

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'G' : NEW DELHI)**

**BEFORE SHRI R.P. TOLANI, JUDICIAL MEMBER
and
SHRI K.D. RANJAN, ACCOUNTANT MEMBER**

**ITA No.1295/Del./2010
(ASSESSMENT YEAR : 2005-06)**

M/s. Simplex Pharma Pvt. Ltd.,
B-4/160, Safdarjung Enclave,
New Delhi – 110 027.

vs. DCIT, Circle 8 (1),
New Delhi.

(PAN : AABCS7865B)

(APPELLANT)

(RESPONDENT)

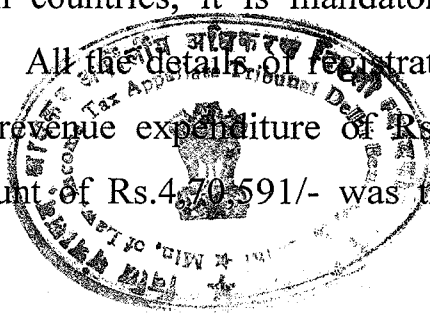
ASSESSEE BY : Shri Ved Jain & Ms. Rano Jain, CAs
REVENUE by : Shri Kishore B., Senior DR

ORDER

PER R.P. TOLANI, JUDICIAL MEMBER :

This appeal filed by the assessee is against the order of CIT (Appeals) for the assessment year 2005-06 challenging the confirmation of penalty under section 271(1)(c) at Rs.1,72,191/-.

2. Learned counsel for the assessee contends that assessee had paid an amount of Rs.5,22,591/- as fees and drug registration charges. The details whereof were placed before A.O. The expenses have been held to be genuine. The assessee contended that the assessee being in pharmaceutical business for doing business in foreign countries, it is mandatory to get registered there for selling any product. All the details of fees and registration were filed before A.O., who held that the revenue expenditure of Rs.52,000/- pertains to this year and balance amount of Rs.4,70,591/- was treated as

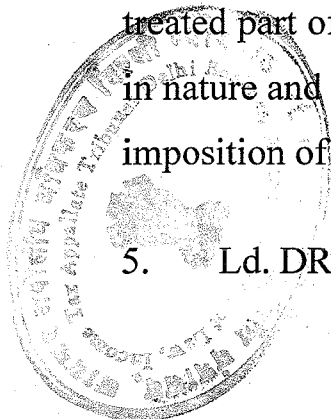


deferred expenditure qua which penalty proceedings u/s 271(1)(c) were initiated. Assessee filed a reply dated 24.3.2009. A.O. however summarily held that the explanation is not found to be satisfactory and imposed a penalty.

3. In first appeal, the same has been confirmed.

4. It is pleaded by learned counsel that fees paid for drug registration charges is clearly revenue expenditure. Same have been found to be genuine, all the details were furnished which were accepted. A.O. however on ad hoc basis held that Rs.52,000/- only is revenue expense pertaining to this year, clearly implying that A.O. treated it as deferred revenue expenditure. The expenses for drug registration charges are revenue in nature without which this cannot be sold in foreign markets and the registration is given for a limited period to keep the credential and details about manufacturers, the expenditure having been incurred for effecting sale cannot be held even to be a deferred revenue expenditure though accepted by assessee to avoid litigation. CIT (A) has confirmed the penalty relying on the Hon'ble Delhi High Court judgment in the case of CIT vs. Escorts Finance Ltd., 226 CTR 105, and other case laws. In such cases, penalty has been confirmed where the expenses have been held to be prima facie not allowable and there existed no bonafides in keeping another view. In assessee's case, the A.O. himself treated part of it as revenue expenditure. The expenses being clearly revenue in nature and in any case being debatable as deferred revenue expenditure, the imposition of penalty u/s 271(1)(c) is unjustified.

5. Ld. DR supported the orders of lower authorities.



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6. We have heard the rival contentions and perused the material on record. The drug registration fee paid by the assessee for sale in foreign market has been held to be genuinely incurred. A.O. held only part of it allowable as revenue expenditure. In our view, penalty should not be levied merely because it is lawful to do so, as held by Hon'ble Supreme Court in the case of Hindustan Steel Limited vs. State of Orissa 83 ITR 26 (SC). Looking at entirety of facts and circumstances, in our view, a clear and bonafide debate existed vis-à-vis assessee incurring expenses on drug registration fees being capital or revenue. With this bonafide debate, it cannot be held that assessee furnished inaccurate particulars or concealed the particulars in respect of these expenses. In our view, the assessee's case by no means calls for imposition of penalty u/s 271(1)(c) which is deleted.

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

Order pronounced in open court on this 25th day of May, 2010 after the conclusion of the hearing.

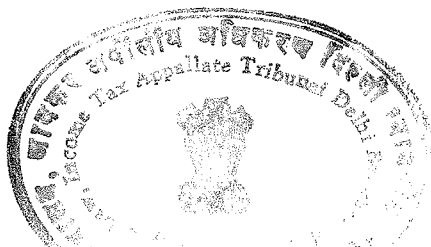

(K.D. RANJAN)
ACCOUNTANT MEMBER



(R.P. TOLANI)
JUDICIAL MEMBER

Dated the 25th day of May, 2010
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Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT(A)-XI, New Delhi.
- 5.CIT(ITAT), New Delhi.




Assistant Registrar
Income Tax Appellate Tribunal
Delhi Branch, New Delhi

