

आयकर अपीलीय अधिकरण "सी" न्यायपीठ मुंबई में।

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "C", MUMBAI**

श्री डि. करुनाकर राव, लेखा सदस्य एवं

श्री अमित शुक्ला, न्यायिक सदस्य के समक्ष ।

**BEFORE SHRI D. KARUNAKARA RAO, ACCOUNTANT MEMBER
AND SHRI AMIT SHUKLA, JUDICIAL MEMBER**

ITA No. : 4848/Mum/2012

(Assessment year :2004-05)

Piramyd Retail and Merchandising Pvt Ltd., Peninsula Spent, 2 nd Floor, Mathuradas Mills Compound, Senapati Bapat Marg, Lower Parel, Mumbai -400 013 स्थयी लेखा सं.: PAN: AACCP 3990 K	Vs	Dy. Commissioner of Income Tax -5(2), 5 th Floor, Aayakar Bhavan, Mumbai
अपीलार्थी (Appellant)		प्रत्यर्थी (Respondent)
Appellant by	:	Shri Ronak Doshi
Respondent by	:	Shri S K Mahapatra

सुनवाई की तारीख /Date of Hearing : 20-07-2015

घोषणा की तारीख /Date of Pronouncement : 15-10-2015

आदेश
ORDER

अमित शुक्ला, न्या. स.:

PER AMIT SHUKLA, JM:

The aforesaid appeal has been filed by the assessee against impugned order dated 17.04.2012 passed by CIT(A)-9 Mumbai, in relation to the penalty proceedings u/s 271(1)(c). The assessee is mainly aggrieved by levy of penalty of Rs. 15,92,618/- on account of disallowance of expenses of Rs. 40,55,560/- having been not incurred for the business purpose. The penalty has been levied by the AO on the ground of furnishing of inaccurate particulars of income.

2. Brief Facts of the case are that, the assessee company is engaged in the business of retail trading and Merchandising of

readymade garments under brand name as "Pyramid" at Mumbai Pune and Nagpur. It furnished its return of income for AY 2004-05 on 30.10.2004, declaring loss of Rs. 9,34,86,396/-. The original return of income was processed under section 143(1) of the Act. Thereafter assessee had filed revised return of income on 17.03.2006 enhancing the loss to Rs. 10,54,67,458/-. The Ld. AO completed the assessment under section 143(3) of the Act determining the total loss at Rs. 9,51,29,392/- on 28.12.2006. The AO from the computation of income attached to the return of income noted that the assessee has claimed pre-operative expenses of Rs.1,21,66,682/- which was treated as deferred revenue expenditure for the period of 5 years in the books of account. This expenditure was in respect of assessee's 3rd Store in the City of Nagpur. In response to the show cause notice, the assessee had submitted and stated as under:-

"the company has incurred certain pre-operative expenses of Rs. 1,04,42,427/- and new project development expenditure of Rs. 17,24,255/- in connection with opening of another shopping mall in Nagpur, which has been claimed u/s 37 of the Act. The company has decided to write off such expenses over a period of five years".

3. The Ld. AO held that the assessee has rightly treated the said expenditure as "deferred revenue expenditure" in the books of account and the entire expenses could not have been claimed in this year u/s 37(1) as 'business expenditure'. For coming to this conclusion, he relied upon the decision of Hon'ble Supreme Court in the case of Madras Industrial Investment Corporation, reported in 225 ITR 802 and Bombay High Court decision in the case of Taparia Tools Ltd., reported in 260 ITR 102 which as per the AO has given the legal recognition to the concept of "deferred revenue expenses". From the stage of the CIT(A) such a disallowance of expenditure was reduced to Rs. 40,55,560/- on the ground that to

this extent the expenditure amount was not verifiable from third party bills and could be of non business expenditure. Accordingly, CIT(A) allowed the relief of Rs. 81,11,122/- for pre-operative expenses and balance was disallowed. In the appeal filed by the revenue on such a relief, the Tribunal dismissed the grounds raised by the revenue. Now penalty has been levied on the disallowance confirmed by the CIT(A) at Rs. 40,55,516/- on account of non-business/non-genuineness of expenses. The Ld. CIT(A) in the impugned order without discussing the merits of the case has referred to catena of case law for confirming the penalty.

4. Before us, the Ld. Counsel submitted that the assessee has treated the expenditure incurred for new store in Nagpur as deferred revenue expenditure for the period of five years. 1/5th was claimed in the books of accounts. However, in the return of income the entire expenditure was claimed. Now from the stage of the CIT(A), the disallowance has been confirmed on ad-hoc basis by taking 1/3rd of the expenditure claimed on the ground that some of these expenses have been incurred for non-business purpose, but there is no specific finding as to what are the expenses which can be said to be for non-business purpose. On such an estimate, no penalty can be levied.

5. On the other hand, Ld. DR relied upon the order of the CIT(A) and submitted that in the quantum proceedings after detailed examination, the CIT(A) found that some of the expenses cannot be held to be incurred wholly for the business purpose therefore, some estimate was made but that does not mean the entire expenditure claimed by the assessee is allowable and, therefore, it will not absolve the assessee from penalty.

6. We have heard the rival submissions and perused the relevant material on record. The assessee has claimed an expenditure of Rs. 1,21,66,682/- in connection with opening of

third store at Nagpur. Initially, in the books of accounts 1/5th was deferred to be allowable and balance 4/5th was set apart to be allowed in the consecutive assessment years. However, at the time of filing of return of income, entire expenditure was claimed as business expenditure. The AO has disallowed the claim after holding that that same should be treated as deferred revenue expenditure and in support, he relied upon the decision of Bombay High Court in the case of Taparia Tools Ltd. Now this decision of Taparia Tools of jurisdictional High Court has been reversed by the Hon'ble Supreme Court in the same case, wherein it has been held that *such expenditure can be claimed in the year of incurring of the expenditure*. Thus, so far as the assessee's claim for treating the entire expenditure in this year has a legal sanctity by the Hon'ble Supreme Court. So far as the quantum of disallowance from the stage of the CIT(A), it is seen that the same has been restricted to 1/3rd on the ground that some of the expenditure cannot be held to be for genuine business purpose. However, there is no specific quantification or pointing out any nature of expenses which can be held to be not incurred for the business purpose. Thus, on such an estimate and ad-hoc addition, penalty u/s 271(1)(c) for furnishing of inaccurate particulars cannot be levied. Accordingly, penalty levied by the AO and confirmed by the CIT(A) is deleted.

7. In the result, appeal of the assessee stands allowed.

Order pronounced in the open court on 19th October, 2015.

Sd/-
(डि. करुणाकर राव)
लेखा सदस्य
(D. KARUNAKARA RAO)
ACCOUNTANT MEMBER

Sd/-
(अमित शुक्ला)
न्याईक सदस्य
(AMIT SHUKLA)
JUDICIAL MEMBER

Mumbai, Date: 19th October, 2015

प्रति/Copy to:-

- 1) अपीलार्थी /The Appellant.
 - 2) प्रत्यर्थी /The Respondent.
 - 3) The CIT(A) -9, Mumbai.
 - 4) The CIT -5, Mumbai.
 - 5) विभागीय प्रतिनिधि "सी", आयकर अपीलीय अधिकरण, मुंबई/
The D.R. "C" Bench, Mumbai.
 - 6) गार्ड फाईल \
- Copy to Guard File.

आदेशानुसार/By Order

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उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण, मुंबई
Dy./Asstt. Registrar
I.T.A.T., Mumbai

*चव्हान व.नि.स

*Chavan, Sr.PS