

Gurbax Singh
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**IN THE HIGH COURT OF PUNJAB AND HARYANA
CHANDIGARH**

ITA No. 274 of 2017

Date of decision: 28.08.2017

Pr. Commissioner of Income Tax (Central), Gurgaon

.....Appellant

Vs.

**M/s Nectar Lifescience Limited, (through its Managing Director) 1596,
Bhagirath Place, Delhi-110006**

.....Respondent

**CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MR. JUSTICE AMIT RAWAL**

**Present: Mr. Rajesh Sethi, Senior Standing Counsel with Mr. Tushar
Gera, Advocate for the appellant-revenue.**

Ajay Kumar Mittal,J.

1. The appellant-revenue has filed the instant appeal under Section 260A of the Income Tax Act, 1961 (in short, "the Act") against the order dated 30.11.2016, Annexure A.5, passed by the Income Tax Appellate Tribunal, Delhi Bench 'F', New Delhi (in short, "the Tribunal") in ITA No. 2680/DEL/2010, for the assessment year 2001-02, claiming following substantial questions of law:-

- (i) "Whether on the facts and in the circumstances of the case, in view of Explanation (ii) of Section 271(1)(c) of Income Tax Act the onus to prove that there was no fault or neglect in filing the correct income was not on assessee?
- (ii) Whether on the facts and in the circumstances of the case, the finding recorded by the Assessing Officer in quantum proceedings establishing the furnishing of inaccurate particulars of income by assessee which was affirmed by the CIT(A) and further affirmed by ITAT has not been

considered appropriately by the ITAT by passing the impugned order dated 30.11.2016?

(iii) Whether on the facts and in the circumstances of the case, the wrong and inaccurate claim made by assessee under Section 80HHC regarding working of business profits can be said to be a contentious issue?

(iv) Whether on the facts and in the circumstances of the case, in hand, once it is seen that the disallowance of gratuity amount was found to be against the provisions of law, the imposition of penalty was not bound to follow as a direct consequence thereof?

(v) Whether on the facts and in the circumstances of the case, in hand once the claim made under Section 43B was ex-facie bogus, the view point of ITAT in deleting the penalty on this count is proper or not?

(vi) Whether on the facts and in the circumstances of the case, in hand the view point of the ITAT taken in impugned order is neither sustainable in the eyes of law nor maintainable in the light of the facts and circumstances of the case and is not perverse in nature?

(vii) Whether on the facts and in the circumstances of the case, in hand the view point of the ITAT while passing the impugned order is not non-speaking in nature?"

2. A few facts relevant for the decision of the controversy involved as narrated in the appeal may be noticed. Assessment in this case was completed under Section 143(3) of the Act at a total income of ₹ 4,43,44,621/- by making addition of ₹ 9,50,087/- under Sections 43B, 36(1)(va) and 2(24)(x) of the Act, ₹ 1,37,286/- on account of selling and distribution expenses, ₹ 61,859/- on account of depreciation of pollution

and control equipment, ₹ 4,60,485/- on account of gratuity and ₹ 50,23,687/- under Section 80HHC of the Income Tax Act. The assessee filed an appeal before the Commissioner of Income Tax Appeals [CIT(A)]. The CIT(A) confirmed the additions made by the Assessing Officer. The Assessee filed an appeal before the Tribunal. Vide order dated 29.07.2008, Annexure A.2, the Tribunal dismissed the appeal and confirmed the additions made by the Assessing Officer. Penalty order under Section 271(1)(c) was passed by Deputy Commissioner of Income Tax, Circle 13(1), New Delhi, i.e. the Assessing Officer, imposing penalty of ₹ 23,41,325/-, vide order dated 27.03.2009, Annexure A.3. Aggrieved by the penalty order passed by the Assessing Officer, the assessee filed an appeal before the CIT(A), New Delhi. Vide order dated 8.3.2010, Annexure A.4, the CIT(A) dismissed the appeal and confirmed the penalty. Still not satisfied, the assessee filed an appeal before the Tribunal at New Delhi. Vide order dated 30.11.2016, Annexure A.5, the Tribunal allowed the appeal and deleted the penalty following the decision of the Apex Court in ***CIT Ahmedabad Vs. Reliance Petroproducts Private Limited*** (2010) 322 ITR 158. Hence, the instant appeal by the appellant-revenue.

3. We have heard learned counsel for the appellant-revenue.

4. The issue that arises for consideration in this appeal is that when the Assessing Officer who passed the assessment order and the penalty order was based at New Delhi and the first appeal was adjudicated by the CIT(A), New Delhi and the second appeal by the Tribunal at New Delhi, whether the appeal under Section 260A of the Act before this Court would be maintainable.

5. The matter is no longer res integra. This Court in ***Commissioner of Income Tax (Appeals), Gurgaon Vs. M/s Parabolic***

Drugs Limited, ITA No.49 of 2012 decided on 11.10.2012, following the Division Bench judgment of this Court in ***Commissioner of Income Tax Faridabad Vs. M/s Motorola India Limited*** ITA No. 44 of 2005 decided on 03.10.2007 had held as under:-

“Accordingly, the present appeal is dismissed by holding that this court has no territorial jurisdiction to adjudicate upon the lis over an order passed by the Assessing Officer at New Delhi. Consequently, the appeal is returned to the Revenue for filing before the competent Court of jurisdiction in accordance with law.”

6. In view of the above, present appeal is dismissed as this Court has no territorial jurisdiction to adjudicate upon the lis over an order passed by the Assessing Officer at New Delhi. Consequently, the appeal is returned to the revenue for filing before the competent court of jurisdiction in accordance with law.

(Ajay Kumar Mittal)
Judge

August 28, 2017
‘gs’
Whether speaking/reasoned
Whether reportable

(Amit Rawal)
Judge
Yes
Yes