

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "E" NEW DELHI
BEFORE SHRI P. K. BANSAL, VICE PRESIDENT
AND SMT BEENA A. PILLAI, JUDICIAL MEMBER
ITA No. 2076/DEL/2014 : Asstt. Year : 2007-08**

ITO Ward-6(4) New Delhi	Vs.	Mittal Timber Products Pvt. Ltd. A-117, 2 nd Floor, Meera Bagh New Delhi PAN : AACCM2537P
[Appellant]		[Respondent]

Assessee by :	Sh. Navin Gupta, Adv.
Revenue by :	Sh. P.Dam Kanunjana, Sr. DR

Date of Hearing:	14	12	2017
Date of Pronouncement:	14	12	2017

ORDER

PER P.K. BANSAL, VICE PRESIDENT :

This appeal has been filed by the revenue against the order of the CIT(A) dated 31.01.2014 by taking the following affective ground of appeal :-

"1. Whether on the facts and circumstances of the case & law, the Ld. CIT(A) erred in deleting the penalty u/s 271E of Rs. 3,17,06,042/- entirely on the submission of assessee and completely ignoring the reasons given by the Addl. CIT while imposing penalty ?

2. Whether on the facts and circumstances of the case & law, the Ld. CIT(A) erred in admitting additional evidences in the form of Bank Statement and copy of certificate from auditor without providing adequate opportunity to A.O. of rebuttal which is in violation of Rule 46A of the I.T.Rules, 1962 ?”

2. We have heard the rival submission and carefully considered with the same. We noted that the assessing officer during the course of the assessment proceedings found that the assessee has repaid a loan amounting to Rs. 3,17,06,042/- to M/s. Riya Enterprises otherwise than account payee cheque or account payee draft in violation of Section 269T. The assessing officer, therefore, after given the opportunity to the assessed, the assessee submitted details of the repayment by cheque but the assessing officer took the view that these details are not substantiated by any documentary evidence like bank statement. The assessing officer, therefore, levied the penalty u/s 269T amounting to Rs. 3,17,06,042/-.

3. When the matter went before the CIT(A), the CIT(A) deleted the levy of the penalty by observing as under :-

“ 4.3. The reason given by the AO and the submission of the appellant are considered. The appellant submitted the statement of bank account of the appellant in Corporation Bank, Rajdhani Park, Delhi for the relevant period. The Account no. Is 40008. The statement of account indicates that entire amount is paid through the banking channel and account payee cheque and there is no violation of Section 269T of the Act. The submission of the appellant that there were sufficient reason preventing him from production of the statement of bank account before the AO is found to be valid. During the appellate proceeding, the appellant also submitted a letter from auditor firm M/s Mohit Parekh & Co.

stating that “while certifying Annexure R-V Towards repayments of loans or deposits forming part of form 3CD, we have reported that the repayment was made otherwise than by an account payee cheque/DD in the case of lender mentioned at Serial No. 2 (M/s Riya Enterprises) of the said Annexure due to typographical/inadvertent mistake on the part of our audit team which is not correct and the same may please be treated as NO that is the payments were made through account payee cheque only.”

In the facts and circumstances of the case, it is found that there is no violation of provision u/s 269T of the Act and hence penalty levied u/s 271E is deleted.”

4. The Id. DR before us vehemently contended that the assessing officer has violated the Rule 46A and accepted the additional evidence in the form of the bank statement. The assessing officer has not been given any opportunity. The Id. AR on the other hand contended that the assessee has already given the details of the payment made to M/s Riya Enterprises through cheque which fact is apparent from the penalty order last paragraph. The bank statement were only the supporting evidence that the cheques were encashed. They were not the additional evidence but only the supporting evidence. We do agreed with the Id. AR that there is a thin difference in the additional evidence and the supporting evidence. The assessee in this case given the details of the cheque through which money was repaid to M/s Riya Enterprises. The bank statement were nothing but to support the contention of the assessee and about the details of the cheque through which payment has been given. The bank statement, therefore, in our opinion is merely a supporting evidence in respect of the detail of the cheque submitted by the assessee, it cannot be regarded to be the additional evidence. We, therefore,

do not find any illegality or infirmity in the order of the CIT(A) deleting the penalty levied by the assessing officer u/s 271E as there will not be any violation committed by the assessee u/s 269T. Accordingly we dismissed both the grounds of appeal taken by revenue.

5. In the result, appeal filed by the revenue stands dismissed.

(Order Pronounced in the Open Court on 14/12/2017)

Sd/-
(Beena A. Pillai)
JUDICIAL MEMBER

Sd/-
(P.K.Bansal)
VICE PRESIDENT

DATED: 14 .12.2017

Binita

Copy forwarded to:-

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

Assistant Registrar

		Date	<u>Initial</u>	
1.	Draft dictated on	14/12/2017		
2.	Draft placed before author	14/12/2017		
3.	Draft proposed & placed before the second member			
4.	Draft discussed/approved by Second Member.			
5.	Approved Draft comes to the Sr.PS/PS			
6.	Kept for pronouncement on	14/12/2017		
7.	File sent to the Bench Clerk			
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.			

