आयकर अपीलीय अधिकरण, मुंबई

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES "E" MUMBAI

सर्वश्री डी. मन्नमोहन, उपाध्यक्ष /एवं
BEFORE SHRI D. MANMOHAN, VICE PRESIDENT /AND

श्री राजेन्द्र, ले.स.
SHRI RAJENDRA, ACCOUNTANT MEMBER

आयकर अपील सं. / ITA No. 4839/Mum/2011
निर्धारण वर्ष /Assessment Year 1999-2000

M/s. Hindustan Organic Chemicals Limited, Harichandrai House, 81, M.K. Road, Marine Lines Mumbai-400 002. **PAN: AAACH 2663 P**	Vs.	Asst. Commissioner of Income Tax, Cir.4(2) Mumbai.

आयकर अपील सं. / ITA No. 4840/Mum/2011
निर्धारण वर्ष /Assessment Year 2003-04

M/s. Hindustan Organic Chemicals Limited, Harichandrai House, 81, M.K. Road, Marine Lines Mumbai-400 002. **PAN: AAACH 2663 P**	Vs.	Asst. Commissioner of Income Tax, Cir.4(2) Mumbai.

आयकर अपील सं. / ITA No. 4841/Mum/2011
निर्धारण वर्ष /Assessment Year 2004-05

M/s. Hindustan Organic Chemicals Limited, Harichandrai House, 81, M.K. Road, Marine Lines Mumbai-400 002. **PAN: AAACH 2663 P**	Vs.	Asst. Commissioner of Income Tax, Cir.4(2) Mumbai.

(अपीलार्थी /Appellant) (प्रत्यर्थी / Respondent)

Appellant by : Shri K. Gopal
Respondent by : Shri Girija Dayal (CIT DR)

Date of Hearing : 30-11-2012
Date of Pronouncement : 28-12-2012

आदेश / O R D E R

PER RAJENDRA, A.M.

Following Grounds of Appeal have been filed by the assessee against the Orders dt. 26-04-2011 of the CIT(A)-8, Mumbai:

ITA No.4839/M/11 AY-1999-2000

1.The Ld. Commissioner of Income tax (Appeals) [hereinafter referred to as "CIT(A)"] erred in confirming the action of the A.O. in levying penalty of Rs.57,55,260/- under section 271(1)(c) of the Act Without appreciating the fact and circumstances of the case. The Appellant, therefore, submits that the levy of concealment penalty under section 271(1)(c) is not at all justified and the same may be deleted.

2.The Ld. CIT (A) erred in confirming the order of the Ld. A.O. treating the following additions and disallowance as concealment of income of the Appellant:

Sr.No.	*Particulars*	*Amount (Rs.)*
A	*Disallowance of depreciation on decapitalisation of asset*	*44,34,346*
B	*Addition on account of valuation of Eutectic Oil*	*13,00,000*
C	*Disallowances of depreciation on plant not in active use*	*29,08,253*
D	*Additions on account of Prior period expenses*	*78,01,100*

3. The Ld. CIT(A) failed to appreciate that the Appellant has neither concealed any particulars of income nor furnished any inaccurate particulars of income. Therefore, the levy of concealment penalty of Rs.57,55,260/- under section 271(1)(c) is Unjustified and the same may be deleted.

4. The Ld. CIT(A) failed to appreciate, that all information / details with respect to the above claims, were furnished by the Appellant in its accounts, which were filed along with the return of income. Hence, levy of concealment penalty of Rs.57,55,260/- under section 271(1)(c) is unjustified and the same may be deleted.

5. The Ld. CIT(A) further failed to appreciate, that the Appellant has furnished bona-fide explanation with respect to each items of additions / disallowances made, during the course of the assessment as well as penalty proceedings, which has not been found to be false. Hence, levy of concealment penalty of Rs.57,55,260/- under section 271(1) (c) of the Act is not justified and the same may be deleted.

6. The Appellant craves leave to add, alter or amend any of the above grounds of appeal.

ITA No.4840/M/11 AY-2003-04

1. The Ld. Commissioner of Income-tax (Appeals) [hereinafter referred to as "CIT(A)"] erred in confirming the action of the A.O. in levying penalty of Rs.6,07,26,681/- under section 271(1)(c) of the Act without appreciating the fact and circumstances of the case. The Appellant, therefore, submits that the levy of concealment penalty under section 271(1)(c) is not at all justified and the same may be deleted.

2. The Ld. CIT (A) erred in confirming the order of the Ld. A.O. treating the following additions and disallowance as concealment of income of the Appellant:

SN.	*Particulars*	*Amount (Rs.)*
A	*Addition on account of reversal of excess liability*	*4,32,51,564*
B	*Additions on account of Prior period expenses*	*1,10,19,632*
C	*Addition on account of valuation of Eutectic Oil*	*12,70,000*
D	*Disallowances of PF/VPF/Pension paid beyond grace period under section 43B*	*76,17,656*
E	*Addition on account of loans and advances written off*	*6,35,000*
F	*Disallowance of depreciation on research and development equipment*	*8,18,57,646*
G	*Disallowance of depreciation on research and development equipment*	*47,46,477*
H	*Disallowance of direct expenses u/s. 145A*	*87,83,980*

3. The Ld. CIT(A) failed to appreciate that the Appellant has neither concealed any particulars of income nor furnished any inaccurate particulars of income. Therefore, the levy of concealment penalty of Rs.6,07,26,681/-under section 271(1)(c) is unjustified and the same may be deleted.

4. The Ld. CIT(A) failed to appreciate, that all information / details with respect to the above claims, were furnished by the Appellant in its accounts, which were filed along with the return of income. Hence, levy of concealment penalty of Rs.6,07,26,681/-under section 271(1)(c) is unjustified and the same may be deleted.

5. The Ld. CIT(A) further failed to appreciate, that the Appellant has furnished bona-fide explanation with respect to each items of additions / disallowances made, during the course of the assessment as well as penalty proceedings, which has not been found to be false. Hence, levy of concealment penalty of Rs.6,07,26,681/- under section 271(1) (c) of the Act is not justified and the same may be deleted.

The Appellant craves leave to add, alter or amend any of the above grounds of appeal.

<u>ITA No.4841/M/11 AY-2004-05</u>

1. The Ld. Commissioner of Income-tax (Appeals) [hereinafter referred to as "CIT(A)"] erred in confirming the action of the A.O. in levying penalty of Rs.63,23,419/ under section 271 (1) (c) of the Act without appreciating the fact and circumstances of the case. The Appellant, therefore submits that the levy of concealment penalty under section 271(1)(c) is not at all justified and the same maybe deleted.

2. The Ld. CIT (A) erred in confirming the order of the Ld. A.O. treating the following additions and disallowance as concealment of income of the Appellant:

Sr.No.	*Particulars*	*Amount (Rs.)*
A	*Disallowance of depreciation on decapitalisation of asset*	*10,52,291*
B	*Additions on account of Prior period expenses*	*1,10,49,240*
C	*Addition on account of valuation of Eutectic Oil*	*10,87,068*
D	*Disallowances of un paid interest section 43B*	*44,37,656*

3. The Ld. CIT(A) failed to appreciate that the Appellant has neither concealed any particulars of income nor furnished any inaccurate particulars of income. Therefore, the levy of concealment penalty of Rs.63,23,419/-under section 271(l)(c) is unjustified and the same may be deleted.

4. The Ld. CIT(A) failed to appreciate, that all information / details with respect to the above claims, were furnished by the Appellant in its accounts, which were filed along with the return of income.

2. Assessee-company, a public sector undertaking, is engaged in the business of manufacturing of basic chemicals and chemical intermediates. Details of filing of return, returned income, assessed income and penalty imposed by the Assessing Officer (AO) can be summarised as under:

ITA No. & A.Y.	**Date of filing of return**	**Return income**	**Assessed income**	**Penalty imposed by the AO**
4839/M/11 1999-2000	31-12-1999	(-)57.14 Cr.	(-)50.97 Cr.	57.55 Lakhs
4840/M/11 2003-04	25-11-2003	(-)22.60 Cr.	(-)4.58 Cr.	6.07 Cr.
4841/M/11 2004-05	01-11-2004	(-)55.79 Cr.	51 Cr.	63.23 Lakhs

3. During the assessment proceedings, AO made various additions/disallowances to the incomes returned by the assessee for all the three years. Assessee challenged a few additions/disallowances before the First Appellate Authority (FAA) and the Tribunal for the respective AYs. Meanwhile, AO issued Penalty Notices u/s.271(1) (c) r.w.s.274 of the Act to the assessee for imposing penalty for concealment of income/and furnishing inaccurate particulars for the respective years. After considering the submissions of the assessee-company, he levied penalty as per the chart given above. Penalty Orders dt. 30-04-2010, passed by the AO, were challenged before the FAA, who vide his order dt. 26-04-2011 decided all the three appeals against the assessee-company.

4. Before us Authorised Representative submitted that penalty should not have been levied just because additions/disallowances were made/confirmed by the AO/Appellate Authorities, that submissions made by the appellant during the penalty proceedings were not dealt with by the AO/FAA. He relied upon the case of Reliance Petro Products (P)Ltd.(322ITR158) delivered by the Hon'ble Supreme Court. He also relied upon the cases of Aditya Birla Nova Ltd. (2012-TIOL-692), VIP Industries (122TTJ 289) Jankar Shroffin (P) Ltd. (48SOT113). Departmental Representative

(DR) relied upon the order of the FAA.

5. We have heard the rival submissions and perused the material available on record. While going through the orders of the AO imposing penalty of Rs. 7.27 Crores (Rs. 57. 55 lakhs + 6.07Crores + 63.23lakhs) we have noticed that AO has not dealt with the submissions that were made by the assessee in response to the notices issued for imposing penalty. Penalty orders for all the three AYs are identical except for the figures of various additions/disallowances made and amount of penalty imposed. But, he has not dealt with the basic issue as what were the particulars which were concealed or which were inaccurate for the AYs.1999-2000, 2003-04 and 2005-05. In other words, he has imposed penalty without discussing anything about the issues raised by the assessee-company during penalty proceedings.

5.1. Similar is the position of the orders of the FAA passed on 26.04.2011.After narrating the facts of the cases in a summary manner, he has confirmed penalty amounting to Rs. 7.27 Crores *vide paragraphs* 1.1.and 1.2 of his orders. We find that additions / disallowances made by the AO are not identical for all the three years. Issues of valuation of Eutectic Oil and Prior period expenses are common for all the three AYs., whereas issue of depreciation on decapitalised assets finds place in the orders of the AYs.1999-2000 and AY.2004-05 only. We find that appellant-company had made submissions about half a dozen other issues during the appellate proceedings. In our opinion all these issues should have been dealt independently in respective AYs-specially in the AY 2003-04 where penalty of Rs.6.07 Crores has been confirmed by the FAA.

5.2. As per the practice followed by the FAAs, for a common issue appearing in more than one AY, a speaking order is passed for one year and same is followed in other assessment years. But, for independent issue/(s),which is/are not common separate reasoned orders are passed in respective AYs. In the cases under consideration we find that issues were different for different Assessment Years, so two-paragraph-orders confirming the penalty of Rs.7.27 cannot be held speaking and reasoned orders. In our humble opinion it is not the length of an order, but the reasoning mentioned in that order makes it a speaking/non-speaking order. In the cases under consideration orders of the FAA are neither speaking nor reasoned. As per the established principles of taxation- jurisprudence disallowance/additions made by the AO in the assessment order and confirmed by the appellate authorities do not result in automatic levy or penalty for concealing the particulars of income or for furnishing inaccurate particulars. Submissions made by the assessee during penalty proceedings have to be independently adjudicated upon. Issues like un paid interest u/s.43B, reversal of excess liability, disallowances of PF/VPF/Pension paid beyond grace period u/s.43B,loans and advances written off, depreciation on research and development equipment etc. required independent application of mind and adjudication. We have perused the submission made by the assessee in response to notices issued by the AO for imposing penalty u/s.271(1)(c) of the Act and the submission made before the FAA. (Pages 476-486of the Paper book).After considering the same we are of the opinion that FAA, while deciding the appeal filed by the appellant-company, has not dealt the issues before him in a manner envisaged by the provisions of the Act.

5.3. So, in the interest of justice, matters are being restored back to the file of the

FAA for passing a speaking orders for all the three AYs. As held earlier, additions/ disallowances made during the assessment proceedings or their confirmation in appellate proceedings do not result in automatic levy of penalty for concealment. Therefore, FAA should have decided the issue of levying penalty for filing inaccurate particulars/ concealing the particulars of income independently-without solely relying upon the additions confirmed in appellate proceedings. We also find that the FAA has stated that the decisions relied upon by the assessee-company were no help to it, but he has not elaborated as how the cases relied upon by the appellant were distinguish-able or as why same were not applicable to the facts and circumstances of the cases adjudicated by him. In these circumstances we are restoring back all the three matters to the file of the FAA for passing speaking orders after affording a reasonable opportunity of hearing to the appellant-company.

As a result, appeals filed by the appellant for all the three AYs. (ITA No. 4839/ Mum/ 2011; ITA No. 4840/ Mum/ 2011 & ITA No. 4841/Mum/2011) stand Partly Allowed.

परिणामस्वरूप निर्धारिती द्वारा दाखिल की गई तीनों अपीलें आंशिक रूप से मंजूर की जाती हैं.

Order pronounced in the open court on 28th December, 2012
आदेश की घोषणा खुले न्यायालय में दिनांक 28th December, 2012 को की गई ।

Sd/-	Sd/-
(डी. मन्नमोहन / **D. MANMOHAN**)	(राजेन्द्र / **RAJENDRA**)
उपाध्यक्ष /**VICE PRESIDENT**	लेखा सदस्य / **ACCOUNTANT MEMBER**

मुंबई Mumbai,
दिनांक Date: 28th December, 2012

TNMM

<u>आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to</u> :

1. Appellant
2. Respondent
3. The concerned CIT (A)
4. The concerned CIT
5. DR “E” Bench, ITAT, Mumbai
6. Guard File

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार Dy./Asst. Registrar
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai