

IN THE INCOME TAX APPELLATE TRIBUNAL  
AHMEDABAD “B” BENCH AHMEDABAD

BEFORE, SHRI S. S. GODARA, JUDICIAL MEMBER  
AND SHRI MANISH BORAD, ACCOUNTANT MEMBER

ITA No.1041/Ahd/2014  
(Assessment Year:2002-03)

Farmson Pharmaceuticals Gujarat Pvt. Ltd.,  
28-35, GIDC Industrial Estate, Nandesari,  
Baroda - 391340

Appellant

Vs.

Deputy Commissioner of Income Tax,  
Circle-1(2), Aaykar Bhavan, Race  
Course, Baroda

Respondent

PAN: AAACF3358B

आवेदक की ओर से/By Assessee : Shri P. B. Parmar on behalf of  
Bhavin Marfatia, A.R.  
राजस्व की ओर से/By Revenue : Shri James Kurian, Sr. D.R.  
सुनवाई की तारीख/Date of Hearing : 19.01.2017  
घोषणा की तारीख/Date of  
Pronouncement : 22.02.2017

**ORDER**

**PER S. S. GODARA, JUDICIAL MEMBER**

This assessee's appeal for assessment year 2002-03 arises against CIT(A)-I, Baroda's order dated 10.02.2014, in appeal no.CAB-I/06/2012-13, affirming Assessing Officer's action in imposing penalty of Rs.07,31,070/-, in proceedings under section 271(1)(c) of the Income Tax Act, 1961; in short "the Act".

2. We come to relevant facts. It is evident that both the lower authorities have imposed the impugned penalty of Rs.7,31,070/- pertaining to disallowances/additions of bad debts written off, foreign travel expenditure and capital loss of Rs.4,74,407/-, Rs.1,91,501/- & Rs.8,33,576/-, respectively. They treat the same as an instance of concealment of income as well as furnishing of inaccurate particulars of income in course of quantum proceedings at assessee's behest.

3. The assessee company manufactures and sells paracetamol. The Assessing Officer completed a regular assessment on 31.03.2005 disallowing assessee's bad debt claim of Rs.4,74,407/- on account of its failure in proving the same to have been made for business purposes. He further disallowed foreign export promotion expenses of Rs.1,91,501/- adopting a similar reasoning that assessee had not filed specific details about expenses incurred on visit of one Mr. Vineet Menon. He thereafter reopened the said regular assessment to frame the impugned re-assessment disallowing loss claim of Rs.8,33,576/- by quoting Section 43 r.w.s. 50 of the Act. The Assessing Officer accordingly initiated the impugned penalty proceedings u/s.271(1)(c) of the Act alleging concealment as well as furnishing of inaccurate particulars of income. We find that the assessee did not challenge the said former two disallowances/additions by way of referring any appeal. It however assailed correctness of the above stated loss disallowance. The case file indicates that the said issue ultimately stood decided in Revenue's favour in this tribunal vide a co-ordinate bench decision in ITA No.666/Ahd/2011 decided on 19.02.2015.

4. We now come to the impugned penalty proceedings. Both the lower authorities strongly rely upon the above stated quantum proceedings to conclude that the assessee's act and conduct therein qua the three issues amounts to concealment as well as furnishing of inaccurate particulars of

income attracting the impugned minimum penalty of Rs.7,31,070/- in question.

5. We have given our thoughtful consideration to rival contentions. There is hardly any dispute about the settled law that quantum and penalty proceedings are altogether different and each and every disallowance/addition made in the course of former proceedings does not ipso facto attract the latter penal action as per hon'ble apex decision in CIT vs. Reliance Petroproducts Pvt. Ltd. 322 ITR 158 (SC). Viewed from the said contour of settled law, it is apparent from the facts of the instant case that so far as assessee's former two claims of bad debts written off and foreign travel expenditure (supra) are concerned, there is hardly any issue that the relevant amounts in question have been found to be otherwise correct. The mere failure on assessee's part is on account of proving a nexus with its business purposes qua the former issue and in producing the relevant details qua expenses incurred on one Mr. Vineet Menon's visit (supra). It is therefore evident that the assessee has not been able to prove its two claims by way of producing necessary supportive details. The same can hardly be termed as an instance of altogether a false claim inviting penal action. We thus quote hon'ble apex court's above stated decision to hold that assessee's two deductions claim do not amount to either an instance of concealment or furnishing of inaccurate particulars of income.

6. This leaves us with the third remaining issue of disallowance of loss (supra). The assessee has debited a sum of Rs.13,33,814/- pertaining to discarded and sold assets. It added back a sum of Rs.5,00,264/- only thereby excluding the remaining amount of Rs.8,33,576/-. It claimed the same as a capital loss. The Assessing Officer was of the view that the said loss arising from sale of discarded assets deserved to be treated as capital in nature. In view of Section 43(6)(c) r.w.s. 50 of the Act. This interpretation held ground

right upto the above stated co-ordinate bench decision. The same indicates that there was no issue so far as assessee's claim on facts was concerned. It is rather assessee's case that it had filed all necessary particulars as per its books of accounts leading to rejection of its claim on legal interpretation of the relevant statutory provision. Learned Departmental Representative is unable to dispute this background of facts. We thus conclude that this third disallowance/addition issue does not amount to either of the two limbs of concealment as well as furnishing of inaccurate particulars of income u/s.271(1)(c) of the Act. The assessee's argument on this third aspect is also accepted. We direct the Assessing Officer to delete the impugned penalty accordingly.

7. This assessee's appeal is accepted.

[Pronounced in the open Court on this the 22<sup>nd</sup> day of February, 2017.]

Sd/-  
(MANISH BORAD)  
ACCOUNTANT MEMBER  
Ahmedabad: Dated 22/02/2017

Sd/-  
(S. S. GODARA)  
JUDICIAL MEMBER

True Copy

S.K.SINHA

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. राजस्व / Revenue
2. आवेदक / Assessee
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद /  
DR, ITAT, Ahmedabad
6. गार्ड फाइल / Guard file.

By order/आदेश से,

उप/सहायक पंजीकार  
आयकर अपीलीय अधिकरण, अहमदाबाद ।