

**IN THE INCOME TAX APPELLATE TRIBUNAL "F", BENCH MUMBAI
BEFORE SHRI R.C.SHARMA, AM
&
SHRI SANDEEP GOSAIN, JM**

**ITA No.1434/Mum/2014
(Assessment Year :2006-07)**

Shri Vijay Omkarmal Jain Omkamal, 34, Green Garden Apts., W.T.Patil Marg, Deonar, Mumbai – 88	Vs.	ITO – Ward 22(2)-4, Navi Mumbai - 400703
PAN/GIR No.		
Appellant)	..	Respondent)

Assessee by	Shri Ashok J Patil
Revenue by	Shri B.S.Bist
Date of Hearing	23/03/2017
Date of Pronouncement	31/03/2017

आदेश / O R D E R

PER R.C.SHARMA (A.M):

This is an appeal filed by the assessee against the order of CIT(A)-7, Mumbai dated 28/11/2013 for the A.Y 2006-07 in the matter of penalty imposed u/s.271(1)(c) of the IT Act.

2. Rival contentions have been heard and record perused.

3. Facts in brief are that the assessee filed his Return of Income for the A.Y.2006-07 on 31/07/2006 declaring total income of Rs.1,50,565/-. The assessment was completed u/s.143(3) on 23/12/2008 determining total income at Rs.11,50,565/-. The sole addition to the total income made was on account of deemed dividend of Rs.10,00,000/- u/s.2(22)(e). The company M/s.Sachi Impex Pvt. Ltd., invested an amount of

Rs.10,00,000/- in the name of the assessee who is holding more than 10% of equity shares of the company. The company had an accumulated profit of Rs.4,24,54,290/- as on 31/3/2006. Therefore the AO applied the provisions of Section 2(22)(e) and treated the receipt as deemed dividend. In appeal against the order of the AO, the CIT(A) allowed relief of Rs.5,00,000/- as the said investment was made in the name of Smt. Shailaja Jain, wife of the assessee. In respect of the addition so sustained, the AO levied penalty u/s.271(1)(c) amounting to Rs.1,75,000/- which was reduced by the CIT(A) to Rs.1,66,650/- against which assessee is in further appeal before us.

4. We have considered rival contentions and carefully gone through the orders of the lower authorities below and found from record that addition on account of deemed income u/s.22(22) (e) was made by AO for which this penalty was imposed . We found that M/s. Sachi Impex Pvt. Ltd., has made investment in the name of assessee for acquiring mutual funds. These mutual funds were duly reflecting in the books of the company. Since these were acquired in the individual name of assessee, AO reached to the conclusion that company has given loan to the assessee, therefore, provisions of Section 22(22)(e) is attracted. We found that company has not issued any cheque advancing loan to the assessee, it was only investment made in the mutual funds by the assessee company itself in the name of the assessee holding more than 10,000 equity shares in the company. We also found that assessee did not get any benefit for the said investment. Even name of assessee was used in mutual fund

investment only out of compulsion as company was borrower of SBI and it had no choice whatsoever in not following the wishes of SBI in subscribing to bond in personal name of Directors. It was a case of difference of opinion between the assessee and revenue authorities, hence it was not a fit case for levy of penalty as per the decision in the case of Kotak Mahindra Old Mutual Life Insurance Ltd., v ITO Ward 3(2)(4) (2007) 15 SOT 722 (Mum É' - Trib).

5. In view of these particular facts and circumstances, we do not find any merit in the action of lower authorities levying penalty for such deemed addition.

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

Order pronounced in the open court on this 31/03/2017

Sd/-
(SANDEEP GOSAIN)
JUDICIAL MEMBER

Sd/-
(R.C.SHARMA)
ACCOUNTANT MEMBER

Mumbai; Dated 31/03/2017

Karuna Sr.PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

BY ORDER,

सत्यापित प्रति //True Copy//

(Asstt. Registrar)
ITAT, Mumbai