

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

**BEFORE SHRI D.T. GARASIA, JUDICIAL MEMBER AND
SHRI MANOJ KUMAR AGGARWAL, ACCOUNTANT MEMBER**

**ITA No.500/M/2014
Assessment Year: 1999-2000**

M/s. Technoweld, 1-28, Mittal Estate, Andheri Kurla Road, Marol, Andheri (E), Mumbai – 400 059 PAN: AAAFT2273Q	Vs.	The Asst. Commissioner of Income Tax – 20(3), Room No.506, 5 th Floor, Piramal Chambers, Jijeebhai Lane, Nr. Morarji Mills, Parel, Mumbai – 400012
(Appellant)		(Respondent)

Present for:

Assessee by : Shri Sanjiv M. Shah, A.R.
Revenue by : Miss Anupama Singla, D.R.

Date of Hearing : 10.04.2017
Date of Pronouncement : 12.05.2017

ORDER

Per D.T. Garasia, Judicial Member:

The present appeal has been preferred by the assessee against the order dated 08.02.2013 of the Commissioner of Income Tax (Appeals) [hereinafter referred to as the CIT(A)] relevant to assessment year 1999-2000.

2. The short facts of the case are that the assessee firm has filed the return for A.Y. 1999-2000 on 30.12.1999. The case was taken for scrutiny. The assessment was completed and addition of Rs.1,68,06,440/- was made under section 68 of the Income Tax Act. The matter went to the Tribunal and The Tribunal has partly allowed the appeal and confirmed the addition of Rs.1,68,06,440/-. Therefore, the penalty has been levied for the addition of Rs.1,68,06,440/-. During the course of hearing, the L.D. A.R. submitted that the addition confirmed by the Tribunal is challenged before Hon'ble High

Court and Hon'ble High Court has admitted the appeal of the assessee in Income Tax Appeal No.2034 of 2012. He further submitted that the Hon'ble Bombay High Court has admitted the substantial question of law on the addition made by the Tribunal, therefore this addition is certainly debatable. He further submitted that in this circumstances the penalty cannot be levied as held in various judgments of Hon'ble Delhi High Court, Hon'ble Bombay High Court and Hon'ble Karnataka High Court including *Rupam Mercantile vs. DCIT* (2004) 91 ITD 237 and *Smt. Ramila Ratilal Shah vs. ACIT* (1998) 60 TTJ (Ahd) 171, therefore, penalty may be deleted. Ld. A.R. further submitted that simply by admission of addition, if the addition is confirmed by the Hon'ble High Court, assessee must be given liberty to raise the legal objection before the authorities.

3. The Ld. D.R. relied upon the order of the Revenue authorities.

4. We have heard the rival contentions of both the parties. Looking to the facts and circumstances of the case, we find that in this case the addition has been confirmed by the Tribunal and assessee is before Hon'ble High Court and Hon'ble High Court has admitted the question of law by observing as under:

- "a) Whether on the facts and in the circumstances of the case and in law, the Tribunal was justified in holding that the respondent is correct in making the addition Rs.1,68,06,442/- under section 68 in the regular assessment?
- b) Whether on the facts and in the circumstances of the case and in law, the Tribunal was correct in bringing the entire gross proceeds Rs.1,68,06,442/- to tax when it ought to have circumscribed the impugned addition to the extent of the profits earned by the Appellant on the same?"

When the substantial question of law has been admitted by High Court on addition, it becomes apparent that addition is certainly debatable. In such circumstances penalty cannot be levied. Therefore, following the judgment of Hon'ble Jurisdictional High Court of Bombay in the case of *CIT vs. Aditya Birla Power Co. Ltd.* in ITA No.851 of 2014, we delete the penalty.

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

Order pronounced in the open court on 12.05.2017.

Sd/-
(Manoj Kumar Aggarwal)
ACCOUNTANT MEMBER

Sd/-
(D.T. Garasia)
JUDICIAL MEMBER

Mumbai, Dated: 12.05.2017.

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The CIT (A) Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.