

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

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER
&
SMT RENU JAUHRI, ACCOUNTANT MEMBER**

**ITA No.2406/MUM/2024
(A.Y. 2016-17)**

Aenox Digital Technology Limited 104, Venkatesh Chambers, 1 st Floor, Ghanshyam Talwatkar Marg, Fort.- 400001. PAN: AAACA6876H	v/s. बनाम	DCIT Circle 1 (1)(1) Aayakar Bhawan, Mumbai.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: AAACB8993D		
Appellant/अपीलार्थी	..	Respondent/प्रतिवादी

Appellant by :	Shri Gaurang Sanghavi
Respondent by :	Shri Manoj Kumar Sinha (SR. D.R.)

Date of Hearing	29.08.2024
Date of Pronouncement	14.10.2024

आदेश / ORDER

PER RENU JAUHRI [A.M.] :-

The present appeal has been filed against the order dated 31.03.2024 of the Learned Commissioner of Income-tax (Appeals), Mumbai-32/National Faceless Appeal Centre, Delhi [hereinafter referred to as “CIT(A)”] passed u/s. 250 of the Income-tax Act, 1961 [hereinafter referred to as “Act”] for Assessment Years [A.Y.] 2016-17 confirming the penalty imposed by the Ld. AO u/s. 271 (1) (c) of the Act.



2. The assessee has raised following grounds of appeal:
 - i. *That, the Hon'ble CIT(A) has grievously erred in confirming the penalty imposed by the Ld. AO u/s 271(1)(c) amounting to Rs.38,93,400/-.*
 - ii. *That, the appellant craves for leave to add, amend and/or modify the grounds of appeal.”*
3. The brief facts of the case are that the assessment was made u/s. 143(3) at an income of Rs.19,40,92,800/- after making an addition of Rs.1,12,50,000/-. The assessee had incurred an expenditure towards research and development for which a sum of Rs.1,12,50,000/- was paid to M/s. Ashapura Minechem Ltd. The assessee claimed weighted deduction u/s. 35(1)(ii) of the Act. During the course of assessment proceedings, the assessee was required to furnish the notification u/s. 35(1)(ii) of the Act in respect of M/s. Ashapura Minechem Ltd. which is a pre-requisite for claiming deduction u/s. 35(1)(ii) of the Act. The assessee informed that M/s. Ashapura Minechem Ltd. has submitted an application and is in the process of obtaining the requisite approval. Subsequently, a copy of the approval was submitted which was found to be u/s. 35(2AB) of the Act and not u/s. 35(1)(ii) of the Act. The assessee thereupon withdrew the said claim of Rs.1,12,50,000/-, by informing the Ld. AO in writing as the time for filing the revised return had lapsed by then.
4. During the penalty proceedings, Ld. AO observed that the assessee had not furnished any response despite repeated opportunities and it had also withdrawn the appeal filed before the Ld. CIT(A) on this issue. He,

therefore, held that it was a fit case for levy of penalty as the assessee had concealed his income by way of furnishing inaccurate particulars of income and proceeded to levy the penalty.

5. Before the Ld. CIT(A), detailed submissions were made by the assessee claiming that deduction was claimed under bonafide belief that the approval to M/s. Ashapura Minechem Ltd. was granted u/s. 35(1)(ii) of the Act. However, Ld. CIT(A) dismissed the appeal.
6. We have heard the rival submissions. Before us, Ld. A.R. has contended that it was a genuine mistake and bonafide belief that deduction u/s. 35(1)(ii) was allowable. Moreover, only weighted deduction part is disallowable and not the entire sum paid to M/s. Ashapura Minechem Ltd. As such there is no concealment by way of furnishing inaccurate particulars of income by the assessee as it is a simple case of inadvertent oversight and misunderstanding. It was further submitted that the application for approval u/s. 35(1)(ii) of the Act was filed by M/s. Ashapura Minechem Ltd. in 2014 but the approval had not been received.
 - a. On the other hand, Ld. D.R. submitted that the claim of weighted deduction was withdrawn only after detection of wrong claim by the Ld. AO and therefore penalty had been rightly imposed.



7. After careful consideration of the material available before us, we are of the view that the mistake was genuine and it was not the revenue's case that the expenditure incurred on research and development was non genuine. Since the said claim has been allowed u/s. 37(1) of the Act, it is only the claim of weighted deduction that was required to be disallowed due to the fact that approval u/s. 35(1)(ii) of the Act was not granted to M/s. Ashapura Minechem Ltd. As such it cannot be said to be a case of concealment of income. We, therefore, are of the view that it is not a fit case for levy of penalty u/s. 271 (1) (c) of the Act and the penalty is accordingly deleted.

8. In the result, the appeal is allowed.

Order pronounced in the open court on 14.10.2024.

Sd/-

AMIT SHUKLA

(न्यायिक सदस्य/JUDICIAL MEMBER)

Sd/-

RENU JAUHRI

(लेखाकार सदस्य/ACCOUNTANT MEMBER)

Place: मुंबई/Mumbai

दिनांक/Date. 14.10.2024

snehal c. ayare, stenographer

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent.
3. आयकर आयुक्त / CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण DR, ITAT, Mumbai
5. गार्ड फाईल / Guard file.



ITA No.2406/MUM/2024
(A.Y. 2016-17)
Aenox Digital Technology Limited

सत्यापित प्रति //True Copy//
आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण/ ITAT, Bench, Mumbai