IN THE INCOME TAX APPELLATE TRIBUNAL

'A' BENCH, CHENNAI

BEFORE Dr. O.K.NARAYANAN, VICE-PRESIDENT AND
SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER

ITA No.1397(Mds)/2012
Assessment Year : 2006-07

The Assistant Commissioner of Income-tax, Central Circle.I(2), Chennai.	Vs.	M/s.Harvey Heart Hospitals Ltd., New No.542, Old No.143, TTK Rd., Alwarpet, Chennai-600 018. PAN AAACH2237D.
(Appellant)		(Respondent)

Appellant by : Shri Shaji P Jacob, IRS, Addl. CIT
Respondent by : Shri C.V.Rajan, Advocate

Date of Hearing : 8th November, 2012
Date of Pronouncement :15th November, 2012

O R D E R

PER Dr.O.K.NARAYANAN, VICE PRESIDENT

This appeal is filed by the Revenue. The relevant assessment year is 2006-07. The appeal is directed against the order of the Commissioner of Income-tax(Appeals)-I at Chennai,

dated 2-4-2012. The appeal arises out of the penalty order passed under section 271(1)(c) of the Income-tax Act, 1961.

2. A search under section 132 was conducted in the premises of M/s. Harvey Heart Hospitals Ltd. and Dr. M.P. Naresh Kumar on 14-12-2005. M/s.Harvey Heart Hospitals Ltd. is the assessee before us.

3. The assessee M/s.Harvey Heart Hospitals Ltd. was incorporated in 1996. Dr. M.P.Naresh Kumar, a renowned cardiac surgeon, is the managing director of the company. He was also one of the promoters of the company. The assessee company has not carried out any business activity in the previous year relevant to the assessment year under appeal. This is because the assessee company has sold all its fixed assets to M/s.Harvey Health Care Limited.

4. In the return filed by the assessee for the assessment year 2006-07, no income was disclosed in the accounts of the assessee. At the same time the assessee company has claimed an expenditure of ₹ 32,99,650/-. This expenditure comprised of ₹ 91,760/- as salary, wages and bonus; ₹ 28,31,520/- as interest; ₹ 1,75,220/- as travelling

expenses, including foreign travel, and ₹ 2,01,150/- as other miscellaneous expenditure. The Assessing Officer asked the assessee to establish the need for incurring such expenditure when the assessee has not carried on any business during the previous year relevant to the assessment year under appeal.

5. In reply to the queries raised by the Assessing Officer, the assessee company replied that the expenses were incurred for research and development activities. But no details or evidences were furnished before the Assessing Officer. Accordingly, the Assessing Officer disallowed the claim of expenditure of ₹ 32,99,650/- and added the same to the income of the assessee company. This addition was confirmed by the Commissioner of Income-tax(Appeals) as well as the Appellate Tribunal. The Income-tax Appellate Tribunal, Chennai, in their order dated 26-2-2010, passed in ITA No. 1843(Mds)/2008, confirmed the addition made by the Assessing Officer on the ground that the assessee has not produced any sort of evidence to support its claim of expenditure, before any of the authorities, including the Tribunal. The Tribunal has also made a specific finding that in the absence of any material and evidence it cannot

be accepted that the assessee company has conducted research and development.

6. In the light of the above addition, the Assessing Officer initiated penalty proceedings under section 271(1)(c). After hearing the assessee, the Assessing Officer found that it is a fit case for levying penalty under section 271(1)(c) for concealment of income and also for filing inaccurate particulars in claiming expenditure to the extent of ₹ 32,99,650/-. The Assessing Officer levied a penalty of ₹ 11,10,662/- under section 271(1)(c) of the Act.

7. The penalty was taken in first appeal before the Commissioner of Income-tax(Appeals)-I at Chennai. The Commissioner of Income-tax(Appeals) observed that the foundation for levy of penalty in the present case is that no evidences were produced for the claim at any stage. He further observed that the assessee had already incurred losses and only the impugned disallowance made by the assessing authority has brought in positive income in this file and, therefore, as such there is no motive for furnishing false particulars. He found that the claim of expenditure made by the assessee was not

accepted for want of evidence alone and therefore, it is not a fit case for levy of penalty. Accordingly, the Commissioner of Income-tax(Appeals) deleted the penalty levied by the Assessing Officer.

8. It is against the above that the Revenue has come in appeal before us.

9. The grounds raised by the Revenue in the present appeal are extracted below:-

> *"1. On the facts and in the circumstances of the case, the learned CIT(A) has erred in deleting the penalty levied u/s 271(10(c) amounting to ₹ 11,10,662.*
>
> *2. The learned CIT(A) has failed to note that the addition was upheld by the ITAT and that the addition was because of assessee's failure to prove the expenses.*
>
> *3. The learned CIT(A) has failed to note that the assessee has furnished inaccurate particulars of*

income relating to claim regarding the expenses and that the same was not substantiated by it."

10. We heard Shri Shaji P Jacob, the learned Commissioner of Income-tax appearing for the Revenue and Shri C.V.Rajan, the learned counsel appearing for the respondent-assessee.

