

IN THE INCOME TAX APPELLATE TRIBUNAL “G”, BENCH MUMBAI
BEFORE SHRI G. MANJUNATHA, ACCOUNTANT MEMBER
&
SHRI RAVISH SOOD, JUDICIAL MEMBER

ITA No.843 & 844/Mum/2019
(Assessment Years: 2011-12 & 2012-13)

DCIT-9(3)(2) Room No.418, 4 th Floor Aaykar Bhawan M.K.Road Mumbai-400 020	V s.	Galderma India Pvt.Ltd. Lotus Corporate Park 'D' Wing, Unit 801 & 802 Graham Firth Steel Compound, Western Express Highway Goregaon(West) Mumbai-400 063
		PAN/GIR No.AAACG8660M
Appellant)	..	Respondent)

Assessee by	Ms. Krupa R.Gandhi & Ms. Riddhi Maru, AR's
Revenue by	Shri V.Vinod Kumar, DR
Date of Hearing	03/03/2020
Date of Pronouncement	06/03/2020

आदेश / O R D E R

PER G.MANJUNATHA, Accountant Member:

These two appeals filed by the revenue are directed against separate, but identical orders of the Ld. Commissioner of Income Tax (Appeals)-16, Mumbai, both dated 28/12/2018 for the Asst. Years 2011-12 & 2012-13. Since, the facts are identical and issues are common, for the sake of convenience, these appeals were heard together and are disposed-off by this consolidate order.

2. The revenue has more or less raised common grounds of appeal for both Asst.Years. Therefore, for the sake of brevity, grounds of appeal filed for AY 2011-12 are reproduced as under:-

1. *"Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in deleting penalty of Rs. 68,00,000/- levied u/s. 271(1)(c) of the I.T. Act, 1961 on account of disallowance of promotion expenses?"*
2. *"Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in deleting penalty of Rs.68,00,000/- levied u/s. 271(1)(c) of the Act Solely on ground that quantum addition has been deleted by the Hon'ble IT AT ignoring the fact that the decision on quantum decision has not been accepted by the Department and appeal u/s. 260A has been filed before the Hon'ble Bombay High Court?"*

3. The brief facts of the case are that the assessee company is engaged in the business of marketing and trading of dermatology products. The assessee has filed its return of income for the AY 2011-12 on 30/09/2011, declaring total income of Rs.6,80,98,658/-. The assessment has been completed u/s 143(3) of the I.T.Act, 1961 on 08/03/2014 and determined total income at Rs. 10,30,96,510/- after making addition of Rs.2,96,41,408/- towards sales promotion expenses being freebies and sponsorship given to doctors and marketing personnel. Thereafter, the Ld. AO has initiated penalty proceedings u/s 271(1)(c) of the I.T.Act, 1961 and after considering relevant submissions of the assessee has levied penalty of Rs.68 Lacs, which is equal to 100% of the tax sought to be evaded for furnishing inaccurate particulars of income. Meantime, the assessee has challenged additions made by the Ld. AO before the appellate authorities and the ITAT, vide its order dated 02/04/2018 in ITA No.80/Mum/2016 & ITA No.138/Mum/2016 for AY 2011-12 has deleted additions made by the Ld. AO towards disallowances of

sales promotion expense, on the ground that circular No.05/2012, dated 01/08/2012, issued by the CBDT is applicable from AY 2013-14 onwards and consequently, no disallowances could be made towards sales promotion expenses being freebies given to doctors for AY 2011-12.

4. The Ld. AR for the assessee, at the time of hearing submitted that penalty levied by the Ld. AO u/s 271(1)(c) of the I.T.Act, 1961, on account of additions towards disallowances of sales promotion expenses being freebies given to doctors cannot survive, because the additions made by the Ld. AO has been finally deleted by the ITAT, vide its order dated 02/04/2018 for AY 2011-12 and vide order dated 31/05/2018 for AY 2012-13.

5. The Ld. DR, on the other hand submitted that although, the Tribunal has deleted additions made by the Ld. AO towards disallowances of sales promotion expenses in quantum appeals proceedings, but, fact remains that the department has not accepted the findings of the Tribunal and further, appeal has been filed before the Hon'ble Jurisdictional High Court and hence, penalty levied on such additions should be decided on the basis of facts brought out by the Ld. AO during assessment proceedings and reasons given for levying penalty u/s 271(1)(c) of the I.T.Act, 1961.

6. We have heard both the parties, perused the material available on record and gone through orders of the authorities below. We find that the ITAT, Mumbai 'G' bench in ITA No.80/Mum/2016 & ITA No.138/Mum/2016, vide order dated 02/04/2018 for AY 2011-12 has deleted additions made by the Ld. AO towards sales promotion

expense, in light of the circular issued by the CBDT, on the basis of MCI regulations. We further noted that ITAT, Mumbai 'G' bench in ITA No.1139/Mum/2016 & 1524/Mum/2016 vide order dated 31/05/2018 for AY 2012-13 has also deleted additions made towards sales promotion expenses being freebies given to doctors on the basis of circular No.05/2012 dated 01/08/2012 issued by the CBDT. Once, addition on which penalty levied u/s 271(1)(c) of the I.T.Act, 1961 has been finally deleted by the appellate authorities, then there is nothing survives to levy penalty u/s 271(1)(c) of the I.T.Act, 1961. The Ld.CIT(A) after considering relevant facts and also, by taken note of facts that the Tribunal has deleted additions made by the Ld. AO, which triggered levy of penalty of u/s 271(1)(c) of the I.T.Act, 1961 has deleted penalty levied on such additions, We, therefore are of the considered view that the Ld.CIT(A) was right in deleting penalty levied by the Ld. AO u/s 271(1)(c) of the I.T.Act, 1961 and hence, we are inclined to uphold the order of the Ld.CIT(A) and dismiss, appeal filed by the revenue for both Assessment Years.

7. In the result, both appeals filed by the revenue for AY 2011-12 and 2012-13 are dismissed.

Order pronounced in the open court on this 06/03/2020

Sd/-
(RAVISH SOOD)
JUDICIAL MEMBER

Sd/-
(G. MANJUNATHA)
ACCOUNTANT MEMBER

Mumbai; Dated: 06/03/2020
Thirumalesh Sr.PS

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.

सत्यापित प्रति //True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai