

आयकर अपीलीय अधिकरण "ए" न्यायपीठ पुणे में ।
IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH, PUNE

(Through Virtual Court)

BEFORE SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER
AND
SHRI PARTHA SARATHI CHAUDHURY, JUDICIAL MEMBER

आयकर अपील सं. / ITA No. 1674/PUN/2019

निर्धारण वर्ष / Assessment Year : 2014-15

The Assistant Commissioner of Income Tax,
Circle-1, Aurangabad.

.....अपीलार्थी / Appellant

बनाम / V/s.

M/s. BG LI In Electricals Ltd.
M-137, MIDC, Waluj,
Aurangabad-431 136
PAN : AABCB2400M

.....प्रत्यर्थी / Respondent

आयकर अपील सं. / ITA No. 1676/PUN/2019

निर्धारण वर्ष / Assessment Year : 2014-15

The Assistant Commissioner of Income Tax,
Circle-1, Aurangabad.

.....अपीलार्थी / Appellant

बनाम / V/s.

M/s. BMR HVAC Ltd.
Gut No.65, Vill. Chitegaon,
Aurangabad-431 105.
PAN : AABCH9456K

.....प्रत्यर्थी / Respondent

Assessee by : Shri Sharad Shah

Revenue by : Shri S.P Walimbe

सुनवाई की तारीख / Date of Hearing : 27.07.2021

घोषणा की तारीख / Date of Pronouncement : 28.07.2021

आदेश / ORDER

PER PARTHA SARATHI CHAUDHURY, JM:

These two appeals preferred by the Revenue emanates from the different orders of the Ld. CIT(Appeals)-1, Aurangabad dated 09.08.2019 for the assessment year 2014-15 as per the following identical grounds of appeals on record:

“1. The Ld. Commissioner of Income-tax (A)-I erred in passing the order both on the facts of the case and in law.

2. The Ld. Commissioner of Income-tax (A)-I erred in deleting the penalty levied by Assessing Officer u/s 271(1)(c) for furnishing inaccurate particulars of its income on account of disallowance of the deduction claimed by the assessee u/s 35 of the Income-tax Act, 1961.

3. The Ld. Commissioner of Income-tax (A)-I erred in deleting the penalty levied by Assessing Officer u/s 271(1)(c) for furnishing inaccurate particulars of its income on account of disallowance of the deduction claimed by the assessee u/s 35 of the Income-tax Act, 1961 when the Central board of Direct Taxes vide Office Memorandum dated 21/09/2016 withdraw notification granting approval u/s 35(1)(ii) of the IT. Act, 1961 in case of M/s School of Human Genetics and Population Health to whom the assessee claimed to have donated sum.

4. The Ld. Commissioner of Income-tax (A)-I erred in deleting the penalty levied by Assessing Officer u/s 271(1)(c) for furnishing inaccurate particulars of its income on account of disallowance the deduction claimed by the assessee u/s 35 of the Income-tax Act, 1961 when the Central board of Direct Taxes vide Office Memorandum dated 21/09/2016 withdraw notification granting approval u/s 35(1)(ii) of I.T. Act, 1961 in case of M/s School of Human Genetics and Population Health to whom the assessee has claimed to have donated sum and the assessee company accepted the quantum addition made by the AO vide order u/s 143(3) dated 08/12/2016.

5. In this case the department launched prosecution for AY 2014-15, therefore the case is covered under Para No.10 (f) of Circular No. 17/2018 dated 11/07/2018 subsequently amended on 20/08/2018.

6. On the facts and circumstances of the case, the order of the Ld. Commissioner of Income Tax (Appeals), Aurangabad be vacated and the order of the AO be restored.

7. The appellant craves leave to add, amend or alter any grounds of appeal.”

2. The solitary grievance of the Revenue in both these appeals is with regard to the deletion of penalty levied u/s. 271(1)(c) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') by the Ld. CIT(Appeals).

3. At the very outset, parties herein agreed that both these cases have same facts and circumstances and that the issues are identical. After hearing the parties, these cases were heard together and disposed of vide this consolidated order.

4. The Ld. DR submitted taking ITA No.1674/PUN/2019 for the assessment year 2014-15 as lead case that though as per financial limit for filing appeals before the Tribunal by the Department, these appeals are not maintainable, however, the subject matter falls within the exception since in these cases, prosecution has been launched and therefore, these cases are covered under Para 10(f) of Circular No.17/2018 dated 11.07.2018 and subsequently amended on 20.08.2018 and therefore, needs to be adjudicated.

ITA No.1674/PUN/2019
A.Y. 2014-15

5. The facts concerning levy of penalty, as per the lead case are that the assessee company is engaged in the business of manufacturing, assembling, processing, importing, exporting, fabricating and trading in various kinds of electrical and electronic parts, components, instruments required for automobile and engineering industry. The assessee had filed its return of income for the assessment year 2014-15 on 13th October, 2014 declaring total income of Rs.1,34,42,280/-. The assessee company had claimed a deduction of Rs.26,25,000/- u/s.35(1)(ii) of the Act being 175% of the amount of Rs.15,00,000/- paid to "School of Human Genetics and Population Health" (SHGPH) for undertaking scientific research. The said return was assessed

u/s.143(3) of the Act and the assessment order dated 08.12.2016 was passed disallowing the deduction on the ground that the Central Board of Direct Taxes vide Office Memorandum dated 15th September, 2016 had withdrawn the notification granting approval u/s.35(1)(ii) of the Act. Penalty proceedings were also initiated for filing inaccurate particulars of income and levy of penalty @ 100% being Rs.8,51,681/- was also imposed.

6. It is the case of the assessee that SHGPH was approved by the Central Government as a notified organization u/s.35(1)(ii) of the Act vide Notification No.4/2010 dated 28th January, 2010. Further approval in perpetuity was also granted to SHGPH by the Income Tax Department on 12th December, 2011. SHGPH was also recognized as Scientific and Industrial Research Organization (SIRO) by the Ministry of Science and Technology, Government of India on 25th April, 2008. This recognition was renewed by the Government of India on 17th June, 2010 and 1st April, 2013. On the basis of notifications and approvals granted by the various arms of the Government and the Income Tax Department, the assessee paid an amount of Rs.15,00,000/- to SHGPH and claimed deduction u/s.35(1)(ii) of the Act on the basis of the same.

7. Thereafter, the case of the assessee company was selected under limited scrutiny (CASS) and accordingly, scrutiny proceedings were initiated. During that time vide Notification No.82/2016 dated 15th September, 2016, the Central Government rescinded the approval earlier granted to SHGPH. The said notification reads that it should be deemed that the said notification had not been issued for any tax benefits under the Income Tax Act or any other law for the time being in force. Accordingly, the Assessing Officer vide his order made addition of Rs.26,25,000/- being deduction claimed u/s.35(1)(ii)

of the Act and also initiated penalty proceedings u/s.271(1)(c) of the Act for filing inaccurate particulars of income. The Assessing Officer in his order u/s.271(1)(c) of the Act dated 28th June, 2017 had levied penalty @ 100% being Rs.8,51,681/- for furnishing inaccurate particulars of income. This was merely on the basis of disallowance made in the assessment order and non- appeal of the same by the assessee. It was further submitted by the assessee that the claim of deduction u/s.35(1)(ii) of the Act had to be seen at the time of filing the return of income dated 13th October, 2014 and at the time of filing the return of income SHGPH was a duly notified organization u/s.35(1)(ii) of the Act.

8. The Ld. CIT(Appeals) on this issue observed that the assessee company had filed its return of income on 13.10.2014 and during that time SHGPH was an approved organization u/s.35(1)(ii) of the Act by the Central Government vide Notification No.4/2010 dated 28th January, 2010. That further, the CBDT vide its Notification No.4/2010 (F. No.203/64/2009/ITA-II) dated 28.01.2010 had also recognized SHGPH as an approved scientific research association /institution for claiming deduction u/s.35(1)(ii) of the Act. The said organization was also recognized as Scientific and Industrial Research Organization (SIRO) by the Ministry of Science and Technology, Government of India on 25th April, 2008. This recognition was renewed by the Government of India on 17th June, 2010 and 1st April, 2013. On the basis of notifications and approvals granted by the Government and CBDT, the assessee paid donation of Rs.15,00,000/- to SHGPH on 26th March, 2014 and had claimed deduction u/s.35(1)(ii) of the Act. It was further observed by the Ld. CIT(Appeals) that on the facts of the present case, when donation was made by the assessee to SHGPH, it was done taking into account all the

approvals and notifications issued by the Government of India. When the assessee had filed return of income on 13.10.2014, at that point of time, SHGPH was duly notified organization u/s.35(1)(ii) of the Act. It was only on 15th September, 2016 the Central Government had rescinded the approval earlier granted to SHGPH.

9. The Hon'ble Bombay High Court in the case of **Ramdas Menklal Gandhi Vs. Union of India, 241 ITR 437** on the same set of facts and circumstances has held that the assessee was entitled to get the deduction on the basis of certificate granted to the assessee by prescribed authority which was valid and operative in the previous year despite withdrawal of the same by the prescribed authority subsequently with retrospective effect. The law is now well settled that retrospective withdrawal or cancellation of certificate will have no effect upon the assessee who had acted upon it when it was valid and operative. The Hon'ble Bombay High Court had referred the decision of the Hon'ble Supreme Court in the case of **State of Maharashtra Vs. Suresh Trading Company, 109 STC 439 (SC)** wherein it was held that retrospective cancellation had no effect upon any person who had acted upon the strength of a registration certificate when it was current.

10. Reverting to the facts of the present case, when the assessee had filed its return claiming deduction u/s.35(1)(ii) of the Act, at that time, the approval granted by the Central Government to SHGPH was valid and operative and therefore, it cannot be said that the assessee had filed inaccurate particulars of income. It was also analyzed in the detailed findings of the Ld. CIT(Appeals) that when the deduction has been claimed in the return of income on bona-fide belief, then subsequently if such deduction is not applicable because of removal of grant of approval by the prescribed

authority, it cannot be said in such circumstances that the actions of the assessee were not bona-fide. It was further held by the Ld. CIT(Appeals) that the Assessing Officer merely levied the penalty due to the sole reason that additions were made and the same were also not challenged in appeal by the assessee company without considering the fact that assessment proceedings and penalty proceedings are independent proceedings. With these observations, penalty levied u/s.271(1)(c) of the Act was cancelled and relief was provided to the assessee by the Ld. CIT(Appeals).

11. The Ld. DR for the Revenue has placed strong reliance on the assessment order.

12. Per contra, the Ld. Counsel for the assessee invited our attention to the decision of the Hon'ble Bombay High Court in the case of **Bhanumati Malraj Kabali Vs. Income Tax Officer, Writ Petition No. 3595 of 2018 dated 24th January, 2019**. There also, it was with regard to the donation made to SHGPH amounting to Rs.15,00,000/- during the assessment year 2011-12.

The Hon'ble Jurisdictional High Court has held and observed as follows:

“This information in case of the petitioner, refers to sum of Rs.15 lakhs, allegedly donated by the petitioner to the said Trust. Thus, on the basis of such information supplied by the Investigation Wing is falsified upon perusal of the return filed by the assessee. We also notice that in the return the assessee had claimed to have paid the donation of Rs.20 lakhs to one Scientific Research of Rural Development. However, the information supplied to the AO by the Investigation Wing does not even suggest that this Trust namely Scientific Research of Rural Development was a dubious Trust and the Investigation Wing had material to believe that the donors of this Trust were beneficiaries of the bogus entries. In the result, impugned notice is set aside- Decided in favour of assessee.”

13. We have perused the case records and heard the rival contentions and analyzed the facts and circumstances in this case. Herein, the penalty u/s.271(1)(c) of the Act was imposed by the Assessing Officer stating that the

assessee had furnished inaccurate particulars of income. However, the facts on record clearly specifies that the assessee had made donation to SHGPH and at the time of filing return of income by the assessee, the said SHGPH was notified organization and approved by the Government of India and even recognized as Scientific and Industrial Research Organization (SIRO) by the Ministry of Science and Technology, Government of India. With these particulars existing and being valid at the time of filing return of income, the assessee had claimed deduction u/s.35(1)(ii) of the Act. The bona-fide action of the assessee cannot be doubted since donation given during relevant assessment year to SHGPH and at that point of time, it was a recognized organization.

