

आयकर अपीलीय अधिकरण, “इ” खंडपीठ मुंबई

INCOME TAX APPELLATE TRIBUNAL, MUMBAI - ‘E’ BENCH

सर्वश्री राजेन्द्र, लेखा सदस्य एवं पवन सिंह, न्यायिक सदस्य

Before S/Sh. Rajendra, Accountant Member & Pawan Singh, Judicial Member

आयकर अपील सं./ITA No.6625/Mum/2014, निर्धारण वर्ष/Assessment Year-2006-07

DCIT-8(3), Room No. 217, Aayakar Bhavan, M.K. Marg, Mumbai-400020.	बनाम Vs.	M/s S.M. Dyechem Ltd., 136, Great Western Building, Nagindas Master Road, Extn. Fort, Mumbai-400001 PAN: AAACS7371K
---	-------------	---

(अपीलार्थी /Appellant)

(प्रत्यर्थी / Respondent)

राजस्व और से / Revenue by : Ms. Beena Santosh (DR)

निर्धारिती की ओर से/ Assessee by : Shri S. A. Kanji (AR)

सुनवाई की तारीख/ Date of Hearing : 12-01-2017

घोषणा की तारीख / Date of Pronouncement : 08.02-2017

आयकर अधिनियम, 1961 की धारा 254(1) के अन्तर्गत आदेश

Order u/s.254(1) of the Income-tax Act, 1961 (Act)

**Per Pawan Singh, J.M. न्यायिक सदस्य पवन सिंह के अनुसार:**

1. This appeal by Revenue under section 253 of the Income Tax Act (‘Act’) is directed against the order of Commissioner of Income-Tax (Appeals)-18, Mumbai dated 27.08.2014 for Assessment Year (AY) 2006-07.
2. The brief facts of the case are that assessee filed return of income for relevant AY on 30.11.2006 declaring total income of Rs. Nil. Further revised return was filed on 23.02.2007 declaring total income of Rs. Nil. The assessment order u/s 143(3) was passed on 11.12.2008 assessing the income at Nil. The Assessing Officer (AO) made the disallowance on account of debit balance written off of Rs. 2,27,88,192/- and unreconciled income of Rs. 51,126/-. On appeal before CIT(A) the disallowance of Rs. 54,67,146/- was sustained. After order of Id. CIT(A), the AO issued notice u/s 274 rws 271(1)(c) dated 11.12.2008. No response was made by assessee. The AO again issued notice dated 06.03.2013. The AO recorded that no response was made by assessee. Thus, the AO levied the penalty @ 100% on the tax sought to be evaded and works out the penalty of Rs. 18,40,241/- in its order dated 21.03.2013. Aggrieved, by the penalty order, the assessee filed appeal before the Id. CIT(A) wherein the entire penalty was deleted. Thus, being aggrieved by the order of Id. CIT(A), the Revenue has filed this appeal before us.

3. We have heard Id. DR for Revenue and Id. AR for the assessee and perused the material available on record. The Ld. DR for the Revenue supported the order of AO and would argue that the penalty was levied by AO only on the disallowance which was confirmed by Id. CIT(A). The assessee despite service of notice has not given any explanation before the AO. The AO levied the minimum penalty on the disallowance sustained by Id. CIT(A). On the other hand, Id. AR of the assessee supported the order of Id. CIT(A) and argued that out of the total write off of debit balance, only a sum of Rs. 54,67,146/- was sustained. It was further argued that it is settled law that in all cases where disallowance is made penalty is not followed automatically.
4. We have considered the rival contention of the parties and further gone through the orders of authorities below. The AO levied the penalty holding that on appeal before Id CIT(A) the disallowance was restricted to Rs. 54,67,146/-. The AO further concluded that on show cause notice for initiation of penalty, no explanation was furnished by assessee. During first appellate proceeding, it was submitted during the assessment proceedings the Bankers of the assessee took the possession of the under SARFESAI Act. The Bankers of assessee recommended the winding up of assessee in BIFR and in those circumstances; the assessee could not attain the assessment as well as appellate proceeding in quantum assessment. After considering the facts of the case, Id. CIT(A) concluded that assessee claimed a bad debt written off of Rs. 2,27,88,192/- which was disallowed by AO and bring back to the taxable income. On appeal, the Id. CIT(A) restricted the amount to Rs. 54,67,146/- on which penalty was levied. After considering the various decision of Hon'ble Apex Court, the Id. CIT (A) comes to the conclusion that the assessee neither concealed any particular of income nor submitted inaccurate particular to meet a claim of bad debt which was written off of in the books of account. Thus, levy of penalty u/s 271(1)(c) of the Act is not sustainable.
5. We have seen that the order of Id CIT(A) is supported with the sound reasoning, based on the settled legal position that mere disallowance of claim in all cases where the additions / disallowance is made penalty shall not automatically follow as held by

Hon'ble Apex Court in CIT vs. Reliance Petroproducts 328 ITR 158. Thus, we do not find any infirmity and illegality in the order passed by Id. CIT(A).

6. In the result, appeal filed by Revenue is dismissed.

फलतः राजस्व द्वारा दाखिल की गई अपील नामंजूर की जाती है.

Order pronounced in the open court on 8<sup>th</sup> February, 2017.

□ देश की घोषणा खुले न्यायालय में दिनांक 8 फरवरी, 2017 को की गई ।

Sd/-

(राजेन्द्र / RAJENDRA

लेखा सदस्य / ACCOUNTANT MEMBER

Sd/-

(पवन सिंह / PAWAN SINGH))

न्यायिक सदस्य / JUDICIAL MEMBER

मुंबई/Mumbai, दिनांक/Date: 08.02.2017

SK

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. Assessee /अपीलार्थी

2. Respondent /प्रत्यर्थी

3. The concerned CIT(A)/संबद्ध अपीलीय □ यकर □ युक्त, 4. The concerned CIT /संबद्ध □ यकर □ युक्त

5. DR "E" Bench, ITAT, Mumbai /विभागीय प्रतिनिधि इ खंडपीठ, □ .अ.न्याया.मुंबई

6. Guard File/गार्ड फाईल

सत्यापित प्रति //True Copy//

□ देशानुसार/ BY ORDER,

उप/सहायक पंजीकार Dy./Asst. Registrar

□ यकर अपीलीय अधिकरण, मुंबई /ITAT, Mumbai