**IN THE INCOME TAX APPELLATE TRIBUNAL**
**DELHI "F" BENCH: NEW DELHI**

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER &**
**SHRI M.BALAGANESH, ACCOUNTANT MEMBER**

**ITA No.701/Del/2020**
**[Assessment Year : 2016-17]**

| | | |
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| DCIT,<br>Circle-20(1),<br>New Delhi | vs | Polyplex Corporation Limited,<br>40, New Mandakini, Greater Kailash, New Delhi-110092.<br>***PAN-AAACP0278J*** |
| **APPELLANT** | | **RESPONDENT** |
| **Appellant by** | | Shri Vivek Vardhan, Sr.DR |
| **Respondent by** | | Shri Ved Jain, Adv. &<br>Shri Aman Garg, CA |
| **Date of Hearing** | | 04.04.2024 |
| **Date of Pronouncement** | | 12.04.2024 |

**ORDER**

**PER KUL BHARAT, JM :**

The present appeal filed by the Revenue is directed against the order passed by Ld.CIT(A)-7, New Delhi dated 27.03.2022 for the assessment year 2016-17.

2. The Revenue has raised following grounds of appeal:-

*(i). "Whether on the facts and in the circumstances of the case, the Ld. CIT(A) was correct in deleting the penalty levied u/s 271(1)(c) of the I.T. Act of Rs. 60,11,830?*

*(ii) Whether on the facts and in the circumstances of the case, the Ld. CIT(A) was correct in deleting the penalty levied u/s 271(1)(c) of the I.T. Act of Rs. 60,11,830/- and not appreciating the fact that the assessee company had accepted the quantum addition on the issue of disallowance made by the AO u/s 35(2)(AB) of the Income Tax Act, 1961 and did not prefer appeal before Ld. CIT(A)on the issue and also not appreciating the fact that the assessee company was aware of the fact that the competent authority had restricted the deduction of Rs. 2.6 crores, u/s 35(2)(AB) of the Act and hence the furnishing of inaccurate particulars was deliberate?*

*(iii) The appellant craves to amend, modify, alter, add or forego any ground(s) of appeal at any time before or during the hearing of his appeal."*

3. Facts giving rise to the present appeal are that the assessee had e-filed its return of income on 30.11.2016, declaring total income of INR 14,22,64,180/-. The case was selected for scrutiny assessment and the assessment u/s 143(3) of the Income Tax Act, 1961 ("the Act") was framed on 22.12.2018 at INR 16,14,72,606/- by making disallowance of INR 15,21,372/- by invoking the provision of section 40(a)(i) of the Act; disallowance u/s 35(2)(AB) of the Act at INR 1,76,87,054/- and relief claimed u/s 90 of the Act of INR 24,37,344/- was restricted to NIL. Thereafter, the Assessing Officer ("AO") initiated penalty proceedings u/s 271(1)(c) of the Act and vide order dated 28.06.2019, imposed penalty in respect of disallowance of INR 1,76,87,054/- for furnishing inaccurate particulars of income. Thus, the AO imposed penalty of INR 60,11,830/-.

4. Aggrieved against this, the assessee preferred appeal before Ld.CIT(A), who after considering the submissions, deleted the impugned penalty.

5. Aggrieved against the order of Ld.CIT(A), the Revenue preferred appeal before this Tribunal.

6. Apropos to the grounds of appeal, Ld. Sr. DR for the Revenue submitted that the assessee had wrongly claimed deduction u/s 35(2)(AB) of the Act hence, he furnished inaccurate particulars of income. He contended that under the facts, the AO was justified in imposing the impugned penalty. Had the case of the assessee was not taken up for scrutiny, the correct figure of claim would have gone unnoticed. The AO correctly held that the assessee is

guilty of furnishing of inaccurate particulars of income. He prayed for sustaining the impugned penalty. As the Ld.CIT(A) was not justified in deleting the penalty under the facts of the present case.

7. On the other hand, Ld. Counsel for the assessee reiterated the submissions as made in the Synopsis. He submitted that it is not the case of concealment or furnishing of inaccurate particulars of income. Infact, the assessee had incurred expenditure of INR 4.41 crores for running/operation of Research & Development activities. However, Department of Scientific and Industrial Research ("DSIR") in respect of expenditure of INR 4.41 crores claimed by the assessee, restricted it to the extent of INR 2.85 crores. It was contended that the AO has not disallowed the expenditure as not being genuine. The expenditure was disallowed on the basis that DSIR had restricted this expenditure to INR 2.85 crores. It was contended that the nature of expenditure remained to be business expenditure and it is allowable u/s 37(1) of the Act. Therefore, looking to the totality of the facts of the present case and case laws relied upon by the assessee, the AO was not justified in imposing the penalty. For the sake of clarity, the synopsis filed by the Ld. Authorized Representative ("AR") of the assessee is reproduced as under:-

> *1. "This is a Revenue appeal filed against the order passed by the CIT(A) dated 21.11.2019, whereby CIT(A) deleted the penalty of Rs. 60,11,830/- imposed by A.O. under section 271(1)(c) of the Income Tax Act, 1961. Ant the penalty was levied on the disallowance of deduction claimed by the assessee under section 35(2AB) of the Act.*
>
> *2. Brief facts of the case are that assessee is a limited company engaged in the business of manufacturing of plastic film and polyester chips and have in-house research and development center which has been*

*recognized by department of scientific and Industrial research. (PB Pg.140).*

*3. Assessee filed its return of income for AY 2016-17 on 30.11.2016 declaring total income of Rs. 14,22,64,180/- (PB Pg 1-2). The assessee claimed the deduction of 200% of the amount of Rs. 441.39 lacs spent on research and development expenditure in approved R & D Centre amounting to Rs. Rs.882.78 lakhs u/s 35(2AB) of the Act on the basis of report issued by the Auditor in Form 3CL enclosed at PB Pg. 134-137.*

*4. Thereafter, assessee's case was selected for scrutiny and notice u/s 143(2) dated 14.07.2018 was issued to the assessee.*

*5. During the course of assessment proceedings, assessee via reply dated 15.10.2018 (PB 148-152, relevant page 152) submitted before the Ld.AO that during year under consideration assessee incurred Rs.4.41 crores for running / operation of research & development unit established as per the provision of section 35(2AB) of the Income Tax Act, 1961 and assessee has claimed Rs.882.78 lakhs as deduction u/s 35(2)AB of the Act , same is evident from computation of income place at PB Pg 2 and assessee furnished copy of report from accountant in form 3CLA, in accordance to the provision of section 35(2)AB of the Act. (PB Pg 134-137).*

*6. Thereafter, during the course of assessment proceedings, approval of secretary, DSIR in respect of expenditure of Rs.4.41 crores incurred for running / operation of research & development unit established as per the provision of section 35(2)(AB) of the Income Tax Act, 1961 was received on 22.11.2018. (PB Pg. 138-140) whereby the expenditure of Rs. 2.85 crores was approved as against the amount of Rs. 4.41 crores for the purpose of claiming the deduction under section 35(2AB) of the Income Tax Act.*

*7. Thereafter, assessee vide reply dated 30.11.2018 (PB Pg 158-165, relevant page 160) suo moto informed A.O. about the secretary DSIR action and made the following submission-*

> *"The assessee company had established a Research & Development (R&D) center in the city of Noida, State of Uttar Pradesh, in North*

*India to carry out the testing & development activities related to plastic films since last many years & has been claiming the deduction regularly u/s 35. The assessee had spend Rs.4,41,39,054/- on R&D expenditure in approved R&D centre u/s 35(2)AB but have claimed deduction of Rs. 8,82,78,108/- (200% of Rs. 4,41,39,054/-)*

*The letter of approval of expenses to the extend of Rs, 264.52 lakhs from DSIR is enclosed as per Annexure 4"*

*8. Further, assessee via reply dated 13.12.2018 (PB Pg 168-170, relevant page 170) submitted as under-*

*"The amount of Rs. 4.41 crores has been spend for the running/operation of R&D unit established as per provisions of section 35(2)(AB) of the Income Tax Act, 1961. However, the Secretary DSIR had restricted this expenditure to Rs. 2.85 crores meaning thereby the DSIR had confirmed only Rs. 2.85 crores had been spent for R&D purpose, however the expenditure remains business expenses u/s 37(1) of the Act. Hence only the additional deduction of Rs. 4.41 crores claimed u/s 35(2)(AB) stands restricted to 2.85 crores and the basic expense of Rs. 4.41 crores is eligible expenditure u/s 37(1) of the Act.*

*9. Hence, during the course of assessment proceedings made true and full disclosure of all the relevant facts in relation to deduction claimed u/s 35(2)AB of the Act.*

*10. Subsequently, Ld. AO vide order 22.12.2018 u/s 143(3) allowed the total research and development expenditure of Rs. 4.41 crores. However, in view of DSIR approval, he restricted the additional deduction u/s 35(2AB) in respect of the expenditure to Rs. 2,64,52,000/-.*

*11. It is relevant to mention that there is no dispute regarding the incurrence of expenditure. The dispute is only regarding the amount of deduction approval of which was received on 26.11.2018, much after the initiation of assessment proceedings.*

*12. Subsequently, Ld. AO vide order 22.12.2018 u/s 143(3) made disallowance of Rs.1,76,87,054/- u/s 35(2AB) computing the same as (Rs. 4,41,39,054-Rs. 2,64,52,000) and assessee did not file an appeal before CIT(A) against the said disallowance.*

*13. However, Ld. A.O. Initiated penalty proceedings u/s 271(1)(c) of the Act on the above mentioned disallowance of Rs. 1,76,87,054/- u/s 35(2AB) of the Act.*

*14. Thereafter, Ld.AO issued notice u/s 274 r.w.s 271(1)(C) dated 21.12.2018 (PB Pg 183).*

*15. In response to above mentioned notice, assessee filed its reply dated 21.12.2018 and submitted that disallowance of Rs. 1,76,87,054/- u/s 35(2AB) was purely on the basis of DSIR report which was received during the course of assessment proceedings and therefore penalty cannot be levied on such disallowance.*

*16. However, Ld A.O. ignored the submissions made by assessee and imposed a penalty of Rs. 60,11,830/- u/s 271(1)(c) of the Act.*

*17. Aggrieved by the action of A.O., assessee filed an appeal before Ld. CIT(A).*

*18. Before, Ld.CIT(A) assessee reiterated the stand taken before the AO.*

*19. Ld. CIT(A) after considering the submissions made by the assessee observed that assessee has not furnished inaccurate particulars of Income in its return of income and deleted the penalty of Rs.60,11,830/- u/s 271(1)(c) imposed by Ld. A.O. Relevant extract of the CIT(A) order is as follows-*

> *"In view of the judicial pronouncements referred as above and the facts of the case, the appellant had given an explanation, which is bonafide. Therefore, there is no furnishing of inaccurate particulars of Income or deliberate attempt to conceal income. The rigors of the provision of section 271(1)(C) are not clearly attracted in this case. In*

*view of thereof, the penalty imposed u/s 271(1)(c) of the Act of Rs. 60, 11,830/- is deleted."*

*20. Now, Revenue is in appeal before the Hon'ble Tribunal against the order of CIT(A).*

*21. At the outset, it is relevant to mention that the issue is squarely covered in the favor of assessee via judgment of Hon'ble ITAT Mumbai in the case of M/S. NAPORD LIFE SCIENCES P. LTD. VERSUS DCIT, RANGE-8 (2), MUMBAI, 2019 (2) TMI 980- ITAT MUMBAI, Dated. November 30, 2018, where Hon'ble Tribunal under similar circumstances deleted the penalty u/s 271(1)(c) holding as under-*

*"The dispute arises only with regard to the quantum of deduction claimed on account of part disallowance of expenditure by the DISR. As observed earlier, the certificate of the DSIR in Form No. 3CL disallowing part of the expenditure was received by the assessee in November, 2013, i.e. at a much later stage, even after the AO has started enquiry with regard to assessee's claim of deduction under section 35(2 AB) of the Act. Thus, upon considering the overall facts and circumstances of the case we are of the considered opinion that the assessee cannot be alleged of either furnishing inaccurate particulars of income or concealment of income.*

*Therefore, none of the conditions of Section 271(1)(c) of the Act in the instant case are satisfied. Accordingly we have no hesitation in deleting the penalty imposed of ₹ 31,85,292/-."*

*22. Further reliance is placed on the judgment of co-ordinate bench of ITAT Lucknow in the case of A.C.I.T., RANGE-V, LUCKNOW VERSUS MIS PTC INDUSTRIES LTD., 2015 (12) TMI 963ITAT LUCKNOW, Dated.- June 15, 2015, wherein Hon'ble Tribunal held as under-*

*"8.1 From the above paras from the order of learned CIT(A), we find that the relief was allowed by CIT(A) on the basis that the assessee was under bonafide belief that his claim of revenue expenditure u/s 35(2AB) was genuine as per the provisions of the Act, although the*

*approval DSIR was pending till completion of scrutiny assessment proceedings. He has also given a finding that the assessee has filed proper application for approval in the form of 3CL for approval of Revenue Expenditure which were incurred and recorded in the books of accounts. He has further given a finding that the A.O. has never doubted the genuineness and correctness of the revenue expenditure claimed and shown by assessee on which penalty was levied. He has also given a finding that only sole reason to impose the penalty u/s 271(1)(c) was that necessary approval from DSIR was not received till completion of scrutiny assessment order. Under these facts, it was held that the penalty is not justified u/s 271(1)(c) of the Act. Thereafter, the CIT(A) has referred to various judgments in Para 8 of his order particularly the judgment of Hon'ble apex court rendered in the case of CIT Vs. Reliance Petro Product Pvt. Ltd. (2010) 36 DTR 449 (SC) wherein it was held by Hon'ble Supreme Court that merely because of the assessee's claim, deduction of the interest of expenses which has not been accepted by revenue, penalty u/s 271(1)(c) not attracted, for merely making of the claim, which is not sustainable in law by itself will not amount furnishing inaccurate particulars of income. In the present case also, the claim of the assessee was not accepted by the Assessing Officer for the sole reason that the assessee could not get the approval from DSIR till completion of scrutiny assessment proceedings and therefore, in the facts of the present case, this judgment of Hon'ble Apex Court is squarely applicable and therefore, respectfully following this judgment of Hon'ble Supreme Court, we decline to interfere in the order of learned CIT(A).*

*9. In the result, the appeal of the Revenue stands dismissed."*

***Disallowance was made only on the basis of report of DSIR and genuineness of the expenditure was never doubted by the AO.***

*23. It is relevant to mention that Ld. A.O has not doubted the genuineness of expenditure of Rs.4.41 crores incurred by assessee for running / operation of research & development unit established as per the provision of section 35(2AB) of the Income Tax Act, 1961.*

*24. It is also relevant to mention that Ld.AO has solely relied on report of secretary DSIR for making disallowance of Rs. 1.76 crore and no any other observation/ allegation was made by the AO.*

*25. It is further submitted that assessee in support of expenditure of Rs.4.41 crores, has furnished report in form no.3CLA, from accountant which is required to be furnished u/s 35(2AB) of the Act. (PB Pg. 134-137).*

*26. The above mentioned facts at Pt. 2-9, highlight following points-*

- *Assessee received approval of secretary, DSIR in respect of expenditure of Rs.4.41 crores on 22.11.2018 which is after the date of issuance of notice u/s 143(2) which is 14.07.2018.*
- *Report of secretary, DISR was not available with assessee at the time of filling of income tax return.*
- *Assessee after receiving approval of secretary, DSIR whereby deduction u/s 35(2AB) of Rs. 2.85 crores were approved, suo moto., during the course of assessment proceedings, informed A.O in respect of the report of secretary, DSIR and accepted the disallowance of Rs. 1.76 crores and did not file an appeal before CIT(A) in respect of said disallowance.*
- *Genuineness of the expenditure has not been questioned by A.O.*
- *Basic expenditure of Rs.4.41 crores has been allowed as expenditure u/s 37(1) and only additional deduction of Rs. 4.41 crore u/s 35(2AB) stands restricted to Rs.2.84 crores.*

