

**IN THE INCOME TAX APPELLATE TRIBUNAL
[DELHI BENCHES: "C" NEW DELHI]**

**BEFORE SHRI I. C. SUDHIR, JUDICIAL MEMBER
AND SHRI L. P. SAHU, ACCOUNTANT MEMBER**

**ITA. No. 5874/Del/2014
AND ITA. Nos. 5430 & 5431/Del/2014
Assessment Years : 2007-08, 2008-09 & 2009-10**

Goyal MG Gases Pvt. Ltd.,
A-38, 1st Floor,
Mohan Co-operative Inds. Estate,
Main Mathura Road,
New Delhi-110044.

Vs. DCIT
Central Circle : 15,
New Delhi.

PAN : AABCG 6972 B

(Appellant)

(Respondents)

Assessee by : Shri R. S. Singhvi, C. A.; &
Shri Satyapit Goel, C. A.;

Department by : Shri Amrit Lal, Sr. D.R.;

Date of Hearing : 28.02.2017

Date of Pronouncement: 28.04.2017

ORDER.

PER I. C. SUDHIR, J. M. :

In all these appeals for three assessment years the assessee has impugned the first appellate order upholding the penalty levied under section 271(1)(c) of the Act at Rs.1,26,25,063/- in the assessment year

2007-08, Rs.4,69,732/- in the assessment year 2008-09 and Rs.6,45,082/- in the assessment year 2009-10.

2. At the outset of hearing the ld. AR pointed out that the penalty in question in the assessment year 2007-08 has been made on the additions/disallowance made under section 14A, out of legal and professional charges and out of sales promotion expenses. In the assessment year 2008-09 penalty has been levied on the disallowance/addition made under section 14A out of legal and professional charges and on account of interest accrual. In the assessment year 2009-10 the penalty has been levied on the disallowance made under section 14A and addition made on account of interest accrual. The ld. AR pointed out that the above additions have either been set aside to the file of the Assessing Officer or deleted by the Tribunal in ITA. Nos. 2192, 2193 and 2194/Del/2013 (assessment years 2007-08, 2008-09 and 2009-10) vide order dated 30.06.2016, hence, the penalty in question does not stand. He submitted further that the explanation made regarding short term capital gain was bonafide as the assessee failed to declare it due to inadvertent omission to include the same in the total income and when it came to the notice of the assessee during the course of assessment proceedings, it declared the same. The assessee has also not questioned the short term capital gain added by the Assessing Officer on the basis of declaration made by the assessee in this regard. Since it was a bonafide mistake, the ld. CIT (Appeals) should not have upheld the penalty levied on the addition made on account of short term capital gain in the assessment years 2007-08 and 2008-09. In this regard he placed reliance on the decision of Hon'ble Supreme

Court in the case of Price Water House Coppers Pvt. Ltd. Vs. CIT (2012) 348 ITR 306 (SC).

3. The ld. Sr. DR, on the other hand, tried to justify the orders of the authorities below. He submitted that only on raising of query the assessee had declared short term capital gain for taxation before the Assessing Officer, hence, action of the assessee in this regard cannot be held voluntary or bonafide.

4. Considering the above submission penalty under section 271(1)(c) is not leviable so far as disallowance made under section 14A, out of legal & professional charges and sales promotion expenses in the assessment year 2007-08; disallowance under section 14A and out of legal & professional charges as well as addition on account of interest accrued in the assessment year 2008-09; and disallowance under section 14A as well as addition on account of interest accrual in the assessment year 2009-10 have either been set aside or deleted by the Tribunal in the above-cited decision (supra) in the case of the assessee itself on quantum for the similar assessment years. We thus come to the conclusion that penalty under section 271(1)(c) levied on the above disallowances/additions set aside/deleted by the Tribunal does not stand. It is accordingly ordered to be deleted.

5. Now the question before us is as to whether explanation submitted by the assessee regarding short term capital gain was bonafide or not. The explanation of the assessee in this regard in the assessment years 2007-08 and 2008-09 remained that during the course of assessment

proceedings on the query raised by the assessing officer, the assessee could realize its mistake to include the short term capital gain in its total income and accordingly the assessee did not contest the action of the Assessing Officer and voluntarily came forward to declare the said short term capital gain in their total income for these years. The bonafide of the assessee also reflects from the decision of the assessee not to question addition made on account of short term capital gain, held by the Assessing Officer before the appellate authority. The authorities below have levied penalty on this addition only on the basis that only after cornered by the Assessing Officer the assessee was having no option, but to declare the short term capital gain for taxation. Thus, concealment of particulars of income or furnishing inaccurate particulars thereof was there on the part of the assessee in not declaring the above short term capital gain. We, however, are of the view that being penal in nature the invocation of provisions under section 271(1)(c) of the Act requires a clear finding beyond doubt that there was concealment of particulars of income or furnishing inaccurate particulars thereof on the part of the assessee regarding the addition made by the Assessing Officer. In the present case before us non-furnishing of short term capital gain for taxation in its return of income filed was explained by the assessee as due to inadvertent omission only and the moment it was realized during the course of assessment proceedings on the query raised by the Assessing Officer, the assessee declared the short term capital gain for taxation and no appeal was preferred questioning the same before the appellate authority. In such circumstances, two possibilities are there i.e. it was really a bonafide mistake and secondly, the assessee knowingly omitted it to avoid taxation on short term capital gains. Since both the above aspects are possibilities only. Either of the two cannot be

held a position beyond doubt. The benefit of doubt in such a penal provision will always go to the assessee. We thus find that there was no reason to doubt the explanation submitted by the assessee in absence of adverse positive finding in this regard. We also find strength to support our view from the decision of the Hon'ble Supreme Court in the case of Price Water House Coopers Pvt. Ltd. Vs. CIT (supra) holding that notwithstanding that the assessee was a reputed firm and had great expertise available with it, it was possible that even the assessee could make a "silly" mistake. The appeal of the assessee was allowed by the Hon'ble Supreme Court. Respectfully following the ratio laid down by the Hon'ble Supreme Court, we hold that the authorities below were not justified in making and upholding penalty under section 271(1)(c) of the Act levied on the addition made on account of short term capital gain ignoring the bonafide explanation of the assessee made in this regard. The Assessing Officer is accordingly directed to delete the same in the assessment years 2007-08, 2008-09 and 2009-10.

6. The grounds are thus allowed.

7. In result, all the three appeals are allowed.

8. The order is pronounced in the Open Court on : 28th April, 2017.

Sd/-
(L. P. SAHU)
ACCOUNTANT MEMBER

Sd/-
(I. C. SUDHIR)
JUDICIAL MEMBER

Dated: the 28th April, 2017.

MEHTA

Copy of the Order forwarded to:-

1. Appellant;
2. Respondent;
3. CIT;
4. CIT (Appeals);
5. DR, ITAT, ND.

By Order

ASSISTANT REGISTRAR

	Date
Draft dictated on	28.04.2017
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Date of dispatch of Order.	

