

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'C' अहमदाबाद।
IN THE INCOME TAX APPELLATE TRIBUNAL
"C" BENCH, AHMEDABAD
BEFORE SHRI RAJPAL YADAV, VICE-PRESIDENT
AND
SMT.ANNAPURNA GUPTA, ACCOUNTANT MEMBER

ITA No.1405/Ahd/2019
Assessment Year :1997-98

Nirma Limited Nirma house, Ashram Road Ahmedabad. PAN : AAACN 5350 K	Vs.	DCIT, Cir.3(1)(1) Ahmedabad.
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(Applicant)		(Responent)
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Assesseeby :	Shri BandishSoparkar, AR
Revenue by :	Shri Rakesh Jha, Sr.DR

सुनवाई की तारीख/Date of Hearing : 19/04/2023
घोषणा की तारीख /Date of Pronouncement: 12/07/2023

आदेश/ORDER

PER ANNAPURNA GUPTA, ACCOUNTANT MEMBER

Present appeal has been filed by the assessee against the order of the Id.Commissioner of Income Tax (Appeals)-9, Ahmedabad dated 11.07.2019 passed under section 250(6) of the Income Tax Act, 1961 (hereinafter referred to as "the Act" for short) vide which the Id.CIT(A) confirmed order of the AO passed, levying penalty for concealing/furnishing inaccurate particulars of income under section 271(1)(c) of the Act for the Asst.Year1997-98.

2. The grounds raised by the assessee are as under:

- i) *In law and in facts and circumstances of the appellant's case, the Id.CIT(A) has grossly erred in points of law and facts.*
- ii) *In law and in facts and circumstances of the appellant's case, the Id.CIT(A) has grossly erred in dismissing appellant's case ground*

regarding passing order u/s.271(1)(c) of the Act beyond the prescribed time.

- iii) *In law and in facts and circumstances of the Appellant's case, the ld.CIT(A) has grossly erred in confirming penalty levied u/s.271(1)(c) of the I.T.Act for Rs.47,55,054/-.*

3. As transpires from order of the authority below penalty under section 271(1)(c) of the Act, for concealing/furnishing inaccurate particulars of income, was levied by the AO to the tune of Rs.52,46,045/- which was confirmed by the ld.CIT(A) to the extent of Rs.47,55,054/- noting the fact that initial additions made by the AO on which penalty was levied amounting to Rs.1,22,00,106/- had been curtailed to the extent of Rs.1,14,96,058/- resulting in penalty of Rs.47,55,054/-. The penalty was levied on claim of deduction under sections 80IA and 80HH of the Act denied to the assessee in respect of its various divisions as under:

- | | | |
|------|--|----------------|
| i) | Deduction u/s.80HH (Mandali Division) | Rs.65,11,211/- |
| ii) | Deduction u/s.80IA (Trikampura Division) | Rs.21,870/- |
| iii) | Deduction u/s.80IA (Kanpur & Indore Divisions) | Rs.56,67,025/- |

4. Incomes pertaining to which the deductions were denied are as under:

Section 80IA:

Kanpur Division:

- | | | |
|------|------------------------|---------------|
| i) | Interest on FD | Rs.2,77,442/- |
| ii) | Interest on staff loan | Rs.583 |
| iii) | Interest income | Rs.20,300 |
| iv) | Rent income | Rs.3,500 |

Deduction u/s.80IA

Rs.75,456

Indore Division:

- | | | |
|----|----------------|----------------|
| i) | Interest on FD | Rs.88,66,921/- |
|----|----------------|----------------|

ii)	Interest on loan	Rs.92,06,866/-
iii)	Interest income from IDBI	Rs.13,000/-
iv)	Insurance	Rs.3,37,561
v)	Warehousing charges	Rs.2,000/-
vi)	Tank rent	Rs.3,000/-
vii)	Rent income	Rs.8,000/-
	Deduction u/s.80IA	Rs.55,31,204
	TOTAL	Rs.56,67,025/-

