IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI "A" BENCH: NEW DELHI

BEFORE SHRI ANUBHAV SHARMA, JUDICIAL MEMBER &
SHRI MANISH AGARWAL, ACCOUNTANT MEMBER

ITA No.2100/Del/2024
[Assessment Year : 2011-12]

Aromatrix Flora (P) Ltd. 4237-B-5 & 6, Vasant Kunj, New Delhi-110070. ***PAN-AABCA6992M***	vs	ACIT, Circle-1(1) New Delhi
APPELLANT		**RESPONDENT**
Appellant by	Shri Gautam Jain, Adv. & Shri Parth Singhal, Adv.	
Respondent by	Shri Krishna Kumar Ramawat, Sr. DR	
Date of Hearing	02.12.2025	
Date of Pronouncement	04.02.2026	

ORDER

PER MANISH AGARWAL, AM :

The present appeal is filed by the assessee against the order dated 08.03.2024 by Ld. Commissioner of Income Tax (A), National Faceless Appeal Centre ("NFAC"), Delhi ["Ld. CIT(A)"] in Appeal No. NFAC/2010-11/10160907 passed u/s 250 of the Income Tax Act, 1961 ["the Act"] arising out of assessment order dated 26.12.2018 passed u/s 143(3)/147/148 of the Act pertaining to Assessment Year 2011-12.

2. Brief facts of the case are that assessee company was engaged in the business of manufacturing/agro based industries, filed its

return of income on 30.09.2011, declaring total income of INR 23,63,416/- which was later revised on 26.11.2018 at a total income of INR 2,58,87,480/-. The case was selected for complete scrutiny through CASS and notice u/s 143(2) was issued on 31.03.2018. The assessment was completed wherein the AO assessed the income of the assessee company at INR 2,59,84,420/- as per normal provision of Act and INR 4,86,98,700/- as per book profit vide assessment order dated 26.12.2018 passed u/s 143(3)/147/148 of the Act.

3. Against the said order, assessee filed an appeal before Ld. CIT(A) who vide order dated 08.03.2024, partly allowed the appeal of the assessee.

4. Aggrieved by the order of Ld.CIT(A), assessee is in appeal before the Tribunal by taking following grounds of appeal:-

1. *"That the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, (NFAC), New Delhi has erred both in law and on facts in upholding levy of penalty of Rs. 77,54,617/- on disallowance of claim of deduction of Rs. 2,33,44,909/- u/s 80IC of the Act.*

1.1. *That while upholding the levy of penalty, the learned Commissioner of Income Tax (Appeals) has failed to appreciate that the claim of deduction u/s 80IC of the Act was bonafide wrong claim and not a false claim which was detected only during the course of assessment proceedings for subsequent assessment year 2012-13 and therefore having regard to the fact that no penalty was found tenable even in Assessment year 2012-13 and subsequent assessment years whereto identical claim has been revised, the penalty sustained is misconceived, misplaced and untenable.*

1.2. *That the learned Commissioner of Income Tax (Appeals) has failed to appreciate that appellant is a company filing tax returns for past*

more than 20 years and had no mala fide intent or mens-rea to conceal any income as no additional tax would have been payable as the appellant had sufficient availability of MAT credit and thus a genuine, unintentional mistake of understanding of the statute could not be a basis to levy penalty u/s 271(1)(c) of the Act.

1.3. That the conclusion there was concealment of income by the learned Assessing Officer and, wrong particulars of income by the learned Commissioner of Income Tax (Appeals) itself vitiates the levy of penalty u/s 271(1)(c) of the Act.

1.4. That the learned Commissioner of Income Tax (Appeals) has failed to appreciate that penalty proceeding and quantum proceedings are distinct proceedings and therefore conclusion drawn in quantum proceeding cannot automatically be made a basis to levy penalty u/s 271(1)(c) of the Act.

1.5. That various judgments relied upon by the authorities below to levy and sustain the penalty are wholly inapplicable to the facts of the case of the appellant company.

2. That the learned Commissioner of Income Tax (Appeals) has failed to appreciate that inabsence of any specific show cause notice having been issued, the levy of penalty u/s 271(1)(c) of the Act was illegal, invalid and untenable.

