IN THE INCOME TAX APPELLATE TRIBUNAL

DELHI BENCH: 'C' NEW DELHI

BEFORE SHRI R. K. PANDA, ACCOUNTANT MEMBER

AND

SMT SUCHITRA KAMBLE, JUDICIAL MEMBER

I.T.A .No.-4060/Del/2014 (A.Y 2007-08)
I.T.A .No.-4061/Del/2014 (A.Y 2008-09)
I.T.A .No.-4062/Del/2014 (A.Y 2009-10)

Hazorilal & Sons Jewellers P. Ltd. M-44, Greater Kailash-1 (Market) New Delhi AABCH0480R **(APPELLANT)**	vs	DCIT Central Circle-22 New Delhi **(RESPONDENT)**

Appellant by	**Sh. Anil Jain, C.A**
Respondent by	**Sh. A. K. Saroha, CIT DR**

Date of Hearing	**13.02.2017**
Date of Pronouncement	**27.02.2017**

ORDER

PER SUCHITRA KAMBLE, JM

These appeals are filed by the assessee against the orders dated 19/05/2014, passed by CIT(A)-III, New Delhi for the Assessment Year 2007-08, 2008-09 & 2009-10.

2. The grounds of appeal are common in all three appeals as to whether the CIT(A) was right in upholding levy of penalty on the appellant u/s 271(1)(c).

3. The Ld. AR submitted that the assessee has not filed appeal against the quantum and paid the taxes. The Ld. AR further submitted that if the matter was contested it would have been covered by Kabul Chawla's judgment.

4. The brief facts of the case are as under:

Appellant is in the business of trading in Jwellery. On 11/11/2000 a search operation was carried in appellant group. Nothing incriminating was found however a settlement took place between appellants Directors and departmental representative and the search was concluded. Assessment under consideration was made in pursuance to notice u/s 153C. Assessment for the captioned years were completed almost on returned income. There was no addition on account of any concealed income, or claim of any bogus expenditure. But there were small additions of prima facie disallowances as stated below:

PARTICULARS		A.Y 2007-08	A.Y 2008-09	A.Y 2009-10
1.	Loss-Sale of Fixed Assets	1,04,032/-	-	20,502/-
2.	Donation	-	-	10,500/-
3.	Interest on I TAX & TDS	-	2,91,212/-	462/-
4.	Total Addition in Asst.	1,04,032/-	2,91,212/-	31,464/-
5.	Penalty levied	35,018/-	98,983/-	10,694/-
6.	Returned Income	1,32,13,890/-	2,78,39,050/-	3,85,11,530/-
7.	Disallowance % of RI	0.78%	1.04%	0.08%

Disallowable expenditure/loss were disclosed in the P & L a/c as a separate item.

5. The penalty proceedings were taken out by the Assessing Officer and

imposed penalty for furnishing inaccurate particulars. Aggrieved by the said, the assessee filed appeals before the CIT(A). The CIT(A) did not gave adequate opportunity as very short dates were given by him and adjournment sought on account of hospitalization of the counsel was denied. In his Ex parte order he went on to uphold levy of penalty relying on Delhi High Court decision in the case of CIT v ESCORT FINANCE LTD (2010) 328 ITR 44 (DEL) and CIT v ZOOM COMMUNICATION PVT. LTD. (2010) 327 ITR 510 (DEL), on the premise that disallowance of bogus claim will attract penalty as department take very meager cases for scrutiny assessment and if such case would not have taken up for scrutiny assessee would have got away with the disallowable claim and even if caught in scrutiny assessee would get away by paying tax on the same which in any case it would have paid as self assessment tax.

6. The Ld. AR submitted that the expenditures were not concealed under any other head so that AO might have to make effort to dig them out. Nothing wrong was found in disclosure of their particulars nor the head of account under which they were declared, nor there was any dispute with respect to its amount. Consequently there cannot be any charge of furnishing inaccurate particulars of income. Reliance is placed in this regard on the judgment of the Supreme Court in the case of **CIT Vs. RELIANCE PETROPRODUCTS P LTD 322 ITR 158 (SC).** Loss on sale of Fixed assets being capital expenditure should have been disclosed in Tax Audit Report (TAR) in column no. 17(a), (f) of Form No. 3CD. The same was not disclosed therefore no disallowance on this account was considered while preparing computation of income for AY 2007-08 & 2009-10. It was under wrong presumption that no further adjustment on this account is required once the same has been considered in Depreciation chart.

7. The Ld. AR submitted that there is no charge of any false claim by appellant on the above disallowances. However in penalty proceedings AO held that assessee has accepted its mistake but it had not rectified its mistake by

filing revised return consequently the mistake was not bonafide but was done with a view to avoid tax.

8. The Ld. AR submitted that it is a trite law that penalty proceedings and assessment proceedings are different and it is not necessary that whatever is disallowed/added in the assessable income would attract penalty. Reliance is placed for this proposition on the Supreme Court case in **CIT v RELIANCE PETROPRODUCTS P LTD 322 ITR 158 (SC).** The Ld. AR further submitted that the CIT(A) confirmed the penalty levied by AO relying on the premise that had appellant case not taken up for scrutiny it would have got away with the claim of prima facie disallowable claim and since now it is caught it will get away by paying the due tax, therefore claim was deliberately made. The Ld. AR submits that the Delhi High Court decision in Zoom Communication does not apply in the case of appellant. The said decision applies in cases where return is filed u/s 139 and it does not applies to cases where return is filed in response to notice u/s 148 or section 153A, 153C i.e. cases of reassessment and search case. As per scrutiny guidelines for FY 2004-05 issued by Notification no. 10/2004, dated 20.09.2004. Guidelines have been provided for compulsory scrutiny these guidelines always included cases where search, survey or reassessment proceedings have been initiated have to be compulsory selected for scrutiny. Similar guidelines have been issued in 27.09.2010 & 14-09-2011 by Notification no. F.No. 225/93/2009/ITA.II). Therefore while filing its return of income it was known to appellant that its case would be selected for scrutiny and no false claim was made by taking a chance and return was filed with bonafide belief that it was true and correct and no bogus claim is there. The testimony to this fact is that there were no additions to the returned income but for these small inadvertent errors.

9. The Ld. AR further relied upon the Supreme Court decision in case of PRICE WATERHOUSE COOPERS v CIT 348 ITR 306(SC). In this case Return of income was filed declaring income of RS 24.42 crores. It was a case of

internationally acclaimed consultancy company. In the return of income provision made for gratuity was not added back. In the Tax Audit Report, the Auditor has pointed out such disallowance. The same was not disallowed in the return of income. When a company of such a stature can commit an inadvertent error why commitment of inadvertent error in appellant case becomes unbelievable and a malafide error. The Ld. AR further submitted that the Tax Consultant and Tax Auditor of the appellant company was the same person. Whatever omissions have occurred in Preparation of TAX Audit Report has crept into the preparation of computation of income. Mistake occurred due to mis-appreciation of legal provisions by the Tax consultant. There is nothing false about the claim made by appellant except that it was wrongly made. Appellant had taken advice from Tax consultant as it was not conversed with the complex provisions of I. Tax Act.

10. The Ld. AR further submitted that the AO observed that no effort was made to revise return of income is not just and proper, as the assessment was completed within one month of filing return of income. There was no time to think. Assessments of other assessees of the group were going on.

11. The Ld. AR submitted that no penalty can be levied even if quantum is not challenged as per the various decisions of the various Hon'ble High Courts and ITAT. The Ld. AR relied upon following decisions:

CIT Vs Manjunatha Cotton and Ginning Factory 359 ITR 565 (KAR)

Rai Industrial Power Pvt. Ltd. Vs DCIT (ITA 4862/Del/2013)

12. The Ld. AR further submitted that all the additions made in the assessment were routine assessment and has not been made in pursuance of any material found consequently these type of additions cannot be made in assessment made under u/s 153C/153A. The Ld. AR relied the under mentioned decisions:

KABUL CHAWLA V CIT (2016) 380 ITR 573 (DEL)

All Cargo Global Logistics Ltd V DCIT (2012) 18 ITR(TRIB) 106 (Mum)(SB).

JAI STEEL INDIA v ACIT 259 CTR (RAJ) 281.

13. The Ld. AR further submitted that in the present case two very short dates were given by the CIT(A). Appellant forwarded the notice of hearing to its regular counsel on 12/05/2014 who duly attended the hearing requesting for adjournment as their counsel who handles the appeals has undergone a big operation. Unfortunately no adjournment was allowed and case was decided ex-parte holding that none attended. There was no urgency of disposal as no quantum demand was pending against appellant and penalty amount due was also not large. In any case the CIT (A) should have allowed sometime to appellant to find some new counsel. The appellate order is against the principles of natural justice. The action of the CIT (A) was unjustified and deserved to be set aside. The Ld. AR relied upon the decision of the Supreme Court in the case of TIN BOX CO. vs. COMMISSIONER OF INCOME TAX (2001) 249 ITR 216(SC).

14. The Ld. DR. submitted that the quantum addition is for unsustainable claim of deduction. The Ld. DR further submitted that the assessee had no explanation as to how this claim is admissible. As far as quantum additions are concerned, assessee had no case, therefore, no appeal has been preferred against quantum additions. As far as defense regarding attracting 271(l)(c) is concerned, the assessee is contending that the Tax Auditor did not point out the same in the Tax Audit report. The Ld. DR further submitted that the assessee's case is covered under clause (A) of explanation 1 appended to section 271(1). The Ld. DR further submitted this clause is not concerned with question of bona-fide, at all (in fact question of bona-fide is relevant only in

case covered by clause (B) of explanation 1.) The ratio of Hon'ble Delhi HC in the case of CIT Vs Escort Finance Limited [2009] 183 TAXMAN 453 (DELHI) is squarely applicable. The Hon'ble HC has held that if claim made in return of income appears to be ex facie bogus, it would be treated as a case of concealment or furnishing of inaccurate particulars and penalty proceeding would be justified. The Ld. DR further submitted that although the order of the CIT(A) expressly relied upon the ratio of Hon'ble Delhi HC in the case of CIT Vs Escort Finance Limited(supra), however, the AR has not shown as to how this case would escape from applicability of the said ratio.

15. The Ld. DR further submitted that although the order of the CIT(A) expressly relied upon the ratio of Hon'ble Delhi HC in the case of CIT Vs Zoom Communication Pvt. Ltd.(supra), however, the AR has not shown as to how this case would escape from applicability of the said ratio except simply saying that this case being a of search was a case of compulsory scrutiny which does not help because in response to the notices u/s 153A rws 153C, the assessee just filed a letter saying that the earlier filed returns u/s 139 (filed in regular course and not subjected to scrutiny) may be deemed to have been filed in response to the notices u/s 153A rws 153C. In any case the idea underlined by the Hon'bie HC is still hitting the assessee, in the facts and circumstances of the case.

16. The Ld. DR further submitted that the case of Reliance Petro products Pvt. Ltd. [2010] 322 ITR 158 (SC) 2010-TIOL- 21-SC-JT does not help the case of the assessee. The facts of the Reliance Petro products Pvt. Ltd. are not applicable to the facts of the case under consideration. In the matter of the Reliance Petro products Pvt. Ltd., the assessee had made a claim of deduction u/s. 36(l)(iii) of the Act in respect of interest. This deduction had also been claimed by the assessee in the earlier year and the First Appellate Authority(FAA) had allowed the deduction, while the ITAT had restored the issue back to the file of the AO. Deciding the appeal Tribunal held that the

assessee had duly filed an explanation giving the reasons for making a claim, that once the assessee offered an explanation the onus would shift on the Revenue to prove that the explanation offered by the assessee was false, that bona fides of the explanation were clearly proved, that no material or evidence was brought on record or pointed out by the DR proving that the Revenue had discharged its onus for proving the falseness of explanation of the assessee, that the assessee had also duly discharged its onus which was cast on the assessee. However, in the present case, it is not a debatable claim but the claim is ex-facie bogus.

17. The Ld. DR further submitted that the ratio of Price Waterhouse Coopers Vs. CIT. 348 ITR 305 {SC} is not applicable in the present case. In that case the addition under consideration was 'inadvertently' missed to be included in the computation of income and the PWC 's conduct on detection of the 'error' was supportive of bona-fide of PWC.

18. Thus the Ld. DR prayed that in any case none of the cases cited by the assessee, wherein applicability of provisions of clause (A) of explanation 1 appended to Section 271(1) was subject matter. Therefore, these cannot be made applicable and appeals of the assessee be dismissed.

19. We have heard both the parties and perused the records including the judgments relied upon by the Ld. AR and Ld. DR. In AY 2009-10 interest was paid on shortfall in payment of Advance tax, and it was erroneously considered as normal interest expense for use of money, and of different nature vis-a vis taxes paid. Regarding disallowance of donation of Rs 10500/-, the same was rightly claimed and the same stood disallowed on account of non availability of donation receipt at the time of assessment. The claim was not wrongly made. During penalty proceedings explanation of the same was furnished but Assessing Officer held that assessee is trying to shift blame on Tax Auditor. The Assessing Officer further held that it could not be believed that assessee

did not have qualified staff. There is no question of any presumption as entire salary expenditure was examined by him during assessment proceedings. The expenditures were not concealed under any other head. Nothing wrong was found in disclosure of its particulars nor the head of account under which they were declared, nor there was any dispute with respect to their amount. In fact the present case is fully covered by judgment of Reliance Petro Chemicals 322 ITR 158 and Price Water House 348 ITR 306. It is not the case of revenue that the intention of the assessee was not proper. Penalty proceedings and assessment proceedings are different and it is not necessary that whatever is disallowed/added in the assessable income would attract penalty. In-fact all the relevant particulars and documents were filed during the assessment proceedings itself. The assessee in-fact has filed return in each year for more than one crore, merely for a few thousand or lakhs it cannot be stated that penalty will be attracted. The Ld. DR's submission that none of the cases cited by the assessee are related to applicability of provisions of clause (A) of explanation 1 appended to Section 271(1) is not correct. The Delhi High Court decision in Zoom Communication does not apply in the present case of appellant. The said decision applies in cases where return is filed u/s 139 and it does not applies to cases where return is filed in response to notice u/s 148 or section 153A, 153C i.e. cases of reassessment and search case. The present case therefore is covered by the ratio laid down by the Hon'ble Apex Court and High Court in cases of Reliance Petro Chemicals 322 ITR 158 and Price Water House 348 ITR 306. The CIT(A) has totally ignored these judgments.

20. In result, appeals of the assessee are allowed.

Order pronounced in the Open Court on 27th February, 2017.

Sd/-	Sd/-
(R.K. PANDA)	**(SUCHITRA KAMBLE)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Dated: 27/02/2017

*R. Naheed **

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR

ITAT NEW DELHI

		Date	
1.	Draft dictated on	13/02/2017	PS
2.	Draft placed before author	14/02/2017	PS
3.	Draft proposed & placed before the second member	.2017	JM/AM
4.	Draft discussed/approved by Second Member.		JM/AM

5.	Approved Draft comes to the Sr.PS/PS	27.02.2017	PS/PS
6.	Kept for pronouncement on		PS
7.	File sent to the Bench Clerk	27.02.2017	PS
8.	Date on which file goes to the AR		
9.	Date on which file goes to the Head Clerk.		
10.	Date of dispatch of Order.		