*9. In the result, the appeal of the Revenue stands dismissed."*

***Disallowance was made only on the basis of report of DSIR and genuineness of the expenditure was never doubted by the AO.***

*23. It is relevant to mention that Ld. A.O has not doubted the genuineness of expenditure of Rs.4.41 crores incurred by assessee for running / operation of research & development unit established as per the provision of section 35(2AB) of the Income Tax Act, 1961.*

*24. It is also relevant to mention that Ld.AO has solely relied on report of secretary DSIR for making disallowance of Rs. 1.76 crore and no any other observation/ allegation was made by the AO.*

*25. It is further submitted that assessee in support of expenditure of Rs.4.41 crores, has furnished report in form no.3CLA, from accountant which is required to be furnished u/s 35(2AB) of the Act. (PB Pg. 134-137).*

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- *Assessee after receiving approval of secretary, DSIR whereby deduction u/s 35(2AB) of Rs. 2.85 crores were approved, suo moto., during the course of assessment proceedings, informed A.O in respect of the report of secretary, DSIR and accepted the disallowance of Rs. 1.76 crores and did not file an appeal before CIT(A) in respect of said disallowance.*
- *Genuineness of the expenditure has not been questioned by A.O.*
- *Basic expenditure of Rs.4.41 crores has been allowed as expenditure u/s 37(1) and only additional deduction of Rs. 4.41 crore u/s 35(2AB) stands restricted to Rs.2.84 crores.*

*Based on above mentioned facts and points, it is an undeniable fact that assessee furnished complete information and accurate information at the time of filling of income tax return, as report of DSIR was not available with*

*assessee at the time of filling of income tax return and was received much later, so assessee cannot be deemed to have furnished any inaccurate particulars.*

*27. The above mentioned contention of assessee is supported by the Hon'ble, ITAT Mumbai judgment in the case of M/S. NAPORD LIFE SCIENCES P. LTD. VERSUS DCIT, RANGE-8 (2), MUMBAI, 2019 (2) TMI 980-ITAT MUMBAI, Dated.- November 30, 2018.*

*28. Further reliance is placed on the judgment of co-ordinate bench of ITAT Lucknow in the case of A.C.I.T., RANGE-V, LUCKNOW VERSUS MIS PTC INDUSTRIES LTD., 2015 (12) TMI 963-ITAT LUCKNOW, Dated.- June 15, 2015.*

*29. It is further submitted that it is settled position in law that where deduction claimed by assessee was not accepted by AO, then same cannot be treated as inaccurate particulars.*

*30. The above mentioned contention of assessee is supported by following judicial pronouncement-*

> *PRICE WATERHOUSE COOPERS (P.) LTD. VERSUS COMMISSIONER OF INCOME-TAX, KOLKATA 1, 2012 (9) TMI 775 - SUPREME COURT, Dated.- September 25, 2012*

> *COMMISSIONER OF INCOME-TAX VERSUS RELIANCE PETROPRODUCTS PVT. LTD., 2010 (3) TMI 80 SUPREME COURT, Dated.- March 17, 2010*

> *THE COMMISSIONER OF INCOME TAX EXEMPTION VERSUS MEHTA CHARITABLE PRAJANALAYA TRUST, 2021 (2) TMI 651-DELHI HIGH COURT, Dated February 12, 2021*

*Hence, in the view of above mentioned submissions and judicial pronouncements, the order of CIT(A) should be upheld."*

8. We have heard Ld. Authorized Representatives of the parties and perused the material available on record and gone through the orders of the authorities below. Ld.CIT(A) has decided the issue by observing as under:-

*4.1. "During the assessment proceedings, it was noticed that the assessee had claimed deduction of Rs.4,41,39,054/- u/s 35(2)AB of the Income Tax Act, 1961. The assessee was asked to produce the relevant approval of the competent authority. In response, the assessee explained that amount of RS. 4.41 crores was spend for the running/operation of R&D unit established as per provisions of section 35(2)AB of the Income Tax Act, 1961. Assessee has also admitted that the Secretary DSIR had restricted/confirmed this expenditure to Rs. 2.85 crores. Assessee had also submitted that the additional deduction of Rs. 4.41 crores claimed u/s 35(2)AB stands restricted to 2.85 crores and the basic expense of Rs. 4.41 crores is eligible expenditure u/s 37(1) of the Act. It was observed by the AO that as the competent authority had approved only amount of Rs. 2,64,52,000/- against the expenditure of Rs. 4,41,39,054/- claimed by the assessee, thus, the assessee is not entitled to the differential amount of Rs. 1,76,67,054/- and the same was disallowed by adding back to the income of the assessee.*

*In view of the above, the AO disallowed assessee's claim of Rs. 1,76,87,054/- u/s 35(2)AB of the Income Tax Act, 1961 as the same was not approved by the assessee's competent authority. Further, assessee has also admitted in its reply submitted during the assessment proceedings that "....additional deduction of Rs. 4.41 crores claimed u/s 35(2)AB of the Act stands restricted to 2.85 crores...". Therefore, assessee itself admitted that it had wrongly claimed the deduction u/s 35(2)AB of the Income Tax Act, 1961.*

*The AO therefore concluded during penalty proceedings that the appellant had accepted the addition and not filed appeal on this issue before CIT(A)*

*the charge of filing inaccurate particulars stands substantiated and accordingly imposed a penalty of Rs. 60,11,830/-.*

*4.2. It was submitted that section 35(2)AB provides for 200% deduction of the amount spend by assessee on R&D activities. During the year the Appellant had spend Rs. 4,41,39,054/- on R&D unit approved by DSIR u/s 35(2) (AB) and accordingly claimed 200% deduction on the said amount. But DSIR approved only Rs. 2,64,52,000/- out of the above amount & the appellant accordingly reduced its deduction u/s 35(2)(AB) by Rs. 1,76,87,054/-during the assessment proceedings.*

*The genuineness of expenditure of basic amount of Rs. 4,41,39,054/- had never been in question during the assessment proceedings, the AO had verified these expenses during the assessment proceedings and allowed them as deduction u/s 37 of the Act.*

*The issue was only for the additional deduction of 100% u/s 35(2)AB. It was submitted that as such there is no requirement in section to restrict additional deduction because of the report of competent authority but assessee suo moto restricted the deduction himself.*

*4.3. It was also submitted that penal provisions are only applicable if assessee had furnished any inaccurate particulars and in the present case the report of Competent authority was not available till date of filling ITR but was received much later, so assessee did not furnish any inaccurate particulars.*

*However, the details furnished by the appellant were not found to be false. Ipso facto, this cannot be treated as a malafide intent on the part of the appellant. All the relevant facts were available before the AO, at best it was an inadvertent error committed by the appellant. The explanation furnished by the appellant are genuine and bonafide. The Hon'ble Supreme Court in the case of Price Water House Coopers Pvt. Ltd. vs. CIT reported in 253 CTR 1 (SC) (2012) has held as under:*

> *"Held, allowing the appeal, that the facts of the case were peculiar and somewhat unique. Notwithstanding that the assessee was a*

*reputed firm and had great expertise available with it, it was possible that even the assessee could make a "silly" mistake. The fact that the tax audit report was filed along with the return and that it unequivocally stated that the provision for payment was not allowable under section 40A(7) of the Act indicated that the assessee made a computation error in its return of income. The contents of the tax audit report suggested that there was no question of the assessee concealing its income or of the assessee furnishing any inaccurate particulars. Apart from the fact that the assessee did not notice the error, it was not even noticed even by the Assessing Officer who framed the assessment order. All that had happened was that through a bonafide and inadvertent error, the assessee while submitting its return, failed to add the provision for gratuity to its total income. The assessee should have been careful but the absence of due care, in a case such as the present, did not mean that the assessee was guilty of either furnishing inaccurate particulars or attempting to conceal its income. On the peculiar facts of this case, the imposition of penalty on the assessee was not justified."*

