# IN THE INCOME TAX APPELLATE TRIBUNAL
## MUMBAI BENCH ' E ' MUMBAI

**BEFORE SHRI P M JAGTAP, AM & SHRI R S PADVEKAR, JM**

**ITA No. 6233/Mum/2009**
(Asst Year 2000-01 )

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|---|---|---|
| M/s Strides Arcolab Ltd<br>206 Devavrata<br>Sector 17, Vashi<br>Navi Mumbai 705 | Vs | The Asst Commr of Income Tax<br>10(3), Mumbai |
| (Appellant) | | (Respondent) |

**PAN AADCS8104P**

Assessee by: Shri Nitesh Joshi
Revenue by: Shri C P Pathak

## O R D E R

**PER R S PADVEKAR:**

In this appeal, the assessee has challenged the impugned order of the ld CIT(A) for assessment year –22, Mumbai dated 6.11.2009 in which the penalty levied by the A.O. u/s 271(1)(c ) for the A.Y. 2000-01 has been confirmed.

2 The assessee has taken the following effective grounds in its appeal:

*"The ld CIT(A)22 Mumbai erred in sustaining penalty levied by the A.O. u/s 271(1)( c) of the Act of Rs. 1,90,99,826/- by concluding that the appellant's case is covered by clause (b) of Explanation 1 to sec. 271(1 )( c) of the I T Act."*

3 The factual matrix which are relevant for levy of the penalty as under:

3.1 The assessee company is engaged in the business of manufacture and trading of pharmaceutical and different chemicals. The assessee has filed its return of income for the assessment year 2000-01 declaring the income at Rs. 5,03,36,100/-. The assessment in this case was completed u/s 143(3) vide assessment order dated 31.3.2003 in which the total income was determined at Rs. 10,39,09,220/-.

3.2 So far as the issue in respect of penalty before us is concerned, it is in respect of the disallowances made by the A.O. (i) disallowance u/s 14A to Rs. 3,10,058/- and (ii) u/s 80HHC at Rs. 4,92,99,692/-

4 In respect of the disallowance u/s 14A, the A.O. observed that the assessee declared dividend income at Rs.2,95,58,090/- and the entire dividend income was claimed u/s 10(33) of the Act but has not quantified expenditure relatable to earning of the said income. The A.O., accordingly worked out the amount of Rs. 44,21,890/- as expenditure relatable to dividend, which was claimed as exempt and disallowed the same u/s 14A of the Act. As the assessee carried the issue before the ld CIT(A), the dividend was dividend was reduced to Rs. 3,10,058/-. The A.O., accordingly considered Rs. 3,10,058/- for levy of penalty u/s 271(1)( c) for the reasons that the assessee has furnished inaccurate particulars income to the said amount.

4.1 In respect of the deduction u/s 80HHC, the A.O. was of the opinion that the assessee is not entitled to deduction u/s 80HHC of the act in view of the fact that negative figure was arising as per proviso to sec. 80HHC(3) of the Act. It was the case of the assessee that the A.O. has considered in working the deduction u/s 80HHC, the negative figure of profit of business has worked by the assessee before giving effect to the proviso to sec. 80HHC(3). The A.O. also reduced the profit of loss of the business on the

amount deductible u/s 80IB of the Act by resorting to the provisions of sec. 80IB(13) r.w.s 80IA(9) of the Act.

5 The assessee contended that the negative figure of profit of the business is to be ignored for the purpose of computing sec. 80HHC of the Act. The assessee relied on the decision of the ITAT, Mumbai in the case of Vishal Exports Overseas Ltd vs ITO to support the plea that the negative figure of the profit of the business is to be ignored in working out the deduction u/s 80HHC of the Act. The assessee challenged the action of the A.O. before the ld CIT(A) for denying the claim of deduction. The ld CIT(A) was of the opinion that the A.O. should have applied the provisions of sec. 80IA(9) of the Act while reducing the profit of the business to extent of allowable deduction u/s 80IB of the Act. The ld CIT(A) was of the opinion that so far as the sec. 80IA(9) reveals that the restriction placed on the reduction under other provisions of the Act, in respect of such profits and gains, which are claimed and allowed u/s 80IB. The ld CIT(A) referred to the circular no.772 dated 23.12.98 issued by the CBDT. The ld CIT(A) was of the opinion that only 30% of the export profit of the eligible units should be reduced which was worked out as per his working at Rs. 13,42,576/- and that was the amount which should be reduced for working out deduction under sec. 80HHC. The operative part of the order of the ld CIT(A) is as under:

> *"5.4 A reading of the provision of the erstwhile section 80IA(9) would show that, before it can apply, the condition to be satisfied is that the assessee has claimed and been allowed a deduction/s 80IA/IB. The latter part of that provision, however, clearly refers to "the extent of the profits". The appellants for the relevant assessment year are entitled to deduct 30% of the profits of speciality division u/s 80IB of the I T Act. Hence, if section 801A(9) is to apply, what is relevant is to consider the 30% of the profits for which a deduction is claimed and allowed u/s 801A/IB and then determine the extent of such deduction, which is embedded in 80HHC deduction, subject to the condition that total deduction does not exceed the total profits and gains. It is of course true that there is no corresponding provision in section 8HHC. However, the*

*clear language of section 801A(9) is such that a deduction under any other section of Chapter VIA is restricted. In fact, the last sentence of section 80IA(9) is very significant and states that the deduction shall in no case exceed the profits and gains of the undertaking. In other words, that sentence clearly refers to the aggregate of the deduction u/s 80IA/80IB as well as any other provision of Chapter VI-A. The mere absence of a provision showing corresponding reflection in section 80HHC cannot mean that the express provisions of section 80IA(9) can be ignored. At the same time, A.O.'s action of reducing 80IA/80IB deduction, while working out "profits of business" under explanation 'baa' of section 80HHC is not considered justified, as it amounts to clear violation of provision of explanation 'baa' of I T Act. Thus, in order to give effect to section 80IA(9), the following series of steps are required:*

> *" Compute the deduction u/s 80IA/IB by ascertaining the profits of the new (i.e qualifying) industrial undertaking and apply the relevant percentage thereto;*
>
> *Compute (by applying sub-section (3) of section 80HHC) the export profits of the unit, the profits of which are eligible for deduction u/s 80IA/IB;*
>
> *As only 30% of profits of unit qualify for deduction u/s 80IA/IB, thus in the deduction computed u/s 80IA/80IB, only 30% of export profits of that unit is embedded. The same are required to be deduction from the total claim of deduction u/s 80HHC, which is to be worked out, as per the directions, conveyed in this appellate order."*

5.1 The assessee as well as the revenue both carried the issue before the Tribunal challenging the impugned order of the Ld. CIT(A). The assessee was aggrieved by the directions of the ld CIT(A) to reduce 30% of the export profit of the eligible units and the revenue for not directing to reduce the full deduction u/s 80IB of Rs. 34,86,08,544/- the Tribunal has decided the issue by holding as under:

> *"In the fact of the case before us, the contention raised by the ld AR for the assessee is that, from the eligible unit against which deduction/s 80IB of the Act has been claimed only negligible exports were made. In*

*line with the ratio laid down by the Hon'ble High Court in case of Godrej Agrovet Ltd vs ACIT (supra), we hold that only profits on goods manufactured in the eligible unit availing deduction u/s 80IB of the Act are to be taken into account while computing deduction 80HHC of the Act. The details in respect of the amount of profits on goods manufactured in the eligible units and thereafter being exported on which deduction u/s 80HHC of the Act is claimed are not available from the perusal of records. Accordingly, in the interest of justice, we deem it fit to remit this matter back to the file f the A.O. for the limited purposes of determining the profits of goods manufactured in the eligible unit availing deduction u/s 80IB of the Act and in turn being exported on which deduction u/s 80HHC of the Act is availed. Such profits on goods manufactured on the eligible units shall be excluded from the profits of business which in turn are the basis for computing the deduction u/s 80HHC of the Act. In case no part of the goods manufactured by the assessee from units against which deduction u/s 80IB of the Act is claimed are exported then in line with the ratio laid down by Hon'ble High Court in case of Godrej Agrovet Ltd vs ACIT(supra) no part of such profits shall be excluded from the eligible profits adopted for the purposes of computing deduction /s 80HHC of the Act. The A.O. shall afford reasonable opportunity of hearing to the assessee. The ground no 3 raised by the assessee and the ground no.3 raised by the Revenue are decided as directed above."*