11. There is no dispute regarding the fact that the assessee had not carried on any business in the previous year relevant to the assessment year under appeal. This is because all the assets of the assessee company were sold to M/s. Harvey Health Care Ltd. Obviously, the assessee company did not show any income for the assessment year under appeal.

12. At the same time, the assessee company has claimed an expenditure of ₹ 32,99,650/- under various heads like salary, wages and bonus, interest and travelling expenses, etc. It is an undisputed fact that the assessee company could not produce any sort of evidence before any of the authorities to prove and support the incidence of expenditure in the previous year relevant to the assessment year under appeal. This factum

has been highlighted by the Tribunal in their order dated 26-2-2010, in which the Tribunal has confirmed the quantum addition of ₹ 32,99,650/-.

13. It is worthwhile to note that the Tribunal has further held that in the absence of any material and evidence it cannot be accepted that the assessee company has conducted research and development. This is a crucial finding by the Tribunal against the assessee in the course of disposing of the quantum appeal. The Tribunal has held that there was no circumstance prevailing to hold a view that the assessee had carried out any research and development activity. When the entire business of the assessee has come to a standstill and all the assets were sold to another company, it is very difficult to accept the contention of the assessee that inspite of the above, it had carried on research and development activity.

14. Two questions arise out of the above situation. The first question is whether the assessee company had produced reasonable evidences to support its claim of incurring expenditure to the extent of ₹ 32,99,650/-. The answer is a categorical “no”. This position has been upheld even by the

Tribunal. The assessee has not produced details or any evidence to support its claim of expenditure to the extent of ₹ 32,99,650/-.

15. The second question is, if at all such expenses were incurred by the assessee, was it for the purpose of carrying on the business of the assessee company? Any expenditure incurred by the assessee not for carrying on its business, would not be entitled for deduction in computing the taxable income. The assessee had already sold off its assets. It has also discontinued its business. In such circumstances, it cannot be believed that even if the expenses were incurred by the assessee company, those expenses were incurred for the purpose of carrying on of the business of the assessee company.

16. Therefore, in the facts and circumstances of the case we come to the conclusion that the claim of expenditure made by the assessee company almost amounts to a false claim. Therefore it is a clear case of concealment of income by furnishing inaccurate particulars. Furnishing of inaccurate particulars is highlighted not only by absence of evidence but

also by the stoppage of the business carried on by the assessee company. There is no locus standi to claim such expenditure in the hands of the assessee company.

17. The Commissioner of Income-tax(Appeals) has relied on the decision of the Hon'ble Supreme Court in the case of CIT vs. Reliance Petro Products Pvt. Ltd., 322 ITR 158, to highlight the legal proposition that claiming deduction per se would not invite penalty. But, the present case is beyond the above legal proposition. Here it is not a case of making any claim of expenditure as such. The assessee's business has become defunct. The assessee has no locus standi to claim expenditure for the reason that the assessee has not carried on any business in the previous year relevant to the assessment year under appeal. In addition to that, even the claim is not supported by any evidence or material. Therefore, it is not a case where the assessee simply claims some expenditure. It is a case where the assessee is not showing any income, but at the same time claiming huge expenditure, thereby reflecting loss in its profit and loss account.

18. The Commissioner of Income-tax(Appeals) has further considered the professional achievements of Dr. M.P.Naresh Kumar, the director of the assessee company and the necessity of continuous research in the field of cardiology and cardiac surgery. We have no dispute with the above observation of the Commissioner of Income-tax(Appeals). But what we find from the record is that there are no details regarding the nature of research carried out by the assessee company. Not only in medicine, in every field of science and technology research and development is an ongoing process. But, that general plea alone is not sufficient for the purpose of income-tax. An assessee has to furnish the details of expenditure and the outline of research and development carried out in the course of carrying on of its business. The Commissioner of Income-tax(Appeals) has relied mainly on the reputation of Dr. M.P.Naresh Kumar and his wife Dr. Mrinalini as leading researchers in their professional field. But, here also the Commissioner of Income-tax(Appeals) does not speak anything about the details furnished before him.

19. Therefore, in the facts and circumstances of the case, we find that a simple statement that the company has carried on research and development is not sufficient to support the claim of an expenditure consciously made in the return of income filed by it. As already stated above, we find that this claim is almost a false claim. If the two doctors have carried out any research and development, the assessee should have established the nexus between such research and the business carried on by the assessee company. The most crucial factor is that the assessee has not carried on any business in the previous year relevant to the assessment year under appeal.

20. In the facts and circumstances of the case, we find that the assessing authority is justified in levying penalty in the present case under section 271(1)(c) of the Act. Accordingly, we set aside the order of the Commissioner of Income-tax(Appeals) and restore the penalty order passed by the assessing authority.

21. In result, this appeal filed by the Revenue is allowed.

Orders pronounced on Thursday, the 15th of November, 2012 at Chennai.

Sd/-	Sd/-
(Challa Nagendra Prasad)	(Dr. O.K.Narayanan)
Judicial Member	Vice-President

Chennai,
Dated, the 15th November, 2012.
V.A.P.

Copy to: 1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR
6. GF.