Section 80HH/Mandali Division:

i)	Interest on FD	Rs.21,72,730
ii)	Insurance	Rs.4,04,133/-
iii)	Truck hire charges	Rs.37,50,000/-
iv)	Rent income	Rs.32,400
v)	Other Interest income	Rs.101,88,522
vi)	Interest income on loans	Rs.193,93,359/-
	Deduction u/s 80HH @ 20%	Rs.65,11,211/-

5. The contention of the ld.counsel for the assessee against the levy of penalty on the above was :

(i) that majority of the disallowance was on account of interest earned on FDs; that the said interest income earned from FDs and loans granted, was part and parcel of the business activities, and such FDs are made out of regulatory requirements; that netting of interest expenses incurred against the interest income earned was to be allowed. It was pointed out that for the impugned assessment year, the ITAT vide its order in ITA No.2512 & 254/Ahd/2000 dated 28.02.2013 had allowed the benefit of netting i.e. net income should be excluded for the purpose of calculating deduction under section 80HH and 80IA of the Act and the Department's appeal against this order of the ITAT before the Hon'ble Apex Court had been dismissed vide order in Tax Appeal No.810 &

813 of 2013 dated 27.1.2014. Our attention was drawn to the contentions made by the assessee in this regard to the ld.CIT(A) reproduced at para-7 to 10 of the order wherein it was pointed out that copies of both orders of the ITAT and Hon'ble High Court were already placed and the relevant portion of the decision of the High Court also reproduced in the order. It was further pointed out that against various interest income on FDs and interest on loan to staff, the interest expenses incurred by the assessee were to the tune of Rs.1,37,87,410/- as under:

i)	Mandali Division	:	Rs.82,98,839/-
ii)	Trikampura Division	:	Rs.9,25,330/-
iii)	Kanpur Division	:	Rs.40,88,063/-
iv)	Indore Division	:	<u>Rs.4,75,178/-</u>
	Total	:	Rs.1,37,87,410/-

It was also contended by the ld.counsel for the assessee that the issue of claim of deduction under section 80HH/ 80IA of the Act on interest earned on FDs was debatable issue with several decisions/rulings of the Courts in favour of the assessee. In this regard, our attention as drawn to the following decisions:

- i) CIT Vs. J.J. Exporters Ltd., (2010) 324 ITR 329 (Cal);
- ii) Pr.CIT Vs. West Bengal Housing Board, 134 taxmann.com 175 (Cal);
- iii) R.P. Tarway & Co. Vs. ITO, 71 TTJ 203 (Pat.);
- iv) Laxminarain Kheta Vs. ITO, 99 taxmann.com 450 (All)

6. He thereafter pointed out that other major component of the income was in the nature of insurance claim which was received by the assessee for damages occurred to the vehicles, and hence, it was contended that it related to the business activities of the assessee. It

was also contended that repairs expenses have also been incurred by the assessee which ought to have been netted off against the insurance claim received.

The other income component to which our attention was drawn related to truck hire charges which it was explained by the ld.counsel for the assessee related to reimbursement of expenses incurred towards driver's salary and other fixed expenses.

7. Accordingly, the ld.counsel for the assessee contended that all the incomes were in the nature of business income, and therefore, its claim was not entirely unsustainable in law, and the assessee having furnished complete particulars of income, mere denial of claim would not tantamount to furnishing inaccurate/concealing of particulars of income. Reliance was placed on the decision of the Hon'ble Apex Court in the case of CIT Vs. Reliance Petro-products P.Ltd., (2010) 322 ITR 158.

It was contended that in any case, the issues were debatable, and therefore, there was no case for levy of penalty, and alternatively, penalty, if any to be levied was after giving benefit of netting of interest income against the interest income or insurance claim. That in case of the drivers salary, which was mere reimbursement, it was not in the nature of income at all and therefore no question arose of denial of claim of deduction and consequently levy of penalty on the same.

