

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'SMC', NEW DELHI**

Before Sh. N. K. Saini, Accountant Member

ITA No. 69/Del/2016 : Asstt. Year : 2009-10

Rohit Mehndiratta, Prop. Sham Sales Corporation, Shop No. 30-31, Palika Bazar, Panipat	Vs	Income Tax Officer, Ward-2, Panipat
(APPELLANT)		(RESPONDENT)
PAN No. ADFPM9745Q		

Assessee by : Sh. K. C. Aneja, Adv.

Revenue by : Sh. N. J. Singh, Sr. DR

Date of Hearing : 25.04.2016	Date of Pronouncement : 25.04.2016
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ORDER

This is an appeal by the assessee against the order dated 20.10.2015 of Id. CIT(A), Karnal.

2. The only grievance of the assessee in this appeal relates to the sustenance of penalty of Rs.77,782/- levied by the AO u/s 271(1)(c) of the Income Tax Act, 1961 (hereinafter referred to as the Act).

3. Facts of the case in brief are that the assessee filed the return of income on 30.09.2009 declaring an income of Rs.5,54,693/-, which was processed u/s 143(1) of the Act on 11.06.2010. Later on, the case was selected for scrutiny. During the course of assessment proceedings, the

AO noticed that the assessee on the one hand had given loans and advances amounting to Rs.23,99,474/- to different persons but charged interest from only one person and on the other hand, had paid interest amounting to Rs.7,54,898/- to the Bank. The AO was of the view that the assessee had used borrowed funds for giving interest free advances. He made the disallowance of proportionate interest amounting to Rs.2,51,714/- u/s 36(1)(iii) of the Act. The AO made other additions on account of trading result and low house withdrawals amounting to Rs.2,50,000/- and 48,000/- respectively. He also disallowed 1/5th of the telephone and mobile charges and made the addition of Rs.16,258/-. In this manner, taxable income was determined at Rs.11,20,662/-. The AO however considered Rs.2,51,714/- out of the above additions as concealed income and initiated the penalty proceedings u/s 271(1)(c) of the Act. The AO held that the assessee has failed to explain fully and truly its income with supporting evidence during the course of assessment proceedings, hence, it was a fit case for levy of penalty u/s 271(1)(c) of the Act. Accordingly, penalty of Rs.77,782/- was levied.

4. Being aggrieved the assessee carried the matter to the Id. CIT(A) and submitted as under:

“That no appeal was preferred against quantum omission to file appeal against quantum does not by itself means that the assessee has concealed the income or filed inaccurate particulars of Income.

The A.O has taken alleged income of Rs. 2,51,714/- liable to penal actions. This pertains to alleged interest not charged on advances to some persons as specified in the assessment order vide Para 3.2a. These are mostly persons of blood relations and out of total advances of Rs. 20,98,528/- sum of Rs. 57,200/- pertains to investment made as Paras Ram holding shares yielding dividend income and Balance advances are for Rs. 20,41,148/- against this the assessee has interest free deposits of Rs. 32,69,768/- which are more than the amounts of Advances, so in this regard the assessee has not used The Bank Loans & paid interest there on. These deposits too are old and are being brought forwarded from 2006-07 Asstt. which has been set aside by The Hon'ble ITAT Delhi Bench F in ITA No. 4039/Del/2009 relating to 2006-07.

On perusal of comparative chart of assets & liabilities as on 31.03.2005 & 31.03.2006 evidently clarify that the assessee had his own funds out of which advances were made and no Bank Loan used for such purposes. Same advances carried over to the assessment year under reference.

That the A.O has not been able to prove the nexus in between the amount borrowed & directed towards non business/interest bearing funds. The assessee has its own capital also to manage its own affairs so penalty wrongly imposed.

Case Law Supported

***Commission of Income Tax V/s Vijay Solvese Ltd.
2015,274CTR(Raj), 384***

Hon'ble Supreme Court in the Case of Munjal Sales Corporation V CIT & another 2008,298 ITR 298(S.C) have also held

That the Appellate Tribunal ought to have held that the loan given was from assessee's own funds.

Therefore the A.O without bringing the case in the four corners of law have imposed penalty which is against the facts & circumstances of the case wrong & illegal.

In the present case A.O merely on the basis of 2006-07 assessment took the advances and estimated the interest there on for penal actions. Element of concealment is not proved on record and imposed penalty of Rs. 77,782/- which is conclusively is not proved & is bad in law & liable to be cancelled & may please be cancelled,"

5. The ld. CIT(A) did not find merit in the above submissions of the assessee by observing that the assessee had not been able to establish the fact that the interest free advances were given for business purposes and that the assessee did not file appeal against the addition of Rs.2,51,714/- which made it clear that the assessee was agreeable to the addition. He, therefore, confirmed the penalty u/s 271(1)(c) of the Act levied by the AO.

6. Now the assessee is in appeal. The ld. Counsel for the assessee reiterated the submissions made before the authorities below and further submitted that the penalty proceedings and the assessment proceedings are two different and distinct proceeding. It was further submitted that the nexus was not proved by the AO in between the interest bearing funds and the interest free advances and that in the preceding assessment year, similar additions were made which were confirmed by the ld. CIT(A) but on further appeal by the assessee, the ITAT remanded the issue back to the file of the ld. CIT(A) for fresh adjudication in ITA No.

4093/Del/2009 for the assessment year 2006-07 vide order dated 30.04.2013 and in ITA No. 5629/Del/2011 for the assessment year 2008-09 vide order dated 21.01.2016. It was submitted that the penalty levied by the AO and sustained by the ld. CIT(A) was not justified.

7. In his rival submissions the ld. DR supported the order of the AO and further submitted that since the assessee did not challenge the additions made by the AO, therefore, this fact was established that the assessee concealed the income. As such the AO was justified in levying the penalty u/s 271(1)(c) of the Act and the ld. CIT(A) rightly confirmed the same.

8. I have considered the submissions of both the parties and carefully gone through the material available on the record. In the present case, it is noticed that the assessee in his written submission, copy of which is placed at page nos. 10 & 11 of the assessee's paper book, stated to the ld. CIT(A) that the assessee was having old deposits amounting to Rs.32.69 lacs on which no interest was paid, the said deposits were more than the loans and advances, thus, no falsity of the income returned was predicted. It appears that the above said explanation of the assessee had not been considered by the ld. CIT(A) in right prospective. Moreover, the ld. CIT(A) sustained the penalty levied by the AO by observing that similar issue was examined by the AO and the ld. CIT(A) for the immediately preceding year and proportionate interest was disallowed.

However, the ld. CIT(A) had not considered this fact that the order of the ld. CIT(A) for the preceding assessment year was set aside for re-examination by the ITAT. I, therefore, by considering the totality of the fact as discussed hereinabove think it appropriate to set aside this issue back to the file of the ld. CIT(A) to be adjudicated afresh in accordance with law after providing due and reasonable opportunity of being heard to the assessee.

9. In the result, the appeal of the assessee is allowed for statistical purposes.

(Order Pronounced in the Court on 25/04/2016)

Sd/-
(N. K. Saini)
ACCOUNTANT MEMBER

Dated: 25/04/2016

Subodh

Copy forwarded to:

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

ASSISTANT REGISTRAR