

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

**BEFORE SHRI OM PRAKASH KANT, AM AND
SHRI RAHUL CHAUDHARY, JM**

ITA No. 4772/Mum/2024
(Assessment Year: 2014-15)

Avalon Cosmetics Private Limited Office No. 3, Level 2, Centrium Phoenix Market City, Kurla (W), Mumbai-400 070	Vs.	ITO Ward – 14(1)(1) Mumbai
PAN/GIR No. AAECA 3300 L		
(Assessee)	:	(Respondent)
Assessee by	:	Shri Ajay Singh & Shri Akshay Pawar
Respondent by	:	Shri Ram Krishn Kedia
Date of Hearing	:	30.10.2024
Date of Pronouncement	:	21.11.2024

ORDER

Per Om Prakash Kant, A M:

This appeal has been preferred by the assessee against the order dated 23.07.2024 passed by the learned Commissioner of Income Tax (Appeals) - National Faceless Appeal Centre, Delhi (in short 'Id. CIT(A)') for the Assessment Year ('A.Y.' for short) 2014-15. The grounds raised by the assessee are reproduced as under:

1. Penalty u/s 271 (1)(c) of Rs. 2,26,765/-:

1. The Id. CIT(A) erred in confirming the levy of penalty of Rs. 2,26,765/- by the Assessing Officer u/s 271(1)(c) of the Act on disallowance of factory garden maintenance expenses of Rs. 7,33,865/-, without appreciating the fact that no case of furnishing any inaccurate particulars of income was proved by the AO, as assessee had submitted the details of invoices, ledger and payment details in respect of the expenses, therefore merely because the explanation of assessee is not accepted by AO, the levy of penalty is not justified.

2. The Ld CIT (A) failed to appreciate fact that assessee had not furnished any inaccurate particulars of income nor concealed any income, the factory unit at Nashik had to maintain the surroundings open space as per norms of Pollution Control Board, therefore the expenses were

incurred for the purpose of business, secondly there was complete disclosure of facts in ROI as well as in course of assessment. Therefore, levy of penalty u/s. 271(1)(c) of the Act is not justified.

3. *The notice u/s 274 r.w.s 271 of the Act dated 28/11.2016 is bad in law.*

2. Briefly stated, the facts of the case are that the assessment proceeding u/s. 143(3) of the Act was completed on 28.11.2016, wherein the ld. learned Assessing Officer ('ld. A.O.' for short) made addition for disallowance of the garden expenses of Rs.2,33,865/- holding that the same were not related to the business of the assessee. The ld. A.O. initiated the penalty proceedings u/s. 271(1)(c) of the Act for furnishing inaccurate particulars by the assessee. In the appellate proceedings against the quantum addition, the disallowance was sustained by the ld. CIT(A). Accordingly, the ld. A.O. issued show cause to the assessee as why the penalty in respect of the disallowance of the gardening expenses might be levied.

3. During the penalty proceedings, the assessee contested that the expenses were incurred in compliances to the norms of the Pollution Control Board and all the details were duly filed before the ld. A.O. and no particulars was found either to be incorrect or wrong and, therefore, merely for the reason that the claim of the assessee was not accepted by the ld. A.O., no penalty should be levied. The ld. A.O. rejected the claim of the assessee and levied penalty @ 100% of the tax sought to be evaded, which was worked out to Rs.2,26,765/-.

4. On further appeal, the ld. CIT(A) also upheld the said penalty observing as under:

4.3. The issues were considered. The penalty order, written submission and relevant provisions of law were carefully perused. From the penalty order, it is apparent that the A.O. disallowed the gardening expenses of Rs.7,33,865/- holding the same as not covered under the business expenses. The appellant preferred an appeal before the CIT(A). The CIT(A) examined the issue and dismissed the appeal of the appellant on the issue of disallowance of gardening expenses and accordingly confirmed the addition made by the AO. As a result, the AO imposed a

penalty of Rs.2,26,765/- for furnishing the inaccurate particulars of income of Rs.7,33,865/- From the assessment order and the decision of the CIT(A), it is found that the appellant could not offer the explanation required as per the explanation 1 (A) of section 271 of the Act, which reads as under:

"Explanation 1:- Where in respect of any facts material to the computation of the total income of any person under this Act,

(A) Such person fails to offer an explanation or offers an explanation which is found by the Assessing Officer or the Commissioner (Appeals) or the Principal Commissioner or Commissioner to METAX o be false, or DEPART

(B)

then, the added or disallowed in computing the total income of such person as a result thereof shall, for the purposes of clause (c) of this sub- section, be deemed to represent the income in respect of which particulars have been concealed."

4.4. In the written submission, the appellant submitted that merely because of certain expenses claimed by the appellant, which claim if not accepted or is not accepted by the revenue, it cannot mean the particulars furnished by the assessee are inaccurate. The appellant further relied the decision of the Apex Court in the case of CIT vs Reliance Petro Products Pvt. Ltd. The pleas and reliance by the appellant were examined and found that the reliance is not relevant in the instant case as the particulars furnished in the return of income was factually found to be incorrect during the assessment proceedings and further confirmed by the CIT(A). Hence, I find no infirmity in the penalty order passed by the Assessing Officer. As the appellant was provided sufficient opportunity during the penalty proceedings, the principles of natural justice have not been violated, Accordingly, the penalty order u/s 271(1)(c) of the Act is hereby confirmed. As a result, the above Grounds of appeal are dismissed.

5. We have heard rival submissions of the parties, including the paper book filed by the assessee containing pages 1 to 86.

6. The brief facts *qua* in dispute are that the assessee had a factory unit at MIDC, Nasik. The factory unit had some open surrounding space. The assessee had incurred expenses for maintaining the garden surrounding the factory. The detail documentary evidences in respect of such expenses were duly submitted before the Id. A.O. in the assessment proceedings. The assessee submitted that said expenses were mandatory as per the Pollution Control norms and, accordingly, it was claimed in the return of income. The assessee has filed all the details of the expenses during the assessment preceding, which have not been disputed by the AO. The Id. A.O. has not brought on record that any

of the particulars filed by the assessee are wrong or incorrect or any information filed by was erroneous. The only issue is that according to the Id. A.O., the said expenses had not been incurred wholly and exclusively for the purpose of the business of the assessee. But the expenses were incurred under the requirement of the Pollution Control norms. Before us, the counsel for the assessee referred to the Circular issued by the Pollution Control Board. The said Circular is reproduced as under:

30/06/2016.

CIRCULAR

Sub.:- Circular regarding tree p plantation on remaining open land of 33% of open space reserved by e plantation & green belt development.

*Ref.:- 1) State Govt.'s decision dtd. 31/05/2016 regarding planting two crore trees on occasion of World Environment Day.
2) Board's Circular regarding tree plantation dtd. 02/06/2016*

Hon'ble Environment Minister, GoM in a meeting held on 31/05/2016 has decided to plant two crore trees in the state on occasion of the World Environment Day. To implement State Govt's this decision, Board has issued Circular in this regard and directed all the Regional Officers to form a district level committee, to Identify open spaces, to engage private organizations/ NGOs/ Industries so as to achieve district level target of plantation of 1.5 lakh trees.

Board grants Consent to Operate to industries with the condition to bring minimum 33% of the available open land under green coverage/ plantation. Also, they are instructed to submit a yearly statement by 30th September every year on available open plot area, number of trees surviving as on 31 March of the year and number of trees planted by September end.

In line with the State Govt.'s above decision of two crore tree plantation, it has been decided by the Board to direct all the industries in the State to plant trees on remaining space of the 33% of open land, if any space is left without tree plantation.

Therefore, all the Regional Officers and Sub-Regional Officers are directed to Immediately obtain area of remaining space of the 33% of open land, if any space is left without tree plantation, of all the industries of their jurisdiction and instruct them to plant fruit bearing trees, Banyan trees, Peepal trees, Neem trees etc. on the remaining space. Also, they are requested to encourage the industry, if any industry is willing to plant additional trees beyond 33% of open land of the industry.

*Sd/-
(P.K. Mirashe)
Member Secretary)*

7. In our opinion, there is no dispute that the said expenses were incurred by the assessee and all the information at the time of quantum addition have been provided by

the assessee and same has not been disputed by the Id. A.O. The penalty u/s. 271(1)(c) of the Act cannot be levied merely for the rejection of the claim of the assessee as held by the Hon'ble Supreme Court in the case of *Reliance Petro Products Pvt. Ltd.* (supra). Respectfully following the same, we are of the opinion that the penalty levied by the Id. A.O. and upheld by the Id. CIT(A) is not sustainable. Accordingly, we set aside the order of the lower authorities on the issue in dispute and cancel the penalty levied by the Id. A.O. The ground of appeal of the assessee is accordingly allowed.

8. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open court on 21.11.2024.

Sd/-

Sd/-

(Rahul Chaudhary)
Accountant Member

(Om Prakash Kant)
Accountant Member

Mumbai; Dated : 21.11.2024
Roshani, Sr. PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. CIT - concerned
4. DR, ITAT, Mumbai
5. Guard File

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai