

**IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH "B", MUMBAI**

**BEFORE SHRI JOGINDER SINGH, JUDICIAL MEMBER AND
SHRI RAJESH KUMAR, ACCOUNTANT MEMBER**

**ITA No.3808/M/2011
Assessment Year: 2009-10**

M/s. Mimansa Jewellery Pvt. Ltd., 138, Shreeji Chambers, 1 st Floor, Tata Road No.2, Opera House, Mumbai- 400 004 PAN: AADCM8568R	Vs.	ACIT 5(2), Aayakar Bhavan, M.K. Marg, Mumbai - 400020
(Appellant) (Respondent)		

Present for:

Assessee by : Dr. Daniel, A.R.
Revenue by : Shri Suman Kumar, D.R.

Date of Hearing : 24.01.2018
Date of Pronouncement : 27.03.2018

ORDER

Per Rajesh Kumar, Accountant Member:

The present appeal has been preferred by the assessee against the order dated 16.03.2011 of the Commissioner of Income Tax (Appeals) [hereinafter referred to as the CIT(A)] relevant to assessment year 2009-10.

2. The various grounds raised by the assessee are as under:

I. OBJECTION AGAINST LEVY OF PENALTY UNDER SECTION 221(1) OF THE INCOME TAX ACT, 1961, AMOUNTING TO RS.7,88,986/-.

1. On the facts and in the circumstances of the case, the Commissioner of Income Tax (Appeals), hereinafter referred as the CIT (Appeals), has erred by not deleting the penalty of Rs. 7,88,986/- levied by the Assessing Officer, on the ground that the Self Assessment Tax for the A.Y.2009-10 was not paid before filing the return of Income.

2. The learned CIT (Appeals) failed to consider the financial crisis faced by the appellant company. Further, the learned CIT (Appeals) failed to appreciate that the appellant company has made payment of total self assessment tax within the time allowed by the Assessing Officer. Also, the learned CIT (Appeals) failed to understand that the penalty order was passed even before the expiry of the time allowed by the Assessing Officer to make payment of Self Assessment Tax.

3. The Appellant Company respectfully submits that the default in paying Self Assessment tax u/s 140A of the Act is due to good and sufficient reason and, therefore, penalty u/s 221(1) be dropped.

II. THE APPELLANT CRAVES, LEAVE TO ADD, ALTER, AMEND OR DELETE ANY OF THE GROUNDS OF APPEAL.

3. The only issue raised by the assessee in the various grounds of appeal is against the confirmation of penalty of Rs.7,88,986/- by the Ld. CIT(A) as levied by the AO on the ground that self assessment tax for A.Y. 2009-10 was not paid before filing of income tax return.

4. The facts in brief are that the assessee filed the return of income for A.Y. 2009-10 declaring an income of Rs.92,12,466/- and the tax payable was Rs.31,55,945/-/-. The case of the assessee was selected for scrutiny and the assessment was framed under section 143(3) of the Act. The AO noticed after perusal of the record that self assessment tax was not paid by the assessee before filing the return of income tax which worked out to Rs.31,55,945/- as per income tax computation form and accordingly a notices were issued under section 221(1) of the Act dated 11.02.10 and 04.03.10 requiring the assessee to explain as to why the penalty should not be levied under section 221(1) of the Act which was replied by the assessee vide letter dated 15.03.10 by submitting that assessee is engaged in the business of trading

in gem studded jewellery which is passing through a very difficult time due to recession world over. As a result the profitability of the business was reduced enormously affecting the overall cash flow of the company. The assessee also submitted that arrangement is being made to pay the entire outstanding demand along with interest for which four post dated cheques were issued in favour of the revenue to be paid in four installments by 29.03.10. The contentions of the assessee did not find favour with the AO and he rejected the submissions of the assessee by observing that no evidences to prove the financial stringencies have been filed and finally imposed penalty equal to 25% of the tax outstanding which worked out to Rs.7,88,986/-.

5. In the appellate proceedings, the Ld. CIT(A) dismissed the appeal of the assessee after considering the detailed submissions which have been incorporated in para 2.7 of the appellate order by observing and holding as under:

“2.8 I have carefully considered the findings of the Assessing Officer and submissions of the appellant. After considering the entire facts, I do not find any merit in the arguments of the appellant. The record does not show that the financial condition of the appellant was so bad that he could not pay tax on the computed income in time. It was required to pay advance tax on the date fixed and ultimately, self assessment tax alongwith return of income. However, it has failed to pay Rs. 31,55,945/-. The situation of financial problem was not brought to the notice of the Assessing Officer before filing the return of income and the appellant had approached the Assessing Officer, after committing the default and given four post dated cheques. The appellant had relied on several case laws which are distinguishable on facts. The appellant has filed general explanation that there was recession, therefore, they were unable to pay the tax in time. The appellant has failed to prove with evidence that they were sincere and particular for making payment of tax in time and they made any sincere effort to pay tax along with the return of income; but failed to do so. So in view of the aforesaid facts and in the absence of any will supported reasonable cause and the fact that the Assessing Officer has levied 25% penalty, I find no further scope to interfere in the penalty order passed by the Assessing Officer dated 22.03.2010.

6. The Ld. A.R. vehemently submitted before us that due to global recession in the gems and jewellery industry the business of the assessee was impacted adversely and as a result financial position of the assessee became very stressed as the assessee was into the business of manufacturing gems and studded jewellery and exporting the same. Due to the overall recession in the international market the liquidity position of the company became from bad to worse and recovery from the debtors of the company was slowed down and the assessee could hardly received any payments from the sundry debtors to pay off the sundry creditors and suppliers for getting raw materials to keep the business going and this was the sole reason for non-payment of self assessment tax. The Ld. A.R. also filed before the Bench the statement of fund flow during October 2009 to March 2010 by showing inflows and outflows during these months which proved that overall balance was negative. Similarly, the cash flow statement was filed in respect of the above period which showed that the bank balance of the assessee was in negative to the tune of Rs.4,98,77,642/-. The Ld. A.R. submitted that the AO imposed the penalty despite the fact that the AO allowed the assessee to pay the outstanding tax in four equal installments for which the post dated cheques were issued in favour of the revenue which were duly cleared as committed by the assessee. The detail whereof were also filed before the Bench. The Ld. A.R. prayed that since the assessee has cleared the installments on the stipulated dated the penalty as

imposed by the AO is without any basis and deserved to be deleted. The Ld. A.R. relied on a series of decisions namely;

1. ITO vs. Devsons (P) Ltd. (2008) 113 ATTJ (Del) 615
2. JCIT vs. Viral Laminates (P) Ltd. (2006) 5 SOT 160 (Ahd.)
3. ACIT vs. Avdesh Kumar Parvinder S. Kochar (2008) 117 TTJ (Del) 137
4. Ramchandra Pesticides Pvt. Ltd. vs. CIT (2006) 285 ITR 45 (Karn.)

7. On the other hand, the Ld. D.R., relied heavily on the order of authorities below and submitted that the assessee could not prove before the authorities below that its financial position was so bad that even the taxes could not be paid before filing the return. The Ld. D.R. submitted that the assessee failed to pay the advance taxes on the specific dates and ultimately showing huge amount of tax outstanding to the tune of Rs.31,55,945/- which remained unpaid even the return of income was filed. The Ld. D.R. contended that the assessee has completely failed to make out any prima-facie case to show their financial stringencies in the business of the assessee and it is only after committing the default by way of non payment on or before filing the return, the assessee issued four post dated cheques in favour of the department and thus, there was no reasonable cause for non imposition of penalty and finally prayed that the order of Ld. CIT(A) be upheld.

8. We have heard the rival submissions and perused the material on record including the decision cited by the Ld. A.R. The undisputed facts are that the assessee is in the business

of manufacturing of gems and jewellery and exports thereof. The self assessment tax of Rs.31,55,945/- was outstanding as per the return of income filed by the assessee for which four post dated cheques were issued by the assessee in favour of the revenue of Rs.8,50,000/- each which were cleared on 12.03.10, 19.03.10, 26.03.10 and 31.03.10 as committed. The case of the assessee was selected for scrutiny and assessment was framed under section 143(3) of the Act. The AO imposed penalty equal to 25% of the tax outstanding on the ground that assessee committed a default in the payment of taxes in terms of the provision of section 140A of the Act which was upheld by the Ld. CIT(A) on the ground that assessee failed to show any reasonable cause in the form of financial difficulties in its business and thus no reasonable cause was proved for deletion of penalty. Contrary to this, we find from the records placed before us that the assessee throughout the period commencing from 01.10.09 to 31.03.10 have negative flow of funds as is apparent from fund flow and cash flow statement as reproduced below:

Statement showing funds flow during the period of October 2009 to March 2010

	Inflow during the month	Outflow during the month	Balance
<i>October</i>	6,272,441	6,683,052	(410,611)
<i>November</i>	16,165,237	61,736,495	(45,571,257)
<i>December</i>	19,850,924	21,927,511	(2,076,587)
<i>January</i>	15,211,976	15,512,193	(300,217)
<i>February</i>	19,981,183	19,269,270	711,913
<i>March</i>	27,947,327	31,030,627	(3,083,300)

Mimansa Jewellery Private Limited
Cash Flow Statement
1-10-2009 to 31-03-2010

<i>Particulars</i>	<i>Amount</i>	<i>Amount</i>
--------------------	---------------	---------------

<i>Bank Balance as on 1-10-2009</i>		852,418
<i>Add: Receipts</i>		
<i>Receipts from Debtors</i>	97,681,210	
<i>Cash Sales</i>	5,736,803	
<i>Refund received from Gems and Jewellery Promo. Council</i>	121,898	103,539,911
		104,392,329
<i>Less: Payments</i>		
<i>Paid to Creditors of Raw Material</i>	143,600,161	
<i>Paid to Creditors of Services</i>	3,078,896	
<i>Payment of Salary to Staff</i>	493,901	
<i>Statutory Dues - Prof. Tax, PF, TDS Paid</i>	201,392	
<i>Self Assessment Tax Paid</i>	3,400,000	
<i>(Paid on 12-03-2010, 19-03-2010, 26-03-2010, 29-03-2010 of Rs. 8,50,000/-)</i>		
<i>Bank Interest and Finance Cost</i>	3,165,739	
<i>Administrative and Selling Expenses</i>	329,882	154,269,971
<i>Bank Balance as on 31-03-2010</i>		(49,877,642)

The AO has granted four installments to the assessee of Rs. 8,50,000/- each which were cleared by the assessee along with interest from its account with Standard Chartered Bank which was paid out of the overdraft facility availed from the bank. Looking to the facts and circumstances of the case in totality, we are of the considered view that the assessee was

passing through severe financial hardships during the above period which is a sufficient and reasonable cause for non payment of tax. The case of the assessee is also supported by a number of decisions as referred to above. In the case of ITO vs. Devsons (P) Ltd. (supra), it is held that penalty imposed before expiry of period granted to the assessee to make the payment of tax was not valid and more so when assessee had shown financial difficulties and has made a reasonable offer for making the payment in installments. In the case of JCIT vs. Viral Laminates (P) Ltd. (supra) the co-ordinate bench of the Tribunal has held that assessee, though having failed to pay self assessment tax, paid the outstanding tax in accordance with schedule of payment agreed before the AO and liquidating the entire liability no penalty under section 221(1) is leviable. In view of these facts and the ratio laid down by the decisions of the co-ordinate benches of the Tribunal, we are of the view that there was sufficient reason for non payment of self assessment tax and the order of CIT(A) affirming the order of AO can not be sustained. Accordingly we reverse the order of the Ld. CIT(A) and direct the AO to delete the penalty.

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

Order pronounced in the open court on 27.03.2018.

Sd/-
(Joginder Singh)
JUDICIAL MEMBER

Sd/-
(Rajesh Kumar)
ACCOUNTANT MEMBER

Mumbai, Dated: 27.03.2018.

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The CIT (A) Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.