2.1. That the learned Commissioner of Income Tax (Appeals) has failed to appreciate that notice issued for levying the penalty was vague, non-specific and as such penalty levied on the basis of the said notice was invalid and not in accordance with law.

3. That the learned Commissioner of Income Tax (Appeals) has also failed to appreciate that in absence of any valid satisfaction having been recorded in the order of assessment the penalty levied was otherwise not sustainable.

4. That even otherwise the computation made by the learned Assessing Officer while levying the penalty and upheld by the learned Commissioner of Income Tax (Appeals) is not based on correct interpretation of provision of the Act and therefore untenable and in any case, excessive."

5. Before us, Ld.AR for the assessee submits that during the year under consideration, assessee had claimed deduction u/s 80-IC of

the Act inadvertently for 11(Eleventh) Assessment Years though the same was allowable only for consecutive ten assessment years and therefore, the assessee has accepted the said mistake and filed the revised return of income. Ld. AR further submits that since the assessee had paid taxes on the book profits, there is no loss to the revenue if deduction u/s 80-IC of INR 2,33,44,909/- was wrongly claimed.

6. Ld.AR further submits that under similar facts, deduction as wrongly claimed in Assessment Year 2012-13 also, which was disallowed and penalty u/s 271(1)(c) was levied which was deleted by ld. CIT(A). Ld. AR submits that the assessee has already filed revised return of income on 26.11.2018 wherein withdrew the claim of deduction u/s 80-IC of the Act wrongly made in the original return of income. Ld. AR further submits that even otherwise, tax paid under MAT was higher than the normal tax therefore, there is no loss to the revenue. Since no tax sought to be evaded by making incorrect claim of deduction u/s 80-IC of the Act and deduction was inadvertently claimed, therefore, no penalty u/s 271(1)(c) should be levied. Ld.AR also filed detailed written submission which is placed on record.

7. On the other hand, Ld. Sr.DR for the Revenue supported the orders of the lower authorities and submits that incorrect deduction was claimed in the original return of income filed and the return was revised at a very late stage after the completion of the assessment for Assessment Year 2012-13 and it cannot be said that the assessee

suo-moto offered the income. Ld. Sr. DR submits that once the assessee has made incorrect claim of the deduction and had not withdrawn the same within the stipulated time and only when the assessment was completed for subsequent Assessment Year, even after assessee has not *suo-moto* corrected the error and after expiry of more than 03 years, the return was revised therefore, it is not the case where assessee had made a mistake inadvertently which was corrected later. He therefore, prayed for the confirmation of the penalty levied u/s 271(1)(c) of the Act.

8. Heard the contentions of both the parties and perused the material available on record. In the present case, original return of income was filed u/s 139(1) of the Act wherein assessee had wrongly claimed deduction u/s 80-IC of the Act for Eleventh Assessment Years and therefore, as under the provisions of section 80-IC of the Act, the claim of the assessee was not allowable. The assessee later through revised return of income, withdraw this claim. It is observed that even after revision of income, tax paid under MAT was higher than the tax on the normal income and there was no loss to the Revenue. It is further observed that other additions made were deleted by Ld. CIT(A) and therefore, income declared in the revised return is the final income of the assessee. The Hon'ble Delhi High Court in the case of ***CIT vs Nalwa Sons Investments Ltd.*** reported in ***327 ITR 543 (Delhi)*** has held that where income has been assessed u/s 115JB of the Act, no penalty can be levied for the disallowance made while computing the income under the normal

provisions of the Act. The relevant contention of the order is reproduced as under:-

"21. The question, however, in the present case, would be, as to whether furnishing of such wrong particulars had any the effect on the amount of tax sought to be evaded. Under the scheme of the Act, the total income of the assessee is first computed under the normal provisions of the Act and tax payable on such total income is compared with the prescribed percentage of the 'book profits' computed under section 115JB of the Act. The higher of the two amounts is regarded as total income and tax is payable with reference to such total income. If the tax payable under the normal provisions is higher, such amount is the total income of the assessee, otherwise, 'book profits' are deemed as the total income of the appellant in terms of section 115JB of the Act.

22. In the present case, the income computed as per the normal procedure was less than the income determined by legal fiction namely 'book profits' under section 115JB of the Act. On the basis of normal provision, the income was assessed in the negative i.e., at a loss of Rs. 36,95,21,018. On the other hand, assessment under section 115JB of the Act resulted in calculation of profits at Rs. 4,01,63,180.

23. In view thereof, in conclusion, the assessment order records as follows:-
"Assessed at Rs. 4,01,63,180 under section 115JB, being higher of two. Interest under section 234B and 234C has been charged as per the provisions of Income-tax Act, 1961. Penalty proceedings under section 271(1)(c) of the Income-tax Act, 1961 have been initiated. Issue necessary forms."

24. The income of the assessee was thus assessed under section 115JB and not under the normal provisions. It is in this context that we have to see and examine the application of Explanation 4.

25. Judgment in the case of Gold Coin Health Food (P.) Ltd. (supra), obviously, does not deal with such a situation. What is held by the Supreme Court in that case is that even if in the Income-tax return filed by the assessee losses are shown, penalty can still be imposed in a case where on setting off the concealed income against any loss incurred by the assessee under other head of income or brought forward from earlier years, the total income is reduced to a figure lower than the concealed income or even a minus figure. The court was of the opinion that 'the tax sought to be evaded' will mean the tax chargeable not as if it were the total income. Once, we apply this rationale to Explanation given by the Supreme Court, in the

present case, it will be difficult to sustain the penalty proceedings. Reason is simple. No doubt, there was concealment but that had its repercussions only when the assessment was done under the normal procedure. The assessment as per the normal procedure was, however, not acted upon. On the contrary, it is the deemed income assessed under section 115JB of the Act which has become the basis of assessment as it was higher of the two. Tax is thus, paid on the income assessed under section 115JB of the Act. Hence, when the computation was made under section 115JB of the Act, the aforesaid concealment had no role to play and was totally irrelevant. Therefore, the concealment did not lead to tax evasion at all.

26. The upshot of the aforesaid discussion would be to sustain the order of the Tribunal, though on different grounds. Therefore, while we do not agree with the reasoning and approach of the Tribunal, for our reasons disclosed above, we are of the opinion that penalty could not have been imposed even in respect of claim of depreciation made by the assessee. This appeal is accordingly dismissed."

9. It is further pertinent to note that such order by Hon'ble Delhi High Court stood confirmed by Hon'ble Supreme Court by dismissing the SLP filed by the revenue reported in 221 taxmann.com 184. Similar view is taken by the Hon'ble Jurisdictional Delhi High Court in the case of ***Unison Hotels Ltd. vs DCIT in ITA No.89/2013*** reported in ***40 taxmann.com 237 (Delhi).***

10. It is further observed that penalty was levied u/s 271(1)(c) of the Act for wrong claim of deduction u/s 80-IC of the Act in Assessment Year 2012-13 which was deleted by Ld.CIT(A) vide its order dated 02.11.2016 which is filed in the Paper Book placed before us and no appeal is preferred by the revenue against the said order.

11. The assessee has filed a chart before us according to which tax payable under MAT u/s 115JB of the Act as per original return of income and as per revised return remained the same and the tax payable under normal tax is less than the tax chargeable under MAT under both the situations therefore, even otherwise, there is no loss to the revenue by making such incorrect claim inadvertently and thus there is no loss to revenue on account of tax sought to be evaded by the assessee.

12. Accordingly, in view of the above facts and by respectfully following the judgements of Hon'ble High Court as stated herein above, we are of the considered view that penalty levied u/s 271(1)(c) of the Act deserves to be deleted. Therefore, we direct the AO to delete the same.

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

Order pronounced in the open Court on 04.02.2026.

Sd/- ***Sd/-***

(ANUBHAV SHARMA)
JUDICIAL MEMBER

(MANISH AGARWAL)
ACCOUNTANT MEMBER

Date:-04.02.2026
Amit Kumar, Sr.P.S

Copy forwarded to:
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ITAT, NEW DELHI