The ld.DR supported the order of the ld.CIT(A).

8. We have heard both the parties. The fact relating to the levy of penalty u/s 271(1)(c) of the Act is as stated in the earlier portion of our order above that it was levied on account of disallowance of

claim of deduction under section 80IA and 80HHC of the Act on the profits earned in the various divisions of the assessee-company, relating to the income which were found by the Revenue authorities as having no nexus with the business activities of the assessee

9. As is evident from the details noted in the earlier part of our order, majority of the incomes denied deduction pertained to interest earned on FDs and loans, insurance claim and drivers salary.

As far as insurance claim received is concerned, we hold, that it is not in the nature of the income at all. It is a compensation which is awarded by the insurance company for the loss incurred by the assessee against which it was insured. Therefore, there arises no question for treating the insurance claim received as being in the nature of income and denying deduction under sections 80HH/80IA of the Act. Considering the nature of insurance claim being compensatory, there is no profit element involved in the same, and the assessee is only compensated for the loss that the insurance company evaluated the assessee to have incurred in such circumstances. The assessee cannot be said to have claimed any deduction on the income in the nature of insurance claim, therefore, there arises no question of excluding the entire insurance claim for the purpose of claiming deduction under section 80HH/80IA of the Act.

10. On merits, therefore, we hold that the disallowance of deduction of insurance claim was not in accordance with law, and therefore, there arises no question for levy of penalty under section 271(1)(c) of the Act on the same.

11. On the issue of driver's salary, the assessee has repeatedly contended that it was merely a reimbursement of salary. Again, reimbursement of salary received is not in the nature of income, and following the reasoning given by us on the issue of insurance claim, there arises no question of disallowance of any deduction on the salary paid to the drivers and thus, no case for levy of penalty under section 271(1) (c) on the same.

12. Now, the only remaining addition, on which penalty has been levied, relates to interest income earned on FDs and on loans. Admittedly, the ITAT in the case of the assessee for the impugned year itself has held that the assessee be allowed benefit of netting of interest expenses against such income, and this order of the ITAT has been confirmed by the Hon'ble High Court. Therefore, in any case, the penalty, if any, which could be levied on the components of the interest income earned on FDs and loans is only on that which remains after netting of interest expenses. The Id.CIT(A), we have noted has given no credence to this fact pointed out by the Id.counsel for the assessee, noting that the Revenue has filed appeal against order of the Hon'ble High Court to the Supreme Court. This cannot be basis for denying the relief granted to the assessee by the Hon'ble High Court.

13. Having said so, we have also noted that on the issue of nature of interest income earned on FDs and loans there are decisions of Hon'ble High Courts holding that it is in the nature of business income more particularly where the FDs have been created for statutory components and regulations. Therefore, there is no doubt that the issue of denial of claim of deduction under section 80HH/80IA of the Act on interest on FDs and others, is a debatable issue, and considering the fact that it is not the case of the Revenue

that the assessee has not furnished complete particulars relating to the same or has concealed any particulars of income relating to the same the mere denial of claim of deduction will not tantamount to concealment of income and/or furnishing of inaccurate particulars of income so as to attract levy of penalty under section 271(1)(c) of the Act. The proposition of law in this regard has been settled by the Hon'ble Supreme Court in the case of CIT Vs. Reliance Petro-products P. Ltd (supra).

In view of the above, we see no reason to uphold order of the ld.CIT(A) and we direct the AO to delete the penalty levied in entirety. The grounds of appeal of the assessee are allowed.

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

Order pronounced in the Court on 12th July, 2023 at Ahmedabad.

Sd/-

**(RAJPAL YADAV)
VICE-PRESIDENT**

Sd/-

**(ANNAPURNA GUPTA)
ACCOUNTANT MEMBER**

Ahmedabad, dated 12/07/2023

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त (अपील) / The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण / DR, ITAT,
6. गार्ड फाईल / Guard file.

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आदेशानुसार/BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad