IN THE INCOME TAX APPELLATE TRIBUNAL

"D" BENCH, MUMBAI

BEFORE SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER AND

SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER

ITA no.3307/Mum./2023
(Assessment Year : 2011–12)

Meyer Organics Pvt. Ltd.
A–177, Road No.16 (Z)
Wagale Estate, Thane 400 604
PAN – AABCM9346B

……. Appellant

v/s

Dy. Commissioner of Income Tax
Circle–1, Thane

……. Respondent

Assessee by : Shri Mihir C. Naniwadekar a/w
Shri Ruturaj H. Gurjar
Revenue by : Smt. Mahita Nair

Date of Hearing – 08/02/2024	Date of Order – 12/02/2024

O R D E R

PER SANDEEP SINGH KARHAIL, J.M.

The present appeal has been filed by the assessee challenging the impugned order dated 31/07/2023, passed under section 250 of the Income Tax Act, 1961 (*"the Act"*) by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi, [*"learned CIT(A)"*], which in turn arose from the order passed under section 271(1)(c) of the Act, for the assessment year 2011–12.

2. In its appeal, the assessee has raised the following grounds:–

"On facts & circumstances of the case and in law, the NFAC Appeal Centre has erred in upholding levy of penalty u/s.271(1)(c) of the Income Tax Act amounting to Rs.17,81,066/-. The penalty levied u/s.271(1)(c) of the Income Tax Act may please be cancelled.

The appellant reserves its right to add to, alter, amend, modify or delete any of the grounds taken in this appeal."

3. The only grievance of the assessee is against the levy of penalty under section 271(1)(c) of the Act.

4. The brief facts of the case are that the assessee is a company and is engaged in the business of manufacturing and trading pharmaceutical products. For the year under consideration, the assessee filed its return of income on 30/09/2011 declaring a total income of Rs. 30,54,99,500. The return filed by the assessee was selected for scrutiny and statutory notices under section 143(2) as well as section 142(1) of the Act were issued and served on the assessee. During the assessment proceedings, from the perusal of the profit and loss account, it was observed that the assessee has debited Rs. 51,35,000 towards donation and charity, however, the same has not been added by the assessee in the computation of income. On being pointed out the discrepancy, the assessee vide its submission dated 02/03/2015 submitted the revised computation of income including the amount of donation and charity of Rs. 51,35,000. Further, during the assessment proceedings, it was also noted that the assessee has debited an amount of Rs. 2,26,832 on account of loss on sale of assets, however, the same has not been added to the computation of income by the assessee. In this regard, no reply was furnished by the assessee, accordingly the amount of Rs. 2,26,832 claimed on account of loss on sale of assets was disallowed and added to the total income of the assessee. The Assessing Officer ("*AO*") vide order dated 20/03/2015 passed

under section 143(3) of the Act also made disallowance of Rs. 20 lakh on account of sales promotion expenses, as the assessee could not substantiate the entire expenditure of Rs. 11,31,83,522 claim by it. Accordingly, after making the aforesaid additions, the AO assessed the total income of the assessee at Rs. 31,28,61,332.

5. Meanwhile, the penalty proceedings vide notice dated 20/03/2015 issued under section 274 r/w section 271(1)(c) of the Act were initiated. The Assessing Officer ('*AO*') vide penalty order dated 30/09/2015, passed under section 271(1)(c) of the Act, levied a penalty of Rs. 17,81,066, on the basis of additions on account of donation and charity, and on account of loss on sale of assets, which were debited to the profit and loss account, however, the same were not been added by the assessee in the computation of income. Vide penalty order it was held that the aforesaid aspects came to the light only during the assessment proceedings and had the case not been selected for scrutiny, this income would not have been brought to tax. It is pertinent to note that in the present case, the penalty is levied only in respect of aforesaid two additions made in the scrutiny assessment.

6. The learned CIT(A), vide impugned order, dismissed the appeal filed by the assessee and held that both the issues were identified during the assessment proceedings from the profit and loss account and therefore this is not a case of a *bona fide* reasonable mistake. Being aggrieved, the assessee is in appeal before us.

7. We have considered the submissions of both sides and perused the material available on record. In the present case, during the scrutiny

proceedings upon perusal of the profit and loss account, it was noted that the assessee has debited an amount of Rs. 51,35,000 towards donation and charity, however the same was not added in the computation of income. On being pointed out the aforesaid discrepancy, the assessee filed a revised computation of income including the aforesaid amount towards donation and charity of Rs. 51,35,000. From the perusal of the copy of the aforesaid submission, we find that the assessee claimed it to be sheer inadvertent human error, as the assessee not only missed to add the aforesaid amount but also failed to claim deduction under section 80G of the Act of 50% of the aforesaid amount. Accordingly, the assessee furnished the rectified computation and paid the differential tax amount. As regards the loss on sale of assets of Rs. 2,26,832, which was debited to the profit and loss account but not added to the computation of income, the assessee accepted the error and did not object to the discrepancy pointed out by the AO during the assessment proceedings.

8. From the above, it is evident that it is not a case wherein the assessee has disputed the discrepancies pointed out by the AO during the scrutiny proceedings. Further, we find that once the aforesaid discrepancies were pointed out the assessee accepted its mistake and filed the revised computation of income, and paid the tax difference of Rs. 22,59,394. It is undisputed that the assessee has not further challenged the aforesaid additions made by the AO in the present case. Further, the fact that the donation given was stated in the Tax Audit Report and the deduction under section 80G of the Act was also computed by the tax auditor, however even then the assessee failed to claim a deduction under section 80G of the Act

supports the claim of the assessee that the mistakes were sheer inadvertent human error. We find that the plea of the assessee is supported by the decision of the Hon'ble Supreme Court in Price Waterhouse Coopers (P.) Ltd. v/s CIT, [2012] 348 ITR 306 (SC). Therefore, we are of the considered opinion that the assessee made *bona fide* mistakes in the computation of its total income while filing its original return of income, which were corrected by the assessee by filing the revised computation during the assessment proceedings.

9. Thus, in view of the aforesaid findings, we are of the considered view that this is not a fit case for the levy of penalty under section 271(1)(c) of the Act. Accordingly, the ground raised in the present appeal is allowed and the AO is directed to delete the penalty.

10. Since the relief has been granted to the assessee on merits, the additional ground raised by the assessee is kept open.

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

Order pronounced in the open Court on 12/02/2024

Sd/-	**Sd/-**
PRASHANT MAHARISHI	**SANDEEP SINGH KARHAIL**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

MUMBAI, DATED: 12/02/2024

Copy of the order forwarded to:

(1) The Assessee;
(2) The Revenue;
(3) The PCIT / CIT (Judicial);
(4) The DR, ITAT, Mumbai; and
(5) Guard file.

True Copy
By Order

Pradeep J. Chowdhury
Sr. Private Secretary

Assistant Registrar
ITAT, Mumbai