14. The Hon'ble Delhi High Court in the case of **CIT Vs. M/s. SAS Pharmaceuticals, 11 taxman.com 207 (Delhi)** has held that “..... *No doubt, the discrepancies were found during the survey. This has yielded income from the assessee in the form of amount surrendered by the assessee. Presently, we are not concerned with the assessment of income but the moot question is to whether this would attract penalty upon the assessee under the provisions of section 271(1)(c) of the Act. Obviously, no penalty can be imposed unless the conditions stipulated in the said provisions are duly and unambiguously satisfied. Since the assessee was exposed during survey, may be, it would have not disclosed the income but for the said survey. However, there cannot be any penalty only on surmises, conjectures and possibilities. Section 271(1)(c) of the Act has to be construed strictly. Unless it is found that there is actually a concealment or non-disclosure of the particulars of income, penalty cannot be imposed. There is no such concealment or non-disclosure as the assessee had*

made a complete disclosure in the income tax return and offered the surrendered amount for the purposes of tax.”

15. That further the Hon'ble Supreme Court in the case of **CIT Vs. Reliance Petroproducts (P) Ltd., (2010) 322 ITR 158 (SC)**, the very basis for imposing penalty u/s.271(1)(c) of the Act was analysed and the principle emerged was that the alleged concealment of income or furnishing of inaccurate particulars of income by the assessee has to be determined from income tax returned filed by the assessee.

That further proceedings u/s.271(1)(c) of the Act, is a separate proceedings than from the assessment proceedings and the omission or error i.e. concealment of income or furnishing of inaccurate particulars of income should come out specifically from the return of income filed by the assessee before the Department. There is no scope for any guess work or surmises or any hypothetical situation for imposing penalty u/s.271(1)(c) of the Act.

15.1 The position of law further is very much clear as per the various aforesaid referred judgments that retrospective withdrawal or cancellation of an entitlement will have no effect upon the assessee who had acted upon it when it was valid and operative.

16. Further, the Assessing Officer has not brought out his case as to why penalty u/s.271(1)(c) of the Act should be levied for filing inaccurate particulars of income in the case of the assessee. Merely not challenging the additions made in the assessment order in an appeal, cannot be the ground for imposing penalty u/s.271(1)(c) of the Act. The Revenue has also not disputed the fact that when deduction was claimed in return of income by the assessee at that time SHGPH was a notified organization by Government of

India u/s.35(1)(ii) of the Act. The Ld. DR could not bring on record any evidences contrary to these facts on record. In such scenario, we are of the considered view that this is not a fit case for imposing penalty u/s.271(1)(c) of the Act and therefore, we do not find any reason to interfere with the findings of the Ld. CIT(Appeals) and relief provided to the assessee is hereby sustained.

17. In the result, **appeal of the Revenue in ITA No.1674/PUN/2019 for the assessment year 2014-15 is dismissed.**

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18. Both the parties herein submitted before the Bench that the facts and circumstances and issues involved in ITA No.1676/PUN/2019 are absolutely identical and similar to ITA No.1674/PUN/2019. Therefore, our decision rendered in ITA No.1674/PUN/2019 shall **mutatis-mutandis apply** in ITA No.1676/PUN/2019.

19. In the result, **appeal of the Revenue in ITA No.1676/PUN/2019 for the assessment year 2014-15 is dismissed.**

20. In the combined result, **both the appeals of the Revenue are dismissed.**

Order pronounced on 28th day of July, 2021.

Sd/-
INTURI RAMA RAO
ACCOUNTANT MEMBER

Sd/-
PARTHA SARATHI CHAUDHURY
JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 28th July, 2021
SB

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(Appeals)-1, Aurangabad.
4. The Pr. CIT-1, Aurangabad.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "ए" बेंच,
पुणे / DR, ITAT, "A" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

निजी सचिव / Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.

		Date	
1	Draft dictated on	27.07.2021	Sr.PS/PS
2	Draft placed before author	28.07.2021	Sr.PS/PS
3	Draft proposed and placed before the second Member		JM/AM
4	Draft discussed/approved by second Member		AM/JM
5	Approved draft comes to the Sr. PS/PS		Sr.PS/PS
6	Kept for pronouncement on		Sr.PS/PS
7	Date of uploading of order		Sr.PS/PS
8	File sent to Bench Clerk		Sr.PS/PS
9	Date on which the file goes to the Head Clerk		
10	Date on which file goes to the A.R		
11	Date of dispatch of order		