

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'D' NEW DELHI**

**BEFORE SHRI G.D. AGRAWAL, HON'BLE PRESIDENT
&
SHRI K.N. CHARY, JUDICIAL MEMBER**

**ITA No.-6274/Del/2015
(Assessment Year: 2007-08)**

ACIT Circle 61(1) Room No. 2005, 20 th Floor, Block E-2, Dr. Shyama Prasad Mukherjee Civic Centre, J.L.N. Marg, New Delhi.	vs	Remfry & Sagar Remfry House, Millenium Plaza, Sector-27, Gurgaon. AAEFR6753P
Assessee by		Sh. K.V.S.R. Krishnan, CA
Revenue by		Sh. Arun Kumar Yadav, Sr. DR

Date of Hearing	19.09.2017
Date of Pronouncement	09.10.2017

ORDER

PER SHRI K.N. CHARY, JUDICIAL MEMBER

This appeal of the Revenue is challenging the order dated 04.09.2015 in appeal no. 12/2012-13 passed by the Ld. Commissioner of Income Tax (Appeals)-20, New Delhi (hereinafter for short called as the "Ld. CIT (A)") on the following grounds:

1. *"In the facts and circumstances of the case, the Ld. CIT (A) has erred in deleting the penalty imposed u/s 271(1)(c) of the Income Tax Act, 1961 of Rs. 7,57,79,930/- by way of furnishing inaccurate particulars of income, without appreciating the fact that the whole*

transaction of first gifting the goodwill associates with Remfry & Sagar to R&S Consultants Pvt. Ltd. and then leasing back to partnership firm Remfry & Sagar for use of goodwill and consequent payment of license fee thereof was a colourable transaction done with an intentin of siphoning of profit of the firm.

2. That the appellant, craves, leave to add, amend or modify the grounds of appeal at any time.

It is prayed that the order of CIT (A) is contrary to the facts on record and the settled position of law; and the order of the AO deserves to be restored.”

2. Briefly stated facts are that during the scrutiny assessment for the AY 2007-08 relating to the assessee AO found that the assessee paid a sum of Rs. 22,51,33,484/- under the license fee to M/s Remfry & Sagar Consultants Pvt. Ltd. for the use of goodwill of “Remfry & Sagar” and to practice in this name. The AO treated this transaction as a colourable transaction for siphoning of profit of the firm only to reduce tax liability of the firm and benefit relatives and made an addition of Rs. 22,51,33,484/-. Simultaneously the AO initiated proceedings u/s 271(1)(c) of the Income Tax Act, 1961 (for short called as the ‘Act’) and concluded them by way of order dated 29.03.2012 levying a penalty of Rs. 7,57,79,930/-. In the appeal Ld. CIT (A) observed that the assessee had declared all facts in the return of income during the assessment as well as penalty proceedings, the Department did

not unearthed anything during the investigation which the assessee had not declared, mere rejecting the claim of the assessee in the assessment proceedings cannot make the particulars inaccurate or concealment of facts and lastly that there is a difference of opinion in the Department about the treatment of the assessee's claim. On these observations, Ld. CIT (A) thought it fit to delete the penalty and thereby allowed the appeal. The Revenue is, therefore, before us in this appeal.

3. At the outset, Ld. AR brought it to our notice that apart from the deletion of addition by the Ld. CIT (A) in the impugned order, in the appeals preferred by the assessee against the quantum addition for the earlier years, a coordinate bench of this Tribunal considered that deduction claimed by the assessee of license fee paid to M/s RSCPL had to be allowed as deduction u/s 37 of the Act, and he submitted that in view of the deleting the addition for the relevant assessment year the penalty cannot be sustained.

4. We have gone through the record and vide paragraph no.8.20 a coordinate bench of this Tribunal recorded the finding that the license fee paid by the assessee to M/s RSCPL had to be allowed

as deduction u/s 37 of the Act and deleted the quantum addition. Since the quantum addition is deleted the penalty does not survive. Hence, we allow the grounds of appeal and delete the penalty.

5. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 09.10.2017

Sd/-
(G.D. AGRAWAL)
PRESIDENT

Sd/-
(K.N. CHARY)
JUDICIAL MEMBER

Dated: 09.10.2017

*Kavita Arora

Copy forwarded to:

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

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ASSISTANT REGISTRAR
ITAT NEW DELHI

