

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'E': NEW DELHI**

**BEFORE  
SHRIS. RIFAUR RAHMAN, ACCOUNTANT MEMBER**

**AND  
SHRI RAJ KUMAR CHAUHAN, JUDICIAL MEMBER**

**ITA No.5040/Del/2025, A.Y. 2020-21**

AXA PARENTERALS LIMITED, C-268, 2 <sup>nd</sup> Floor, Vivekanand College Vivek Vihar, New Delhi-110092 PAN: AAFCA3600E <b>(Appellant)</b>	Vs.	Assessment Unit, Civic Centre, Minto Road, New Delhi  <b>(Respondent)</b>
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Appellant by	Sh. Venktesh Chaurasia, Adv.
Respondent by	Ms. Ankush Kalra, Sr.DR

Date of Hearing	10/12/2025
Date of Pronouncement	28/01/2026

**ORDER**

**PER RAJ KUMAR CHAUHAN (J.M.):**

1. This appeal is directed against the order dated 29.07.2025 passed u/s 250 of the Income Tax Act, 1961 [hereinafter referred to as "*the Act*"] by the Commissioner of Income Tax (Appeals)/ NFAC, New Delhi wherein the addition made on account of penalty due to late supply of goods by

the assessee to the tune of Rs. 32,91,211/- imposed vide Assessment order dated 23.09.2022, was confirmed and the assessment order was upheld.

**2.** The facts in brief as culled out from the order of the authorities below are that during the concerned year, the assessee was engaged in the business of manufacturing of IV Fluid & Other Pharmaceutical products and participate in Government Tenders. The assessee has filed Income Tax Return ('ITR') on 11.02.2021 declaring total income of Rs. 17,36,20,470/- which was processed u/s 143(1)(a) of the Act on 24.11.2021 and a demand of Rs. 3,69,860/- was raised. The case was selected for complete scrutiny assessment under the assessment Scheme, 2019 on the following issues: -

- Large sales promotion expenses vis-is gross receipts
- Huge loss from currency fluctuations

**3.** After close scrutiny of return of income and computation of income, the Assessing Officer ('AO') noticed that the assessee has claimed expenses on account of the penalty on late supply of Rs. 32,91,211/-. Notice u/s 142(1) of the Act was issued asking for the details and the assessee has

filed response and also reply to the show cause notice stating that the said amount was deducted by Government as the supply was got delayed by the Assessee and as per tender agreement clause, the government department has levied penalty towards late supply of goods. The late supply expenses are allowable business expenditure u/s 37 of the Act as having been laid out wholly and exclusively for the purpose of the business of the assessee and not being in the nature of capital expenditure or personal expenses. The AO did not agree to the submissions of the assessee observing that the assessee was habitual in making late payment spread over all the years, therefore, the said activity can be stated as offensive in nature and is therefore, carried out as an offence and the case of the assessee would fall in explanation 1 to Section 37. Hence, those expenses were disallowed and addition was made and penalty proceeding u/s 270 'A' of the Act were initiated.

4. Aggrieved by the assessment order, the assessee filed appeal before the Ld. CIT(A) who without following the procedure provided under section 250(6) of the Act upheld the assessment order and confirmed the addition so made.

5. Accordingly, aggrieved the impugned order, the assessee has filed appeal before us and has raised following ground of appeal:

1. *“On the facts and circumstances of the case, the order passed by the National Faceless Appeal Centre (NFAC) is bad, both in the eye of law and on the facts.*

2. *On the facts and circumstances of the case, the NFAC has erred both on facts and in law in confirming the action of the AO in disallowing an amount of Rs. 32,91,211/- claimed as penalty on account of late supply by the*

3. *On the facts and circumstances of the case, the NFAC has erred both on facts and in law in confirming the abovesaid disallowance invoking the provisions of Explanation to Section 37(1) of the Act.*

4(i) *On the facts and circumstances of the case, the NFAC has erred both on facts and in law in confirming the disallowance rejecting the contention of the assessee that the said penalty is in the nature of damages only.*

(ii). *On the facts and circumstances of the case, the NFAC has erred both on facts and in law in confirming the disallowance rejecting the contention of the assessee that the said penalty has not been paid on account of any offence prohibited under any law and only compensatory in nature.*

5. *The appellant craves leave to add, amend or alter any of the grounds of appeal.”*

6. On careful perusal of the grounds it becomes clear that the only question for consideration before the Tribunal is whether the penalty

amount paid for delayed supply of goods by the assessee to the various government departments would tantamount to an offences and

Explanation 1 to Section 37 of the Act is extracted or not?

7. We have heard Ld. AR for the assessee and Ld. Sr. DR on behalf of the Revenue. The Ld. AR has filed the written submissions as under:

*“The appellant duly explained the nature of damages on late supply and further explained that the nature of damages/penalty on late supply is neither an offence nor prohibited by law therefore damages on late supply cannot be disallowed as per explanation 1 to section 37, being laid out wholly and exclusively for the purpose of the business of the assessee but the AU passed the Assessment Order by ignoring the explanations/justification/clarifications purely indulging in suspicion, surmises, conjecture & misinterpreting the facts of the case and ignoring the evidences brought on record by the appellant. The same is evident from the Assessment Order page 8 para 3.7 which reads as under*

*3.7 From this it is clear that assessee is habitual in making late payment Late payment is spread over all the year. Therefore, this type of activity can be stated as offensive in nature Therefore, it can be stated that, assessee has delayed the payment of government and carried out offence. Therefore, explanation 1 to section 37 is applicable in this case Therefore, the amount of Rs. 32,91.211/deemed to be treated as not incurred for business and disallowed and added to the income.*

*The observation of the AU for making the disallowance that the assessee is habitual in making late payment, late payment is spread all over the year therefore this type of activity can be stated as offensive in nature, is highly arbitrary. First of all the Assessment Unit has failed to appreciate the facts of the case and the true nature of the expenses the penalty is not for late payment but represent the amount deducted by the different government departments for late supply of goods The amount deducted by the various government department is in the nature of short payment made by the government departments is in the nature of short payment made by the government departments i.e. in the nature of discounts. Discounts to customers in the nature of short payment are allowable business expenditure. Further only on the basis that since the late*

*payment is spread all over the year, it cannot be held that the activity is offensive in the nature.*

*The NFAC/CIT(A) also confirmed the disallowances by observing in their very cryptic order u/s 250 of the Act at page 2 second last para observing:*

*"The addition of Rs 32,91,211/- being late payment to Government and hence an offence is confirmed."*

*The Ld. NFAC passed the order by ignoring the fact that there is no delay in Government due late payment, rather it's on account of various reasons as mentioned above deducted the damages from the total invoices raised by the appellant.*

*Breach of contractual obligation is different from infraction of law It may be noted that payment in damages, may be wrongly termed as penalty, is quite different and distinct from imposition of penalty for infraction of law. The former is an ordinary incident of the business and may be allowable as a business loss or expenditure, but the latter arises on a wrongful act and is not allowable [Lakshmi Narayan Gouri Shankar v. CIT, (1975) 100 ITR 143, 151-2 (Pat), CIT v. J.K. Cotton Spng. & Wvg. Mills Co., (1980) 123 ITR 911 (All). Thus penalty by way of damages for supply of foodgrains not conforming to contract quality was held deductible (CIT v. Profulla Kumar Mallick, (1969) 73 ITR 119 (Orl); Govind Choudhary & Sons v. CIT, (1971) 79 ITR 492 (Ori)].*

The reliance is being placed upon the following judicial pronouncements

(1) *Sardar Prit Inder Singh v. CIT, (1986) 160 ITR 493 (Pat) (damages paid for delay supply of certain articles and also for supplying articles of inferior quality-hold deductible*

(2) *CIT v. Indo Asian Switch-gears (P) Ltd., (1996) 222 ITR 772, 794 (Punj) (amount paid to the Punjab State Electricity Board for delay in delivery of goods has been held deductible because the same was not on account of infraction of any law].*

(3) *CIT v. S.A. Builders P. Ltd., (2008) 299 ITR 88, 90, 91 (Pun), following CIT v Murari Lal Ahuja & Sons, (1989) 177 ITR 228 (Punj); CIT v. indo Asian Switch gears (P) Ltd., (1196) 222, ITR (Punj) [compensation for breach of contractual obligations held deductible)*

(4) *Hind Mercantile Corpn. Ltd. v. CIT [1963] 49 ITR 23 (Mad.). Damages for Breach of contract for export of goods before declaration of export policy of the Government are deductible.*

*(5) CIT. v. Sohanlal Kanwar & Sons [1987] 164 ITT 129 (Raj) Compensation payable by the assessee-firm which has entered into export contracts but was unable to execute contracts due to high export duty levied by the Government to deductible.*

*(6) Central Trading Agency v. CIT [1965] 86 ITR 861 (AR) Damages for fulfil the contract in time are deductible.”*

**8.** Ld. Sr. DR on the other hand supported the judgment of the lower authorities. We have considered the rival submission and examined the record. In order to ascertain as to how the AO has proceeded to make the addition, we deem it expedient to extract the relevant portion of the assessment order from para 3.5 onwards as below:

*“3.5 Assessee has claimed expenses of Rs. 32,91,211/- on account of the penalty on late supply. The Penalty was paid by the assessee to government on account of late supply of medicines.*

*3.6 The show cause notice issued assessee filed response on 06-09-2022. On the request of Assessee the VC was granted to assessee, which was conducted on 19-09-2022.*

*3.7 The reply filed by the assessee has been closely scrutinized. In the Video conference conducted Shri Anuj Agarwal CA, Authorized representative of assessee attended and put forward its contention which is also considered and assessee's contention is not acceptable as discussed below:*

*3.5 Assessee's main contention is that penalty paid to government on account of late supply of medicines is neither offence or nor prohibited by law Therefore allowable expenditure. Assessee relied upon different court decisions which was duly considered and not directly relatable to case.*

*3.6 Month wise penalty levied on late supply is as under:*

Month	April	May	JUNE	JULY	August	September	Total
Amount(Rs)	1649	440124	159626	290661	88616	465505	
Month	October	November	December	January	February	March	
Amount(Rs)	322826	489718	72588	292229	80255	587413	3291211

3.7 From this it is clear that assessee is habitual in making late payment. Late payment is spread over all the year. Therefore, this type of activity can be stated as offensive in nature. Therefore, it can be stated that, assessee has delayed the payment of government and carried out offence. Therefore, explanation 1 to section 37 is applicable in this case. Therefore the amount of Rs 32,91,211/- is deemed to be treated as not incurred for business and disallowed and added to the income.

3.8 Penalty proceedings u/s 270A of the Income Tax Act is hereby initiated for under reporting in consequence to mis-reporting of income.

4. Accordingly Assessed Income is computed as under:

Sl No.	Description	Amount (in INR)
1.	Income as per Return of Income filed	17,36,20,470/-
2.	Income as computed u/s 143(1)(a)	17,49,90,680/-
3.	Variation in respect of issue of	32,91,211/-
4.	Asses Total Income/Loss determined as Per the above proposal	17,82,81,891/-

5. Assessed u/s 143(3) r.w.s. 144B of the I.T. Act at Rs. 17,82,81,890/- . Penalty proceeding under section 270A is initiated for underreported its income consequence of misreporting of income. Computation of Income and demand notice u/s 156 of the Act is generated and attached.”

9. The assessee has challenged the assessment order and the observation of the Ld. AO before the Ld. CIT(A) by raising various grounds of appeal. The Ld. CIT(A) without determination of any points has

dismissed the appeal just by reproducing the observation of Ld. AO which is evident from the following extracts of the impugned order from para 2.1 to onwards as below:

*“2.1 Assessee’s main contention is that penalty paid to government on account of late supply of medicines is neither offence or nor prohibited by law therefore allowable expenditure. Assessee relied upon different court decisions which was duly considered and not directly relatable to case.*

*2.2 From month wise details of late payment, it is clear that assessee is habitual in making late payment. Late payment is spread over all the year. Therefore, this type of activity can be stated as offensive in nature. Therefore, it can be stated that assessee has delayed the payment to government and carried out offence. Therefore, explanation 1 to section 37 is applicable in this case. Therefore, the amounts of Rs. 32,91,211/- was deemed to be treated as not incurred for business and disallowed and added to the income.*

*The addition of Rs. 32,91,211/- being late payment to Government and hence an offence is confirmed.*

*3.In the result, the appeal filed by the assessee is dismissed.”*

**10.** We have considered the rival submission and carefully examined the observation of the Ld. AO which were relied and reproduced by the Ld. CIT(A) in the impugned order.

**11.** Both the Ld. AO and Ld. CIT(A), in our opinion has misconstrued the provision of explanation 1 to section 37 of the Act, while making the addition of the amount of Rs. 32,91,211/- claimed as deduction of business expenses incurred by the assessee on the ground that the said

amount was paid by way of penalty due to late supply and is thus becomes a type of activity which can be stated an offence in nature. Both the Ld. Lower authority has not supported these observations by any statutory provision or any legal precedence instead, the ld. Lower authority has misconstrued and misread the explanation 1 to section 37 of the Act. It is evident from explanation 1 that expenditure incurred by the assessee for any purpose which is an offence or which is prohibited by law shall not be deemed to have been incurred for the purpose of business or profession. Admittedly, the expenses were incurred by the assessee as a trader while supplying medicines to the government department as he was required to make payment of penalty due to late supply of the medicines as per the term and condition of the tender document under which supply were made. In other words, the said amount has been paid as a breach of contract for which remedy lies in payment of damages under the contractual obligation. The word offence primarily means a crime or a prohibited activity. The late supply of goods by the assessee is neither a crime nor a prohibited activity. The payment of proceeds is on account of breach of contract only. Hence, both the Ld. Lower authorities under the misconception wrongly proceeded to deny the deduction of business expenditure by the

assessee which were rightly claimed as a deduction. For these reasons, we are of the considered opinion that impugned order is not sustainable and is accordingly set aside. The question framed by us is decided in negative against the Revenue in favour of the assessee.

**12.** The appeal of the assessee is accordingly allowed as above terms.

Order pronounced in open Court on 28<sup>th</sup> January, 2026.

Sd/-

Sd/-

**(S. RIFAUR RAHMAN)**  
**ACCOUNTANT MEMBER**

**(RAJ KUMAR CHAUHAN)**  
**JUDICIAL MEMBER**

Dated: 28/01/2026

*Binita, Sr. PS*

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT/PCIT
4. CIT(Appeals)
5. Sr.DR: ITAT

**ASSISTANT REGISTRAR**  
**ITAT, NEW DELHI**