know-how from M/s. Kawasaki Heavy Industries Ltd. Japan to introduce the concept of multi model assembly line and the services of Kawasaki Heavy Industries Ltd. Japan and were utilized to understand the concept of the multi model assembly line and accordingly, an agreement was entered between the two. The assessee has claimed the said expenditure in the computation of income as an allowable deduction relying upon the decision of the Hon'ble Supreme Court in the case of Alembic Chemical Works Co. Ltd. V/s CIT (177 ITR 377)". The brief facts in the case of Alembic Chemical Works Co. Ltd. was that the assessee-company engaged in the manufacture of well-known antibiotic, pencillin, with a view to

increasing the yield in their plant, entered into an agreement with a Japanese firm M in the year 1963 according to which in consideration of once for all payment of Rs 2,39,625 the latter agreed to supply to the assessee sub-cultures of their most suitable penicillin producing strains, technical know how the design and specifications of the main equipment in such pilot-plant, etc for a period of two years, with a stipulation that such technical know-how would be kept confidential by the assessee in the proceedings for the assessment year 1964-65 the assessee claimed deduction of the aforesaid sum as a revenue expenditure the ITO disallowed the claim on the ground that the expenditure was far the acquisition of an asset or advantage of an enduring nature, and so did the AAC on appeal. On second appeal the Tribunal also rejected the assessee's claim, holding that the arrangements envisaged setting up of a large commercial plant and therefore the expenditure must be regarded as one incurred for a new venture on a new process with a new technology on a new type of plant. It also held that the payment being once for all payment, was made for the acquisition of a capital asset. On a reference at the instance of the assessee the High Court concurred with the Tribunal's decision. The Hon'ble Supreme Court after referring to the various judgments including the case of Empire Jute Co. Ltd vs. CIT (124 ITR 1) and CIT vs. Associated Cement Companies Ltd. (172 ITR 257) held that-

"There was no material for the Tribunal to hold that the area of improvisation was not a part of the existing business or that the entire gamut of the existing manufacturing operations for the commercial production of penicillin in the assessee's existing plant had become obsolete or inappropriate in relation to the exploitation of the new sub-cultures of the high yielding strains of penicillin supplied by the foreign firm and that the mere introduction of the new bio-synthetic sources required the erection and commissioning of a totally new and different type of plant and machinery. The financial outlay under the agreement was for the better conduct and improvement of the existing business and should, therefore he held to be a revenue expenditure. The circumstance that the agreement insofar as it placed limitations on the right of the assessee in dealing with the know-how and the conditions as to non portability confidentiality and secrecy of the know-how inclined towards the inference that the right pertained more to the use of the know-how than to its exclusive acquisition. The further circumstance that the agreement pertained to a product already in the line of the assessee's established business and not to a new product indicated that what was stipulated was an improvement in the operations of the existing business and its efficiency and profitability not removed from the area of the day-to-day business of the assessee's established enterprise.

The once for all payment test was also inconclusive. What was relevant was the purpose of the outlay and its intended object and effect considered in a commonsense way having regard to the business realities. In a given case the test of 'enduring benefit might break down

In the result, the assessee was held to be entitled to the deduction of the amount paid by it to the foreign firm, the some being revenue expenditure.

10. If the assessee has made a claim in the computation of income that, it is a revenue expenditure because the payment was made under an agreement for obtaining technical knowhow for increasing the efficiency and to optimize the

operation cost from new line under the concept of multi model assembly line as 'Revenue expenditure' then such a claim cannot be held to be furnishing of inaccurate particulars. The issue whether particular expenditure is a capital or revenue has a very thin line of demarcation. The Hon'ble Supreme Court in the case of CIT vs. Associated Cement Co. Ltd. (supra) had made following observations:-

"As observed by the Supreme Court in the decision in Empire Jute Co. Ltd. v CIT [1980] 124 ITR 1 (SC) that there may be cases where expenditure, even if incurred for obtaining an advantage of enduring benefit, may, nonetheless, be on revenue account and the test of enduring benefit may break down. It is not every advantage of enduring nature acquired by an assessee that brings the case within the principles laid down in this test. What is material to consider is the nature of the advantage in a commercial sense and it is only where the advantage is in the capital field that the expenditure would be disallowable on an application of this test."

11. Thus, if we apply such principles then, it cannot be said that merely because the claim of the assessee as 'Revenue expenditure' had been held to be a capital expenditure then it does not lead to levy of penalty u/s.271(1)(c) for furnishing inaccurate particulars of income. Accordingly, we do not find any infirmity in the order of the ld. CIT(A) in deleting the said penalty. Accordingly, the penalty levied on disallowance of Rs.17,70,92,101/- is deleted. In the result, the appeal of the Revenue is dismissed. Accordingly, the Cross Objection raised by the assessee is allowed.

12. In the result, appeal of the Revenue is dismissed and Cross Objection of the Assessee is allowed.

Order pronounced on 6th September, 2024.

Sd/-	**Sd/-**
(OMKARESHWAR CHIDARA)	**(AMIT SHUKLA)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Mumbai; Dated 06/09/2024
KARUNA, *sr.ps*

Copy of the Order forwarded to :

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

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BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai