आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'डी' अहमदाबाद।
IN THE INCOME TAX APPELLATE TRIBUNAL
"D" BENCH, AHMEDABAD

BEFOREMRS. ANNAPURNA GUPTA, ACCOUNTANT MEMBER AND SHRI T.R. SENTHIL KUMAR, JUDICIAL MEMBER

ITA No. 769/Ahd/2019
निर्धारणवर्ष/**Assessment Year: 1999-2000**

M/s. Atul Limited, Atul House, GI Patel Marg, Mithila Society, Ahmedabad PAN : AABCA 2390 M	Vs.	DCIT, Circle 1(1)(1), Ahmedabad
अपीलार्थी/ (Appellant)		**प्रत्यर्थी/** (Respondent)

Assessee by :	Shri Bandish Soparkar, AR & Shri Parin Shah, AR
Revenue by :	Shri Atul Pandey, Sr DR

सुनवाई की तारीख/Date of Hearing : 20.09.2022
घोषणा की तारीख **/Date of Pronouncement : 16.12.2022**

आदेश/O R D E R

PER ANNAPURNA GUPTA, ACCOUNTANT MEMBER:

The present appeal has been filed by the assessee against the order passed by the learned Commissioner of Income-Tax (Appeals)-1, Ahmedabad, ("CIT(A)" in short) dated 26.03.2019 confirming the levy of penalty imposed by the Assessing Officer under Section 271(1)(c) of the Income-tax Act, 1961 ("the Act" in short) for the Assessment Year 1999-2000.

2. The grounds of appeal raised by the assessee read as under:

"1. Ld. CIT (A) erred in law and on facts in confirming penalty levied by AO of Rs.1,55,96,843/- invoking provisions of s. 271(1)(c) of the Act ignoring that appellant neither concealed income nor furnished inaccurate particulars of income.

2. Ld. CIT (A) erred in law and on facts dismissing ground challenging failure of AO initiating penalty on both the charges: furnishing inaccurate particulars as well concealment of income mechanically without application of mind that is not permissible under the law.

3. Ld. CIT (A) erred in law and on facts confirming penalty levied by AO merely on the basis of disallowance of the claim ignoring that the appellant had disclosed complete details with relevant documents relating to claim made tendering full explanation during assessment proceedings.

4. Ld. CIT (A) erred in law and on facts rejecting submissions of the appellant that no penalty can be levied on debatable issue as to whether deduction under chapter VI-A is allowable in case of negative business income held in favour of the appellant by Hon'ble jurisdictional High Court at the time of filing return that was subsequently decided against the appellant by Hon'ble Apex Court.

3. The brief facts leading to the levy of penalty for concealing/furnishing inaccurate particulars of income u/s 271(1)(c) of the Act in the present case are that the assessee had filed return of income for the impugned assessment year, i.e. AY 1999-2000, declaring total income comprising of only Long Term Capital Gains amounting to Rs.3,95,20,413/-. This income under the head "Capital Gains" was computed after adjusting losses under the head "Business Income" and after considering the effect of deduction under Section 80G and 80HHC of the Act. In the assessment framed for the impugned year under Section 143(3) of the Act, the assessee was denied claim of deduction under Section 80G and 80HHC of the Act in the absence of any business income returned by the assessee. Thereafter, penalty proceedings were initiated for this incorrect claim made by the assessee and penalty was levied by the Assessing Officer holding that the claim of deduction under Section 80G and 80HHC of the Act against Long Term Capital Gains of the assessee was against the specific provision of law in this regard as provided under Section 112(2) of the Act. The Assessing Officer held that the assessee had filed inaccurate particulars in respect of the deduction claimed under Section 80G and 80HHC of the Act totaling to Rs.4,45,62,409/-, comprising of deduction claimed Rs.4,44,02,159/- under Section 80HHC and Rs.1,60,250/- under Section 80G of the Act, and, accordingly levied penalty @ 100% of tax sought to be evaded amounting

Rs.1,55,96,843/-. The relevant findings of the Assessing Officer in this regard at paragraph Nos. 4.1 - 7 of assessment order are as under:-

"4.1 Disallowance under chapter VI-A:

On scrutiny of income computation statement, itwas noticed that the assessee had claimed deduction under section 80G, 80HHC and 80IA from its gross total income. During the course of assessment proceedings the representative of the assessee was asked to explain as to how deduction under chapter VI-A could be allowed when the gross total income of the assessee company comprised only Long Term Capital Gain. The element of any business income being absent from such income no deduction under any section covered under chapter VI-A was allowable. In response to this query the submission made by the assessee was perused but found not acceptable. In the present casethe entire gross total income remaining after set off of business loss of currentyear, comprised purely of long term capital gain and such a situation was governed by a specific provision of the Act u/s 112(2) of the I.T. Act. Provision of section 112(2) of the Act states as under:

"where the gross total income of an assessee includes any income arising from the transfer of long term capital assets the gross total income shall be reduced by the amount of such income and the deduction u/c VI-A shall be allowed as if the gross total income so reduced were the gross total income of the assessee"

From the above extract, it is clear that deduction under chapter VI-A would be allowed only after reduction of long term capital gain from the gross total income and the reduced gross total income would be considered gross total income of the assessee for the purpose of deduction under chapter VI-A. but in the instant case, the gross total income of the assessee company comprised only Long Term Capital Gain and if the same is reduced from such gross total income, the gross total income so reduced resulted in a negative figure. Thus the deduction claimed by the assessee company under chapter VI-A was disallowed by the AO as there was no business income and penalty proceedings u/s.271(1)(c) were initiated for furnishing inaccurate particulars of income. The Ld. CIT(A) andthe Hon'ble ITAT also confirmed the disallowance made by the AO on this count.

5. In view of the facts and legal position discussed above the assessee is held to have furnished inaccurate particulars of income in the return of income filed by him and as per decision of Hon'ble Supreme Court in the case of Reliance Petroproduct (p) Ltd. (noted above), the liability of penalty arises. Had the assessee's case not been selected for scrutiny, the assessee would have been

benefited by filing inaccurate particulars of income. The assessee took chance with the department. Had the revenue not detected the inaccurate particulars of income of the assessee, the assessee would have enjoyed the fruits of filing inaccurate particulars of income and would have caused loss to the revenue. Therefore, the penalty initiated by the A.O. is liable to be levied.
6. In light of the facts discussed above, I am satisfied that the assessee has furnished inaccurate particulars in respect of the deduction claimed to the tune of Rs. 4,45,62,409/- (4,44,02,159 u/s 80HHC + 1,60,250 u/s 80G) and therefore liable for penalty u/s. 271(1)(c) of the Act.

6.1 The quantum of penalty works out as under :

Minimum penalty @ 100% of tax sought to be evaded : Rs. 1,55,96,843/-
Maximum penalty @ 300% of tax sought to be evaded : Rs. 4,67,90,529/-

7. Considering the overall facts, a penalty of Rs. 1,55,96,843/-- is levied u/s. 271(1)(c)of the Act."

4. The aforesaid findings recorded by the Assessing Officer was upheld by the learned CIT(A) in appeal; and, before us, one of the contentions raised by the learned Counsel for the assessee was that this claim of deduction made by the assessee was inconsonance with the position of law as existing at the point of time when the return of income was filed by the assessee. He pointed out that the ITAT, Ahmedabad Benches in the case of assessee's sister concern namely M/s. Arvind Ltd. had held in favour of the assessee that even in the absence of any business profits, deduction under Section 80G and 80HHC of the Act was allowable against Long Term Capital Gains returned and the said decision was further upheld by the Hon'ble jurisdictional High Court vide its order dated 11.09.2001 in the case of CIT Vs. Arvind Mills Ltd, reported in [2002] 254 ITR 529 (Gujarat). Copy of the said order was placed before us and our attention was drawn to the facts of the said case briefly outlined as under:-

"FACTS

There was no profit to the assessee-exporter from the business of export. The Tribunal allowed the deductions under section 80HHC. The revenue

contended that the provisions of section 80AB were applicable to all the sections which fell under the heading 'C.—Deductions in respect of certain incomes' and that section 80HHC was a provision which fell within the said heading. It was submitted that it was necessary that there should be profits from export activity and in the absence of such profits from export business, the Tribunal was clearly in error in holding that the assessee was entitled to deduction under section 80HHC against the income from other head, viz., 'Capital gains'.

HELD

On a plain reading of section 80HHC, it is apparent that a deduction can be claimed by an assessee if such assessee exports out of India during the previous year relevant to the assessment year any goods or merchandise as specified in the section. The deduction has to be made while computing the total income of the assessee of an amount specified out of the export turnover of such goods or merchandise whereas section 80AB requires that a deduction is required to be made or allowed under any section (except section 80M) included in Chapter VI-A under the heading 'C.—Deductions in respect of certain incomes' in respect of any income of the nature specified in that section which is included in the gross total income of the assessee. [Para 10]

Heading 'C' which deals with deductions in respect of certain incomes commences with the provision of section 80HHC and ends with section 80TT. When the language of all the provisions which fall under the heading 'C' of Chapter VIA are compared, it is found that except for section 80HHC in all other provisions the language used is to the effect that where the gross total income of an assessee includes any profits and gains as specified, a deduction has to be allowed from such profits and gains of the specified amount in each of the provisions. On comparison, section 80HHC stands out by virtue of the language employed and it is not possible to state that on a plain reading it would fall within the same set of provisions which have been contemplated to be governed by the provisions of section 80AB. [Para 11]

Section 80AB was introduced by the Finance (No. 2) Act of 1980, with effect from 1-4-1981. While section 80HHC was introduced by the Finance Act, 1983, with effect from 1-4-1983. Therefore, the contention raised on behalf of the revenue that section 80AB should override the provision of section 80HHC cannot be accepted as it is not possible to hold that the Legislature was not aware of the difference in other provisions falling under heading C of Chapter VI-A and the language employed in section 80HHC. On the contrary, there is an inherent indication in the Act when one reads the provision of section 80HHB which was introduced by the Finance Act, 1982, with effect from 1-4-1983. The language employed in both the provisions is

entirely different though both the provisions have been made effective from the same date. [Para 12]

Considering the matter from a slightly different angle, the provision of section 80HHC requires that deduction is to be made from the total income of an assessee. The scheme of the Act, as can be seen, is to fasten the charge of income-tax by virtue of section 4 in respect of the total income of the previous year. The term 'total income' has been defined by section 2(45) to mean the total amount of income referred to in section 5, computed in the manner laid down in the Act. Section 5 deals with the scope of total income to provide that the 'total income' of any previous year would include all income from whatever source. Once the Legislature has provided for inclusion of all incomes, the definition of 'income' as provided in section 2(24) becomes relevant. Sub-clause (vi) of section 2(24) states that income includes any capital gains chargeable under section 45. Therefore, once capital gains form part of the income, which is to be included for the purpose of ascertaining the total income, the charge specified in section 4 gets attracted. Thus, the moment this exercise has been undertaken, the figure of total income is arrived at and it is from this figure that deduction under section 80HHC is provided being the specified percentage of the export turnover. Therefore, the Tribunal had rightly held that the assessee was entitled to deduction under section 80HHC on the facts and in the circumstances of the case. [Para 13]"

5. He further pointed out that an identical issue had arisen in the case of the assessee itself for AY 2004-05, wherein the assessee was found to be claimed excess deduction under Section 80-IB of the Act and the penalty was levied on account of the same on the assessee which was deleted by the ITAT noting that it was a debatable issue since at the time of filing the return for the impugned assessment year, there were pronouncements by the Hon'ble Court in favour of the assessee. Our attention was drawn to the order of the ITAT, Ahmedabad Benches in the case of M/s. Atul Ltd. Vs. DCIT in ITA No.3455/Ahd/2010 dated 19.01.2012 placed before us at page Nos.95 to 100, more particularly to paragraph 13 to 15 of the order wherein the issue was dealt with by the ITAT as under:-

"13. The Ld. D.R. submitted that the assessee has claimed excess deduction u/s 80-IB and there is a clear case of misrepresentation in tax and therefore, the penalty u/s 271(1)(c) of the act was rightly imposed as held by Hon'ble

Delhi High Court rendered in the case of CIT Vs Nalwa Sons Investments Ltd. 327 ITR 543 (Del.). He referred to the relevant portion of the penalty order in support of the case of the revenue. He relied on the order of the A.O.

14. Ld. Counsel for the assessee submitted that at the time when the assessee made the claim for deduction u/s 80-IB of the Act, the decision of Hon'ble Jurisdictional High Court rendered in the case of CIT Vs India Gelatine and Chemicals Ltd. as reported in 275 ITR 284 was in favour of the assessee and, therefore, it cannot be said that the claim made by the assessee for deduction was not bona fide. He submitted that there was no income for the relevant assessment year the assessee was not liable to income tax excluding the MAT calculation and, therefore, as per the ratio laid down in the decision of Hon'ble Delhi High Court rendered in the case of Nalwa Sons Investments Ltd. (supra), no penalty u/s 271(1)(c) of the Act is leviable upon the assessee.

15. We have considered the rival submissions. We find that the issue of deduction u/s 80-IB of the Act was highly debatable in nature. At the time of filing the return for the assessment year 2004-05, there were pronouncements by the Hon'ble Courts in favour of the assessee. The CIT(A) has deleted the penalty by observing that similar addition made in the earlier assessment year 2003-04 was deleted by ITAT vide order dated 24.07.2009 and also that at the time of making the claim by the assessee, there were several decisions in favour of the assessee. Ld. CIT(A) has further observed that in any case, this issue was debatable and on such debatable issue, penalty u/s 271(1)(c) could not be levied. We find that this issue being debatable and there being decisions in favour of the assessee at the time of filing of return for the relevant assessment year, it could not be said that the conduct of the assessee in claiming the deduction was not bona fide. In this view of the matter, we hold that it is not a fit case for levy of penalty u/s 271(1)(c) of the Act which was accordingly cancelled by the CIT(A) and the order of Ld. CIT(A) is confirmed. Ground No.3 of the revenue's appeal is dismissed."

6. The learned Counsel for the assessee, thereafter, pointed out that this aspect of the issue being debatable had been pointed out before the learned CIT(A) also and the submission of the assessee in this regard as recorded by the learned CIT(A) in his impugned order at page No.5, paragraph no. 4.10,are as under:-

"4.10. That the issue was highly debatable and thus penalty u/s 27(1)(c) of the Act could not have been levied.

4.10.1. In this connection, the Appellant most respectfully submits that the issue as to whether deduction under chapter VI-A can be allowed in case of .negative business income, was settled in favour of the Appellant by the judgment of Hon'ble ITAT in the case of Appellant's sister concern namely M/s Arvind Ltd. The said decision of Hon'ble ITAT was further upheld by the Hon'ble Jurisdictional High Court. The copy of the said order is placed along with this submissions, herewith marked as Annexure-A.

4.10.2. The Hon'ble Tribunal in the deciding the Quantum Additions/ disallowances, has relied upon the Judgment of Hon'ble Supreme Court in the case of Jeyar Consultant and . Investment Pvt. Ltd. reported in 373 ITR 87, which was delivered on 01/04/2015. The Appellant most respectfully submits that though the Hon'ble Supreme Court settled all the gamut of dispute, the issue at the time of filing of return of income was settled in favour of the Appellant By the Hon'ble Jurisdictional High Court.

4.10.3. The Appellant thus submits that the appellant has made a bonafide claim and the penalty was initiated on a debatable issue, which was later on settled by the Apex Court in a judgment delivered after the entire assessment proceedings got completed in the case of the Appellant.

4.10.4. The Appellant at this juncture would like to rely upon the decision of Ahmedabad Tribunal in the Appellant's own case in ITA No. 3455/Ahd/2010 wherein the Hon'ble Tribunal with regards to a different issue but penalty levied on debatable issue, held that the penalty cannot be levied in such debatable issues, wherein binding nature of judicial precedents are available on either side of the parties. The copy of the order is paced along with this submissions herewith marked as Annexure-B."

He contended that this specific submission made by the assessee before the learned CIT(A) was not dealt with by the learned CIT(A) who simply upheld the order of the Assessing Officer holding that it was a clear case of furnishing of inaccurate particulars of income by the assessee andtherefore, the claim was not allowable in view of the specific provision provided in the statute denying set off of deductions under Chapter VI-A against Long Term Capital Gains income. He drew our attention to the order of the learned CIT(A) at paragraph No. 3.2.4 which reads as under:-

"3.2.4. The appellant has also taken the ground that it has not furnished inaccurate particulars of income and the issue was debatable, and therefore, penalty is not leviable. I do

not agree with the contention of the appellant as appellant has claimed deduction u/s.80HHC of Rs.4,44,02,159/- and Rs.1,60,250/- u/s. 80G against the long term capital gain in the return of income which is clearly not admissible in view of section 112(2) of the I. T. Act, 1961. Therefore, the appellant has clearly furnished inaccurate particulars of income in respect of claim of deduction u/s. 80HHC and 80G of the I. T. Act,1961. The appellant has relied on the case of Reliance Petroproducts Pvt. Ltd. (supra) which is clearly not applicable over the facts of the case as appellant has made a claim which is not permissible as per the Act. In the case of Reliance Petroproducts Pvt. Ltd. (supra), the issue was the disallowance of expenditure u/s. 14A on the basis of estimates and it was estimate of department versus estimate by appellant. In the present case, appellant has made a claim which is not permissible as per section 112(2) of the I.T. Act, 1961 at all. In view of the above, AO was perfectly justified to levy penalty U/s. 271(1)(c) of the I. T. Act, 1961 for furnishing inaccurate particulars of income."

The learned Counsel for the assessee, therefore, contended that being a debatable issue the assessee could not have been charged with having furnished any inaccurate particulars of income so as to levy penalty under Section 271(1)(c) of the Act.

7. The learned DR, on the other hand, relied on the findings of the learned CIT(A) in this regard at paragraph 3.2.1 of the impugned order as above.

8. We have heard the rival contentions and have carefully gone through the orders of the authorities below and also the decisions of Hon'ble High Court as well as the Coordinate Benches of the Tribunal cited before us. The issue before us relates to levy of penalty on account of claim of deduction under Section 80G and 80HHC of the Act made by the assessee amounting to Rs.4,45,62,409/- denied on the ground that the entire gross total income of the assessee comprised purely of Long Term Capital Gains and not business income. The learned Counsel for the assessee has drawn our attention to the decision of Hon'ble jurisdictional High Court in the case of M/s. Arvind Mills Ltd. (supra) wherein, on going through which, we find that, in identical facts and circumstances, the Hon'ble High Court had held that the deduction was allowable despite there being no positive business income by the assessee. The issue before us relates to Assessment Year 1999-2000 and

this judgment of the Hon'ble High Court was rendered in the year 2001. Therefore at the time of making of claim by the assessee and even thereafter up to 2001, the legal position was in favour of the assessee and the claim, therefore, made was *bona fide*. It was only subsequently the Hon'ble Apex Court had held otherwise in the case of Jeyar Consultant & Investment Pvt.Ltd in 373 ITR 87 vide order dated 1st April 2015 and in accordance with the said ruling therefore that the denial of the assessee's claim to such deduction was upheld by the ITAT.

9. The contention of the assessee, therefore, that the issue was debatable is correct. The Ld.CIT(A) has not dealt with this contention of the assessee at all, brushing it aside simply by stating that the claim is inadmissible as per law in view of section 112(2) of the Act. In view of the decision of the jurisdictional High Court laying down proposition in favour of the assessee it cannot be said that the claim was clearly inadmissible as per law. In these facts and circumstances of the case, the assessee cannot be charged with having furnished any inaccurate particulars of income so as to be exigible to levy of penalty u/s 271(1)(c)of the Act. The penalty so levied amounting to Rs.1,55,96,843/-is directed to be deleted.

10. Since we have held penalty not leviable for the above reason, the remaining contentions of the assessee are not being dealt with by us.

11. The appeal of the assessee is allowed in above terms.

Order pronounced in the Court on 16th December,2022 at Ahmedabad.

Sd/-	**Sd/-**
(T.R. SENTHIL KUMAR)	**(ANNAPURNA GUPTA)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Ahmedabad; Dated 16 /12/2022