

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCHES "B", MUMBAI**

**BEFORE SHRI JOGINDER SINGH (JUDICIAL MEMBER)  
AND  
SHRI ASHWANI TANEJA (ACCOUNTANT MEMBER)**

I.T.A. No. 698/Mum/2013  
(Assessment Year: 2010-11)

Makson Industries Pvt Ltd 6A, Sector D, AKVN Industrial Area Madhya Pradesh 462046	Vs	Dy.CIT 8(2), Mumbai
PAN : AADCM3354P		
(Appellant)		(Respondent)

Appellant by	Shri Kapil K Jain
Respondent by	Shri Suman Kumar

Date of hearing : 12-01-2017  
Date of order : 13 -02-2017

**ORDER**

**Per ASHWANI TANEJA, AM:**

This appeal has been filed by the assessee against the order of Commissioner of Income-tax (Appeals)-17 [hereinafter called CIT(A)], Mumbai dated 06-11-2012 passed against the penalty order of the AO u/s 221(1) r.w.s. 140A(3) of the Act dated 18-08-2011 for A.Y. 2010-11 on the following grounds:

1. *“On the facts and in the circumstances of the case the Learned Commissioner of Income Tax (A) was not justified in not holding that the AO did not have jurisdiction to initiate penalty proceedings as all proceedings were abetted as provided u/s 153A*

2. *On the facts and in the circumstances of the case the Learned Commissioner of Income Tax (A) was not justified in not holding that the AO did not have jurisdiction to initiate penalty proceedings as the case of the assessee was centralized with DCIT Central Circle 1(3), Ahemadabad.*
3. *On the facts and in the circumstances of the case the Learned Commissioner of Income Tax (A) was not justified in not holding that the AO was not justified in imposing penalty of Rs. 225334/-.”*

2. The brief background of the case are that there was delay in deposit of self assessment tax by the assessee which was confirmed by Ld. CIT(A). During the course of hearing it was stated by Ld. Counsel of the assessee that detailed submissions were made before the lower authorities wherein reasons were explained in detail causing delay in payment of self assessment tax by the assessee. But without discussing or dealing with the reasons narrated by the assessee penalty was levied by the AO and confirmed by Ld. CIT(A). It was also submitted that assessee deposited the entire amount of tax along with the interest as per law voluntarily. There was no malafide intention on the part of the assessee for making late deposit of tax. Under these circumstances, the AO ought not to have levied the penalty. Per contra, the Ld. DR relied upon the orders of the lower authorities.

2. We have gone through the orders passed by the lower authorities. It is admitted fact on record that the entire tax has been deposited by the assessee voluntarily along with the statutory interest. The assessee explained the reasons causing delay in deposit of tax before the AO as well as before the Ld. CIT(A) as under:-

*“The Appellant company has submitted a letter dated 28/03/2011 giving the detailed reasons for the delay in*

*payment due to heavy rains, part strike truckers strike in last quarter of 2010, due to which heavy port congestion occurs which resulted in delay of shipments and causing delay in recovery of revenue. Due to this there were liquidity crises resulting in non payment of taxes. The Appellant also approached to Development Credit Bank to provide us advance credit facility of Rs. 100 Lacs to face the liquidity crisis and it is only after the bank facility, the appellant could pay the Self Assessment taxes. We are also enclosing sanction letter of that said bank.*

*We therefore, pleaded before your honour that the appellant has prevented due to reasons beyond its control from timely payment of taxes and therefore, the levy of Penalty is very harsh and unjustified on the merits of the case. Further, even on the legal aspects of the issue, of penalty is totally bad in Law, Null and void and liable to be quashed.”*

4. Thus, from the above, it is clear that there were reasons of heavy rains and strike by the truckers which led to delay in shipments and causing delay in recovery of revenue by the assessee. All these factors led to liquidity crisis resulting into delay in payment of taxes. It is also stated by the assessee that assessee had to ultimately approach Development Credit Bank to obtain credit facilities and after obtaining the credit facilities only assessee could make the payment of tax. It is noted that assessee has brought on record various evidences in support of these facts. Copy of application filed to bank for obtaining temporary overdraft was filed before us. Our attention was also drawn upon the copy of email received by the assessee from logistics service provider regarding strike of transporters and GM (Operations) about Telangana agitation resulting in *bandh* and disturbances. Nothing was brought on record by the lower authorities contradicting any of these evidences. It is noted that verification of all these facts by both the authorities was very much feasible but none of the authorities chose to make verification of these

facts. In fact, Ld. CIT(A) confirmed the penalty without making any discussion at all and by simply stating that in his view AO was justified in levying the penalty. Thus, the reasons explained by the assessee remain uncontroverted.

5. In our considered view, approach followed by the AO in levying penalty and by Ld. CIT(A) in confirming the same was highly unfair and unjustified. It is noted that first proviso to section 221 provides that before levying penalty u/s 221, the assessee shall be given a reasonable opportunity of being heard. Further, second proviso provides that where the assessee proves to the satisfaction of the AO that the default was for good and sufficient reasons, no penalty shall be levied under this section. Thus, AO was duty bound to consider the material brought on record by the assessee on objective basis. Before levying the penalty, it was also obligatory on the part of lower authorities to arrive at the conclusion that there were no good and sufficient reasons for the default. Unfortunately, no such exercise has been done by either of the lower authorities, which makes levy of penalty illegal *per se*.

6. Further, in our view, the object of bringing penal provisions on the statute was to bring a deterrent effect. The intention of the legislature is not to mop up additional resources through penal provisions. Therefore, levy of penalty by invoking penal provisions even in those cases, where the default occurred due to reasons beyond the control of the assessee would cause avoidable hardships to the taxpayers without achieving the objective of the legislature. We find that both the authorities were highly unreasonable and misdirected in their approach. Such kind of approach should be avoided as it shakes the confidence of the taxpayer upon the

system and working mechanism of the income-tax department which may, in turn, reduce voluntary compliance by the taxpayers. Therefore, the Revenue officials should be more careful and reasonable while levying penalty in such cases. With these observations, we delete the penalty of Rs.2,25,334/- levied by the AO.

6. As a result, appeal of the assessee is allowed.

*Order was pronounced in the open court at the conclusion of hearing.*

Sd/-	Sd/-
(JOGINDER SINGH)	(ASHWANI TANEJA)
JUDICIAL MEMBER	ACCOUNTANT MEMBER

Mumbai, Dt : 13<sup>th</sup> February, 2017

Copy to :

1. The appellant
2. The respondent
3. The CIT(A)
4. The CIT
5. The Ld. Departmental Representative for the Revenue, B-Bench

(True copy)

By order

ASSTT.REGISTRAR, ITAT, MUMBAI BENCHES