*The Hon'ble Supreme Court in the case of CIT vs. Reliance Petroproducts (P) Ltd. observed as under:*

*"A glance at the provisions of section 271(1)(c) of the Income Tax Act, suggest that in order to be covered by it, there has to be concealment of the particulars of the income of the assessee. Secondly, the assessee must have furnished inaccurate particulars of his income. The meaning of the word "particulars used in section 271(1)(c) would embrace the details of the claim made. Where no information given in the return is found to be incorrect or inaccurate, the assessee cannot be held guilty of furnishing inaccurate particulars. In order to expose the assessee to penalty, unless the case is strictly covered by the provision, the penalty provision cannot be invoked. By no stretch of imagination can making an incorrect claim tantamount to*

*furnishing inaccurate particulars. There can be no dispute that everything depend upon the return filed by the assessee, because that is the only document where the assessee can furnish the particulars of his income. When such particulars are found to be inaccurate, the liability would arise. To attract penalty, the details supplied in the return must not be accurate, not exact or correct, not according to the truth or erroneous.*

*Where there is no finding that any details supplied by the assessee in its return are found to be incorrect or erroneous or false there is no question of inviting the penalty under section 271(1)(c). A mere making of a claim, which is not sustainable in law, by itself, will not amount to furnishing of inaccurate particulars regarding the income of the assessee. Such a claim made in the return cannot amount to furnishing inaccurate particulars."*

*In view of the judicial pronouncements referred above and the facts of the case, the appellant had given an explanation, which is bonafide. Therefore, there is no furnishing of inaccurate particulars of income or deliberate attempt to conceal income. The rigors of the provisions of section 271(1)(c) are clearly not attracted in this case. In view thereof, the penalty levied u/s 271(1)(c) of the Act of Rs.60,11,830/- is deleted. The grounds of appeal are ruled in favour of the appellant."*

9. From the above finding of Ld.CIT(A), it is evident that at the time of filing of the return of income, the claim of deduction u/s 35(2)(AB) of the Act, was not reduced by the Competent Authority. The Competent Authority had subsequently approved the expenditure to the extent of INR 2,65,52,000/-. Therefore, the assessee during the course of assessment proceedings, reduced its claim to the extent of INR 1,76,87,054/-. The Ld.CIT(A), therefore, considering the facts and circumstances of the case, applied the ratio laid down by the Hon'ble Supreme Court in the case of ***Price Water House***

***Coopers Pvt. Ltd. vs. CIT reported in 253 CTR 1 (SC) (2012).*** It is not the case of the Revenue that expenditure claimed by the assessee, was not genuine. The accounts are audited and reported in Form No.3CLA was filed. Thus, the assessee had disclosed all material particulars before the Assessing Authority. Merely because the DSIR reduced and approved lower expenditure should not be the only reason for imposition of penalty. The AO ought to have brought adverse material in respect of the expenditure so claimed by the assessee more particularly, when the assessee himself has reduced its claim as recorded by the AO in the assessment order itself. Under these facts and in the light of decision of Co-ordinate Bench rendered in the case of ***M/s. Napord Life Sicences P.Ltd. vs DCIT, Range-8(2), Mumbai, 2019 (2) TMI 980- ITAT Mumbai*** dated ***30.11.2018***, we do not see any infirmity in the finding of Ld.CIT(A), the same is hereby affirmed. Grounds raised by the Revenue are accordingly, dismissed.

10. In the result, the appeal of the Revenue is dismissed.

Order pronounced in the open Court on 12th April, 2024.

***Sd/-*** ***Sd/-***

**(M.BALAGANESH)** **(KUL BHARAT)**
**ACCOUNTANT MEMBER** **JUDICIAL MEMBER**

** Amit Kumar **

Copy forwarded to:
1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI