

**IN THE INCOME TAX APPELLATE TRIBUNAL (VIRTUAL COURT
DB-III) 'C' BENCH, MUMBAI**

BEFORE SHRI M.BALAGANESH, AM

&

SHRI RAM LAL NEGI, JM

**ITA No.2237/Mum/2009
(Assessment Year :2002-03)**

M/s. Piramal Healthcare Ltd., (Earlier known as Nicholas Piramal India Ltd.,) Nicholas Piramal Tower Ganpatrao Kadam Marg Lower Parel, Mumbai-400013	Vs.	Deputy Commissioner of Income Tax, Circle 7(1) Mumbai
PAN/GIR No.AAACN4538P		
(Appellant)	..	(Respondent)

Assessee by	Shri Ronak Doshi, AR
Revenue by	Shri V. Sreekar, CIT DR
Date of Hearing	24/08/2020
Date of Pronouncement	28/08/2020

आदेश / ORDER

PER M. BALAGANESH (A.M):

This appeal in ITA No.2237/Mum/2009 for A.Y.2002-03 arises out of the order by the Id. Commissioner of Income Tax (Appeals)-VII, Mumbai in appeal No. CIT(A)VII/DCIT-7(1)/IT-09/2008-09 dated 30/01/2009 (Id. CIT(A) in short) in the matter of imposition of penalty u/s.271(1)(c) of the Income Tax Act, 1961.

2. The first issue to be decided in this appeal is as to whether the Id. CIT(A) was justified in levying the penalty u/s.271(1)(c) of the Act in respect of disallowance of expenses made u/s.14A of the Act.

3. We have heard rival submissions and perused the materials available on record. We find that the Id. AO in the quantum assessment order made adhoc disallowance of administrative expenses @5% of dividend income u/s.14A of the Act, which was reduced to 2% of dividend income by the Id. CIT(A) in first appeal. We find that this addition was made only on an estimated basis by both the lower authorities and there cannot be any levy of penalty on the estimated disallowance of expenses.

3.1. We find that the Id. AO had not brought on record that the expenditure incurred by the assessee is ingenuine. The entire disallowance of administrative expenses made u/s.14A of the Act was made only on an estimated basis as percentage of dividend income. Hence, there cannot be any allegation that could be levelled on the assessee either for concealment of income or for furnishing inaccurate particulars of income in this regard. Hence, there cannot be any levy of penalty u/s.271(1)(c) of the Act for the same. Accordingly, the penalty levied in respect of disallowance u/s.14A is hereby directed to be deleted.

4. The next issue to be decided in this appeal is as to whether the Id. CIT(A) was justified in confirming the levy of penalty in respect of addition made u/s.145A of the Act in respect of unutilized MODVAT credit.

4.1. We have heard rival submissions and perused the materials available on record. We find that this tribunal in quantum appellate order

in ITA No.3927/Mum/2006 and 4066/Mum/2006 dated 20/02/2020 had remanded this issue to the file of the Id. AO to decide the same in light of directions issued by the Tribunal for A.Y.2009-10 in assessee's own case. Since the quantum addition is pending adjudication before the Id. AO, the levy of penalty u/s.271(1)(c) of the Act would be premature at this stage and accordingly, cancelled.

5. The next issue to be decided in this appeal is as to whether the Id. CIT(A) was justified in confirming the levy of penalty u/s.271(1)(c) of the Act with regard to disallowance of legal and professional fees.

5.1. We have heard rival submissions and perused the materials available on record. We find that this Tribunal in quantum appellate proceedings vide order dated 20/02/2020 referred to supra had deleted the disallowance made. Since the quantum disallowance is deleted, there cannot be any levy of penalty on the same. Accordingly, we direct the Id. AO to delete the penalty u/s.271(1)(c) of the Act in respect of disallowance of legal and professional fees.

6. The next issue to be decided in this appeal is as to whether the Id. CIT(A) was justified in confirming levy of penalty in respect of write off of stocks / receivables.

6.1. We have heard rival submissions and perused the materials available on record. We find that this Tribunal in quantum appellate proceedings vide order dated 20/02/2020 referred to supra had completely deleted the disallowance made on account of write off of stocks / receivables. Since the quantum addition is deleted, no penalty

u/s.271(1)(c) of the Act would survive. Hence, we direct the Id. AO to delete penalty levied in respect of writing off of stocks / receivables.

7. The next issue to be decided in this appeal is as to whether the Id. CIT(A) was justified in levy of penalty in respect of disallowance of pre-payment charges treating it as capital expenditure.

7.1. We have heard rival submissions and perused the materials available on record. We find that this Tribunal in quantum appellate proceedings vide order dated 20/02/2020 referred to supra had completely deleted the disallowance made on account of pre-payment charges . Since the quantum addition is deleted, no penalty u/s.271(1)(c) of the Act would survive. Hence, we direct the Id. AO to delete penalty levied in respect of disallowance of pre-payment charges treating it as capital expenditure.

8. The last issue to be decided in this appeal is as to whether the Id. CIT(A) was justified in confirming the levy of penalty in respect of disallowance of business promotion expenses.

8.1. We have heard rival submissions and perused the materials available on record. We find that the assessee had claimed business promotion expenses as revenue expenditure which was sought to be treated by the Id. AO as capital expenditure. This disallowance was ultimately sustained by the Tribunal in the quantum appellate proceedings. We find that the issue in dispute was whether the particular expenditure was capital or revenue in nature. Whether the particular expenditure is capital or revenue in nature would squarely fall within the ambit of debatable issue and the law is very well now settled that on a

debatable issue, no penalty u/s.271(1)(c) of the Act could be levied. Reliance in this regard has been rightly placed on the decision of the Hon'ble Delhi High Court in the case of CIT vs. Vegan International Ltd., reported in 2 Taxmann.com 140. Respectfully following the same, we direct the Id. AO to delete the penalty u/s.271(1)(c) of the Act in respect of disallowance of business promotion expenses.

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

Order pronounced on 28/08/2020 by way of proper mentioning in the notice board.

Sd/-
(RAM LAL NEGI)
JUDICIAL MEMBER

Mumbai; Dated
KARUNA, *sr.ps*

28/08/2020

Sd/-
(M.BALAGANESH)
ACCOUNTANT MEMBER

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai

