

आयकर अपीलीय अधिकरण, सूरत न्यायपीठ, सूरत
IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER AND
SHRI BIJAYANANDA PRUSETH, ACCOUNTANT MEMBER
आयकर अपील सं./**ITA No. 998/SRT/2024** (AY 2006-07)
(Physical court hearing)

Sahajanand Medical Technologies Ltd. Nr. Dabholi Char Rasta, Ved Road, Surat-395 004 [PAN : AAFCS 7694 L]	बनाम Vs	Deputy Commissioner of Income-tax, Circle-2(1)(2), Surat, Room No.602, 6 th Floor, Aaykar Bhavan, Majura Gate, Surat-395001
अपीलार्थी/Appellant		प्रत्यर्थी /Respondent

निर्धारिती की ओर से /Assessee by	Shri Rajesh C Shah, CA
राजस्व की ओर से /Revenue by	Shri Mukesh Jain– Sr-DR
सुनवाई की तारीख/Date of hearing	31.12.2024
उद्घोषणा की तारीख/Date of pronouncement	03.01.2025

Order under section 254(1) of Income Tax Act

PER PAWAN SINGH, JUDICIAL MEMBER:

1. This appeal by assessee is directed against the order of Commissioner of Income tax (Appeals)-4, Surat [for short to as "Ld.CIT(A)] dated 30.03.2022 for assessment year (AY) 2006-07, which in turn confirming penalty levied by Assessing Officer under section 271(1)(c) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') dated 03.03.2015. The assessee has raised the following grounds of appeal:-

"1. The Ld. AO has erred in levying penalty and Ld. CIT(A) has erred in confirming the penalty u/s 271(1)(c) of the I.T. Act.

2. The appellant reserves the right to add, alter, amend or withdraw any grounds of appeal."

2. Rival submission of both the parties heard and record perused. The Ld. Authorized Representative (Ld.AR) of the assessee submits that assessment

for AY 2006-07 was completed under section 143(3) r.w.s 147 of the Act on 31.10.2011. The Assessing Officer while passing the assessment order made two partial disallowances on the issue of depreciation – first was related to additional depreciation claimed on plant and machinery during the year under consideration. The assessee made addition to the plant and machinery in first half of financial year of Rs.73,05,105/- and in second half addition of Rs.93,54,217/-. The claim of assessee was that they are eligible for additional depreciation @ 20%, if the plant and machinery is put to use for 180 days or more and @ 10% if put to use for less than 180 days. By mistake, the assessee claimed additional depreciation for whole of the addition on account of plant and machinery @ 20% instead of 10% in current year and remaining 10% in subsequent year. During assessment, the assessee made submission to disallow the same in the year under consideration and allowed in subsequent year, tax on both the years were same. Tax return of assessee for the subject assessment year furnished online and the assessee showed it in computation separately i.e., purchase and use of new machinery for less than 180 days and used for 180 days or more. There was no *mens rea* in such situation. It was a just a mistake in calculation. The Assessing Officer while passing the assessment order disallowed the claim of additional depreciation of Rs.7,32,078/- in assessment year 2006-07, it was to be allowed in subsequent assessment year i.e., in assessment year 2007-08, which was not allowed. The assessee has shown return of income about Rs.11.00 crores and alleged excess additional depreciation was only of Rs.7,32,078/- which cannot be said to be intentional. In the subsequent year, the assessee has shown net total

of Rs.11.42 crores. Thus, assessee has not availed special benefit by claiming additional depreciation in the current year instead of claiming for subsequent year. In fact, it was unintentional mistake. Second disallowance was on account of depreciation claimed in improvement in the leasehold property. The assessee claimed 20% of depreciation on the leasehold improvement by amortizing @ 20% for five years and no penalty is leviable on such issue. The Ld. AR of the assessee relied on various decisions of Hon'ble High Court and Tribunal on the ratio that no penalty under section 271(1)(c) is leviable, if full facts are disclosed relating to the expenditure in the notes of account, which was in fact, basis of disallowance. The Ld. AR of the assessee also relied upon decisions of Hon'ble Supreme Court in the case CIT vs. Reliance Petro Products Ltd (2010) 322 ITR 158 (SC), wherein it has been held that merely making an unsustainable claim, without inaccuracy in furnishing particulars of income does not attract a penalty. The Ld. AR also relied upon decision of Delhi Tribunal in Vibracoustic India Private Limited Vs ACIT in ITA N.5339/Del/2019 dated 29.06.2022.

