

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ "डी", अहमदाबाद ।  
IN THE INCOME TAX APPELLATE TRIBUNAL  
" D " BENCH, AHMEDABAD

सुश्री सुचित्रा कम्बले, न्यायिक सदस्य एवं  
श्री मकरंद वसंत महादेवकर, लेखासदस्य के समक्ष।

BEFORE MS. SUCHITRA KAMBLE, JUDICIAL MEMBER  
AND  
SHRI MAKARAND V. MAHADEOKAR, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.675/Ahd/2024  
निर्धारण वर्ष /Assessment Year : 2007-08

Gujarat Insecticides Ltd. Plot No.805-806 GIDC Estate, Ankleshwar Bharuch, Ankleshwar - 393 002 (Gujarat)	बनाम/ v/s.	The Dy.CIT Circle-2(1)(1) Vadodara-390 007
स्थायी लेखा सं./PAN: AAACG 8436 D		

अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)
Assessee by :	Shri Sanjay R. Shah, AR	
Revenue by :	Shri Surendra Kumar, Sr.DR	

सुनवाई की तारीख/Date of Hearing : 11/11/2024  
घोषणा की तारीख /Date of Pronouncement: 12/11/2024

आदेश/ORDER

PER MAKARAND V. MAHADEOKAR, AM:

This appeal has been filed by the assessee against the order of the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi (NFAC) [hereinafter referred to as "CIT(A)"], dated 26.03.2024, upholding the penalty levied by the Assessing Officer [hereinafter referred to as "AO"] under Section 271(1)(c) of the Income Tax Act, 1961 [hereinafter referred to as "the Act"] amounting to Rs.58,97,870/- in respect of the disallowance of a claim of Rs.1,73,51,790/- as a business loss or bad debt.

**Facts of the case:**

2. The assessee is a company engaged in the manufacturing and sale of insecticides. For the Assessment Year (AY) 2007-08, the assessee filed its income tax return on 31.10.2007, declaring a loss. Later, on 07.04.2008, the assessee filed a revised return claiming a deduction of Rs.1,73,51,790/- as a bad debt or business loss. This deduction related to "notional interest" previously added to its income by the Assessing Officer (AO) in prior years, but which remained unpaid by the debtor. In earlier assessment years, the AO had added an aggregate amount of Rs.1,73,51,790/- to the assessee's income as "notional interest" on an inter-corporate deposit (ICD) extended by the assessee to M/s. Nipun Investment Pvt. Ltd. This ICD was provided on an interest-bearing basis, but no actual interest was received from the debtor. The AO, citing the assessee's use of the mercantile system of accounting, had added the notional interest to the assessee's taxable income across six previous years (AY) 2000-01 to A.Y. 2005-06), totaling Rs.1,73,51,790/-. The assessee's claim for deduction was based on two alternative arguments:

- The assessee argued that the unpaid notional interest had been previously offered to tax as business income in prior years, thus fulfilling the conditions under Section 36(1)(vii) read with Section 36(2). Since the income had already been recognized and subsequently became irrecoverable, it qualified for deduction as a bad debt.
- Alternatively, the assessee contended that even if the amount was not allowable as a bad debt, it should be treated as a business loss under Section 28. Since the amount represented income that the assessee reasonably expected but ultimately failed to realize, it was argued that the irrecoverability constituted a business loss for the year in which the recovery of only the principal was made.

3. During the course of assessment proceedings, the AO rejected the assessee's claim for deduction of Rs.1,73,51,790/- on the grounds that the principal amount of the ICD was fully recovered, which the AO interpreted as indicating that the interest amount was also recoverable. The AO took the position that the assessee's claim was not substantiated since no documentary evidence demonstrated the actual irrecoverability of the interest component. The assessee appealed the disallowance to the CIT(A), which upheld the AO's decision, and subsequently to the co-ordinate bench of Tribunal also confirmed the disallowance. The co-ordinate bench reasoned that since the assessee recovered the principal, there was no indication that the interest was truly irrecoverable.

3.1. Despite the Co-ordinate Bench's confirmation, the assessee filed a Tax Appeal (No. 269 of 2021) before the Hon'ble Gujarat High Court, raising a substantial question of law on the allowability of the claimed deduction. On 04.01.2022, the Hon'ble Gujarat High Court admitted the assessee's appeal, thereby recognizing a substantial question of law on the allowability of the claimed deduction. The admission of this question by the High Court suggested that the issue was debatable and involved substantial legal interpretation.

3.2. In parallel with the quantum proceedings, the AO initiated penalty proceedings under Section 271(1)(c) of the Act, alleging that the assessee furnished inaccurate particulars of income by claiming the deduction of Rs.1,73,51,790/-. The AO concluded that the disallowance of the deduction demonstrated that the assessee's claim was incorrect, justifying the imposition of penalty for furnishing inaccurate particulars.

4. On appeal, the CIT(A) confirmed the penalty under Section 271(1)(c) of the Act, primarily on the grounds that the quantum disallowance had been upheld by the co-ordinate bench, establishing that the claim was not allowable. The CIT(A) also concluded that the Co-ordinate Bench's confirmation demonstrated that the assessee's claim lacked validity, and therefore, the penalty was justified as the assessee had furnished inaccurate particulars.

