

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

Before Shri B.R. Baskaran, Accountant Member
& Shri Amarjit Singh, Judicial Member

ITA No.6067/Mum/2013
Assessment Year: 2003-2004

Melodious Movies 3-E, Naaz Bldg, Lamington RD, Mumbai Pin:400004	Vs.	ITO 11(1)2 Mumbai
PAN AAAFM6221D (Appellant)		Respondent)

Appellant By : Shri Bhupendra Shah
Respondent By : Shri Suman Kumar (DR)

Date of Hearing :15.06.2017	Date of Pronouncement :13.09.2017
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ORDER

Per Amarjit Singh, Judicial Member

The assessee has filed the present appeal against the order of the CIT(A) -3, Mumbai, dated 28.08.2013, pertaining to A.Y. 2003-04, confirming the penalty levied by the AO u/s. 271(1)(c) of the I.T.Act.

2. The assessee has raised the following grounds of appeal:

"1 In the facts and circumstances of the case and in law, the Ld. AO erred in levying penalty u/s 271(1)(c) on addition of Rs.50,23,942/- by disregarding sundry creditors u/s 41(1).

2. In the facts and the circumstances of the case and also in law, the Ld. CIT(A) also erred in confirming the penalty merely on rejection of confirmation of creditors and due to non attendance of the sundry creditors.

Relief Prayed:

Your appellant respectfully submits that the following prayers be allowed in full.

To delete the penalty u/s 271(1)(c) on addition of Rs.50,23,942/- related to Sundry Creditors.

D General:

The appellant reserve rights to add alter or delete any portion of this appeal before its conclusion.

This appeal is filed in time and may please be allowed in full.

A detailed paper book along with case laws will be submitted at the time of hearing.”

3. We have heard both the parties and considered their submissions alongwith the orders of the authorities below. At the outset, we find that the assessee had filed an appeal before this Tribunal against the addition of `50,23,942/- by disregarding sundry creditors u/s 41(1) of the Act from Shri Gyanchand Jain and the Tribunal vide its order dated 24.05.2017 in ITA No.3736/Mum/2011 for A.Y. 2003-04 (along with other appeals), has deleted the addition observing as under:

"7. We have examined the details and noticed that notice u/s. 143(2) of the Act became time barred on 31.08.2004 at the time when the search took place much later on 03.08.2006. Therefore, it follows that as on the date of search there was an assessment completed or processing of return of income of the assessee under section 143(1) of the Act. Subsequently, the A.O. initiated proceedings under s.153A and in the assessment completed under s.143(3) r.w.s. 153A, the A.O. has brought to tax a sum of `10,00,000/- being the amount of gift received from Shri Gayanchand Jain without any incriminating material found during the course of search. Once this is the position the issue is clearly covered in favour of the assessee and against the Revenue by the decision of Hon'ble Bombay High Court in the case of Continental Warehousing Corporation (Nhava Sheva) Ltd. (supra). Respectfully, following the same and in the given said of facts, we are of the view that this gift received from Shri Gayanchand Jain for an amount of ` 10,00,000/- disclosed in the return of income as evidence by the capital account and which has not been abated, the amount of gift cannot be added. Accordingly, we reverse the orders of the CIT(A) as well as that of the AO and delete the addition in all these eleven appeals of the assessee."

4. Since the Tribunal has already deleted the quantum addition in the case of the assessee, the penalty levied by the AO does not survive. Thus, the penalty levied by the AO and confirmed by the CIT(A) is hereby deleted.

5. In the result, the appeal is allowed.

Order pronounced in the open court on this day of 13th September 2017

Sd/-

(B.R. BASKARAN)

ACCOUNTANT MEMBER

Mumbai, Dated: 13th September, 2017.

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Copy of the Order forwarded to :

1. The Appellant.
2. The Respondent.
3. The CIT(A), Mumbai.
4. The CIT
5. The DR, 'A' Bench, ITAT, Mumbai BY ORDER

Sd/-

(Amarjit Singh)

JUDICIAL MEMBER

//True Copy//

(Assistant Registrar)
Income Tax Appellate Tribunal, Mumbai