5.2 The A.O. took into consideration the penalty on the two disallowances i.e. 14A at Rs.3,10,058/- and u/s 80HHC at Rs. 4,92,99,692/- which was at Rs.1,90,99,826/-. The assessee challenged the said penalty order before the ld CIT(A) but without success as the ld CIT(A) put his stamp of approval on the view taken by the A.O.. Now, the assessee is in appeal here before us.

6.1 The ld counsel of the assessee vehemently argued that so far as the

issue in respect of disallowance u/s 14A is concerned, the said section was brought on statute book by the Finance Act 2001 with retrospective effect and the present year is A.Y. 2000-01. It is argued that whether the disallowance to be made or not is a debatable issue and merely because the assessee has made a legal claim, which has not accepted by the A.O.; no penalty can be levied.

6.2 In respect of the issue in respect of the claim u/s 80HHC is concerned, the ld counsel of the assessee argued that each and every particulars were disclosed by the assessee in the return and nowhere the A.O. has a case that the assessee has furnished any inaccurate particulars. He further submitted that the assessee has not concealed any income or particulars of any income so the allegation of concealment will also not stand. The ld counsel of the assessee placed heavy reliance on the decision of the Supreme Court in the case of CIT vs Reliance Petroproducts Ltd (322 ITR 158) and submitted that the Hon'ble Supreme Court has considered the earlier decision on this issue i.e in the case of Dilip N. Shroff v. JCIT (291 ITR 519) and Union of India vs Dharmendra Textiles (306 ITR 277) and held that merely because the assessee has claimed the expenditure which claim was not accepted or was acceptable to the revenue that by itself could not attract the penalty u/s 271(1)( c) of the Act. He further argues that so far as the issue in respect of claim of deduction u/s 80HHC, it is a question of interpretation of statutory provisions and merely because the claim is rejected, or partly allowed that cannot be the ground for visiting the assessee with the penalty consequences u/s 271(1)( c) of the Act. It is argued that even after the order of the Tribunal, there will not be any change in the position as after giving the effect to the order of the ld CIT(A), the A.O. has allowed deduction of Rs.4,20,34,196/-. *Per contra*, the ld DR supported the order of the ld CIT)A).

7 We have heard the rival parties and also perused the relevant material

before us. The facts are narrated herein above in detail. So far as the issue of disallowance u/s 14A is concerned; admittedly, the assessment year before us is 2000-01. Section 14A was inserted with retrospective effect by the Finance Act 2001. Even the A.O. has taken shelter of the consequent changes and levied the penalty but in our opinion, that can be supported in the case of Reliance Petroproducts Ltd (supra), the Supreme Court, in clear terms has held that merely because the claim of the assessee in respect of the expenditure is not accepted or acceptable to the revenue that cannot be the reason for levy of penalty.

8 In the present case also, the ld CIT(A) reduced the quantum subsequently and restricted the same to the extent of Rs. 3,10.058/-. Nothing has been brought on record by the A.O. that the assessee has furnished any inaccurate particulars and it is only the interpretation of the A.O. to sec. 14A and in our opinion, no penalty is sustainable so far as the disallowance made u/s 14A is concerned.

9 Now, we examine whether penalty can be levied on the disallowance made u/s 80HHC. The A.O. rejected the entire claim of the assessee under sec. 80HHC. After interpreting the proviso to sec. 80IA(9), the ld CIT(A) was of the opinion that as the assessee was entitled to deduction in respect of the profit of the speciality division under sec. 80IB of the Act, hence, only 30% of such profit is to be reduced from the 'profit of the business' for the purpose of working out deduction u/s 80HHC. This issue is also purely an interpretation of the provisions of law. Nowhere, it is the case of the A.O. that the assessee concealed anything or furnished inaccurate particulars of income.

10. Section 271(1)(c) has undergone legislative amendment from time to time. The latest of such amendment was by insertion of sub.sec (1B) to

section 271 of the Act by the Finance Act 2008 with retrospective effect from 1.4.1989 and the said amendment was made with the intention to overcome the different judicial pronouncements on the issue of condition to record satisfaction by the A.O. in the assessment order.

11. In the case of Dilip N Shroff vs JCIT & Another (291 ITR 519), the Hon'ble Supreme Court explained the expressions "concealment of income" and "furnishing of inaccurate particulars". In the case of Dilip N Shroff (*supra*), while considering requirement of '*mens rea*' for levy of the penalty u/s 271(1)(c), the Hon'ble Supreme Court explained the meaning of the word '*conceal*' and '*inaccurate*' as under:

> *"The expression 'conceal' is of great importance. According to the Law Lexicon, the word 'conceal' mean;*
>
> > *"to hide or keep secret. The word 'conceal' is con+celare which implies to hide. It means to hide or withdraw from observation; to cover or keep from sight; to prevent the discovery of; to withhold knowledge of. The offence of concealment is, thus, a direct attempt to hide an item of income or a portion thereof from the knowledge of the income tax authorities."*
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> *In Webster's Dictionary, 'inaccurate' has been defined as:*
>
> > *"not accurate, not exact or correct; not according to truth; erroneous; as an inaccurate statement, copy or transcript"*
>
> *It signifies a deliberate act or omission on the apt of the assessee. Such deliberate act must be either for the purpose of concealment of income or furnishing of inaccurate particulars.*
>
> *The term 'inaccurate particulars' is not defined. Furnishing of an assessment of value of the property may not by itself be furnishing of inaccurate particulars. Even if the Explanations are taken recourse to, a finding has to be arrived at having regard to clause (A) of Explanation 1that the A.O. is required to arrive at a finding that the explanation offered by an assessee, in the event he offers one, was false. He must be found to have failed to prove that such explanations not only not bonafide but all the facts relating to the same and material to the income were not disclosed by him. Thus, apart from his explanation*

*being not bonafide, it should have been found as of fact that he has not disclosed all the facts which was material to the computation of his income."*

12. In the subsequent decision in the case of Union of India v. Dharamendra Textile Processors (306 ITR 277), their Lordship held that the element of '*mens rea*' was not necessary for levy of penalty u/s 271(1)(c) of the Act. It was further held that the object behind the enactment of section 271(1)(c) read with the Explanations indicates that the section has been enacted to provide a remedy for loss of revenue and the penalty under that provision is a civil liability. Hence, wilful concealment is not an essential ingredient for attracting civil liability as is the case in the matter of prosecution under section 276C of the Act. In the subsequent decision in the case of Reliance Petro products Pvt Ltd (*supra*), their Lordship expressed that on the ultimate inference that *mens rea* is the essential ingredient for penalty, the decision in the case of Dilip N Shroff (*supra*) was overruled by the Supreme Court in the case of Dharmendra Textiles Processors (*supra*).

10. We find that the A.O., CIT(A) as well as the Tribunal has only interpreted the provisions of sec. 80IA(9) and Sec. 80HHC in a different way. As held by their Lordship, in the case of Reliance Petroproducts Ltd (supra) that merely because the assessee has made some legal claim which has not been accepted by the A.O. that will not amount to furnishing of inaccurate particulars of income of the assessee. In our opinion, there is no justification to support the A.O. for levy of the penalty on the claim of the assessee u/s 80HHC, which was not accepted. We, accordingly, delete the entire penalty by cancelling the penalty order passed by the A.O..

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

Order pronounced on the 30th, day of June 2010.

Sd/- Sd/-

| **( P M JAGTAP )**<br>Accountant Member | **(R S PADVEKAR )**<br>Judicial Member |
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Place: Mumbai : Dated: 30th, June 2010
Raj*

Copy forwarded to:

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|---|---|
| 1 | Appellant |
| 2 | Respondent |
| 3 | CIT |
| 4 | CIT(A) |
| 5 | DR |

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BY ORDER

Dy /AR, ITAT, Mumbai