5. Aggrieved by the order of the CIT(A), the assessee is in appeal before us with following grounds of appeal:

1. *The learned CIT(A) erred in law and facts of the case by holding that assessing officer rightly levied penalty in respect of addition of notional interest, without appreciating that assessee duly explained the adopted basis of claiming the deduction, accordingly, no question for furnishing inaccurate particulars of income arises.*
2. *The learned CIT(A) erred in sustaining penalty levied for furnishing inaccurate particulars of income on the premise that impugned deduction is confirmed by the Hon'ble ITAT.*
3. *The appellant reserves the right to add, alter or amend any of the grounds of appeal.*

6. During the course of hearing before us, the Authorized Representative (AR) for the assessee argued that the claim was made in good faith and was fully disclosed in the revised return, showing no intent to conceal or misrepresent facts. The AR emphasized that the admission of a substantial question of law by the Hon'ble Gujarat High Court demonstrated the debatable nature of the claim, supporting the argument that the issue was not straightforward and involved a bona fide interpretation of the law.

7. The AR placed reliance on following judicial precedents where collectively it was held that penalty under Section 271(1)(c) of the Act should not be levied on issues where a substantial question of law has been admitted by a High Court, as this indicates that the matter is debatable and not a clear case of furnishing inaccurate particulars.:

1. **Judgement of Hon'ble Bombay High Court in case of *Nayan Builders & Developers Pvt. Ltd.* [2015] 56 taxmann.com 335.**
2. **Judgement of Hon'ble Karnataka High Court in *Ankita Electronics* [2017] 79 taxmann.com 344.**
3. **Decision of Co-ordinate Bench in case of *Shaileshkumar Shivrambhai Patel Vs. ITO, Ward - 5, Palanpur* (ITA No.999/Ahd/2019 dated 29-06-2022.**

8. The Departmental Representative (DR) relied on the order of CIT(A) and argued that the assessee claimed this expenditure in revised return of income knowing that it will not be allowed which amounts to furnishing inaccurate particulars.

9. We, upon considering the arguments, found that the assessee made a bona fide claim based on historical treatment of notional interest as business income. The admission of a substantial question of law by the Hon'ble Gujarat High Court indicated that the matter was debatable and involved legal interpretation. Given the legal principle that quantum and penalty proceedings are separate, the mere confirmation of disallowance in quantum proceedings did not justify penalty without evidence of intentional concealment or misrepresentation.

9.1. We have considered the judicial precedents relied on and note that mere disallowance of a claim does not automatically lead to the conclusion that the assessee furnished inaccurate particulars of income.

9.2. In the judgment of **CIT Vs. Nayan Builders (supra)**, the Hon'ble Bombay High Court has decided in favour of the assessee. For the sake of clarity, we reproduce the relevant portion of the judgement –

*“Having heard Mr. Ahuja, learned counsel appearing on behalf of the appellant, we find that this appeal cannot be entertained as it does not raise any substantial question of law. The imposition of penalty was found not to be justified, and the appeal was allowed. As a proof that the penalty was debatable and arguable issue, the Tribunal referred to the order on the assessee's appeal in quantum proceedings and the substantial questions of law which have been framed therein. We have also perused that order dated September 27, 2010, admitting Income Tax Appeal No. 2368 of 2009. In our view, there was no case made out for imposition of penalty and the same was rightly set aside. The appeal raises no substantial question of law, it is dismissed. No costs.”*

9.3. Similar view has been taken by the Hon'ble Karnataka High Court in case of **CIT Vs. Ankita Electronics (P.) Ltd. (supra)**. The Co-ordinate Bench in case of **Shaileshkumar Shivrambhai Patel (supra)** has reiterated the principle. For the sake of clarity, we reproduce the relevant portion of the decision –

*“14. Therefore, in our opinion, the basis of levy of penalty itself is not correct. Apart from this, assessee's appeal in quantum proceedings has been admitted by Hon'ble jurisdictional High Court, therefore issue in quantum proceedings are debatable, hence penalty on debatable issue should not be levied, as held by Hon'ble High Court of Karnataka in the case of Ankita Electronics (Pot.) Ltd (supra), hence penalty order under section 271(1)(c) of the Act, needs to be quashed. Accordingly, we quash the penalty order under section 271(1) (c) of the Act.”*

9.4. Based on the cited judicial precedents, penalty is not warranted on issues where a substantial question of law exists, indicating that the matter is

not free from doubt. Accordingly, we quash the penalty order under section 271(1) (c) of the Act.

10. In the result, the appeal of assessee is allowed.

**Order pronounced in the Open Court on 12<sup>th</sup> November, 2024 at Ahmedabad.**

**Sd/-  
(SUCHITRA KAMBLE)  
JUDICIAL MEMBER**

**Sd/-  
(MAKARAND V. MAHADEOKAR)  
ACCOUNTANT MEMBER**

अहमदाबाद/Ahmedabad, दिनांक/Dated 12/11/2024

*टी. सी. नायर, व. नि. स. / T.C. NAIR, Sr. PS*

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त (अपील) / The CIT(A)-(NFAAC), Delhi.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण , राजकोट/DR,ITAT, Ahmedabad,
6. गार्ड फाईल /Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

सहायक पंजीकार (Asstt. Registrar)  
आयकर अपीलीय अधिकरण, ITAT, Ahmedabad