3. On the other hand, Ld. Senior Departmental Representative (Sr-DR) for the Revenue supported the order of lower authorities. The Ld. Sr-DR for the Revenue submits that the assessee claimed additional depreciation on both the items, which was not allowable and was rightly disallowed by Assessing Officer while passing assessment order.
4. We have considered the rival submissions of both the parties and have gone through order of lower authorities carefully. We have also deliberated on various case law relied upon by Ld. AR of the assessee. We find that during

assessment, from the details furnished by assessee, the Assessing Officer noted that assessee claimed depreciation on cost of machinery of Rs. 93,54,217/- after September, 2005 (i.e., in second half of the year) and claimed additional depreciation @20% on machinery i.e., Rs.31,28,520/-. The Assessing Officer was of the view that assessee was eligible only for depreciation @ 10%. Thus, the assessee claimed additional depreciation of Rs.7,32,078/-. The Assessing Officer further noted that assessee has claimed depreciation on leasehold improvement @ 20% instead of @ 15%, the Assessing Officer worked out excess depreciation of Rs.4,92,431/-. The Assessing Officer initiated penalty on both disallowances on issuing shown cause notice to the assessee before levying penalty. The Assessing Officer noted that no reply was furnished by assessee. The Assessing Officer held that the assessee furnished inaccurate particulars of its particulars which leads to concealment of income and levied penalty @ 100% of tax sought to be evaded on both disallowances. The Assessing Officer worked out both penalties of Rs.4,12,170/- in his order dated 03.03.2015. The Id. CIT(A) upheld the action of Assessing Officer by taking view that assessee has not furnished any further details, which was not considered by Assessing Officer during penalty proceedings. We find that excess disallowance of plant and machinery and on leasehold improvement is not in dispute. Further, we find that both the disallowances were made on the basis of details furnished by assessee. Admittedly all details were available on record. Merely the assessee could not substantiate its claim would not lead to a conclusion that the assessee furnished inaccurate particulars of income. Even otherwise, it is a debatable

issue and no penalty is leviable on debatable issue. We find that Hon'ble Apex Court in the case of Reliance Petro Products Ltd (supra) held that the words used under section 271(1)(c) of the Act are plain and simple, and unless the case of the assessee is strictly covered by words in this provision, no penalty can be invoked. By any stretch of imagination, making an incorrect claim in law cannot tantamount to furnishing in accurate particulars. Merely because the assessee claimed deduction of interest expenditure has not been accepted by the revenue, penalty under section 271(1)(c) is not attracted. If the contention of the revenue is accepted, the assessee would be liable to penalty under section 271(1)(c) in every case where the claim made by the assessee is not accepted by the Assessing Officer for any reason. Considering the aforesaid factual and legal position, we direct the Assessing Officer to delete the penalty. In the result, the grounds of appeal raised by the assessee is allowed.

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

Order pronounced in the open court on 03/01/2025.

Sd/-
(BIJAYANANDA PRUSETH)
लेखा सदस्य/Accountant Member

Sd/-
(PAWAN SINGH)
न्यायिक सदस्य/Judicial Member

सूरत / Surat Dated: 03/01/2025

Dkp Outsourcing Sr.P.S*

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

- अपीलार्थी/ The Appellant
- प्रत्यर्थी/ The Respondent
- आयकर आयुक्त/ CIT
- विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, सूरत/ DR, ITAT, SURAT
- गार्ड फाईल/ Guard File

By order/आदेश से,

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सहायक पंजीकार
आयकर अपीलीय अधिकरण, सूरत