

आयकर अपीलीय अधिकरण ,इन्दौर न्यायपीठ ,इन्दौर
IN THE INCOME TAX APPELLATE TRIBUNAL,
INDORE BENCH, INDORE

श्री कुल भारत, न्यायिक सदस्य

तथा

श्री मनीष बोरड, लेखा सदस्य के समक्ष

BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER
AND
SHRI MANISH BORAD, ACCOUNTANT MEMBER

आ.अ.सं./I.T.A. No. 364/Ind/2017			
निर्धारणवर्ष/ Assessment Year : 2010-11			
M/s.Proton Trust, 4 th Floor Plaza, Station Road, Indore.	Education Yeshwant	vs.	ITO-Exemption, Indore.
अपीलार्थी /Appellant		प्रत्यर्थी /Respondent	
स्था.ले.सं./PAN: AAB TP4679D			

अपीलार्थी की ओर से/Appellant by	:	Shri S.S.Deshpande, C. A.
प्रत्यर्थी की ओर से/Respondent by	:	Shri K. G. Goyal, Sr. DR

सुनवाई की तारीख/Date of hearing	:	18.05.2018.
उद्घोषणा की तारीख/Date of pronouncement	:	25 .05.2018

आदेश / O R D E R

PER KUL BHARAT, J.M. :

This appeal has been filed by the assessee against the imposition of penalty of Rs. 14,09,770/-u/s 271(1)(c) of the Income-tax Act, 1961, imposed by the Assessing Officer and confirmed by the Ld. CIT(A)-II, Indore, vide his order dated 01.02.2017.

2. The Ld. Counsel for the assessee contended that the quantum addition of Rs. 13,20,000/- made by the AO is deleted by the I.T.A.T., Indore Bench vide its order passed in I.T.A.No. 83/Ind/2015 dated 30.05.2017. Since the quantum addition is deleted, penalty will not survive.

3. The Ld. Departmental Representative agreed to the submission of the Ld. Counsel for the assessee.

4. We have considered the facts, rival submissions and perused the material available on record. We have also perused the order of the Tribunal passed in I.T.A.No. 83/Ind/2015 dated 30.05.2017, where the Tribunal has held as under :-

"16. We have considered the facts, rival submissions and perused the material available on record and precedents relied upon. It is seen that AO disallowed the rent of Rs. 13,20,000/- paid in respect premises taken on rent from M/s P.T. Education P. Ltd. on the ground that it was more by Rs. 1,10,000/- per month as compared to the premises taken on rent by the assessee at Ahmedabad from M/s Anokhi Reality (3rd Party). The CIT(A) has also upheld the same by observing that the claim made regarding difference in area of 20000 sq. ft. vs. 6100 sq. ft. in respect of Indore premises and Ahmedabad premises, the copy of agreements were not filed by the assessee. However, we find that the assessee has duly filed the copy of agreement entered into with M/s P.T. Education P. Ltd. and M/s Anokhi Reality as per the submissions made by the assessee vide letter dated 28.10.2010 (copy of agreement is placed at page no. 19-38 of paper book). This is also discernible from para1 of assessment order that

rent agreements with Anokhi Reality P. Ltd. were also filed before the AO, however, it appears that the Ld. CIT(A) has lost sight of, to look into these evidences filed before him. It is seen from the copy of agreement that the assessee has taken space of 20000 sq. ft. at Indore at monthly rent of Rs. 4,30,000/- from P.T. Education P. Ltd. with deposit of Rs. 20 lacs. Similarly, the assessee has taken another space at Ahmedabad being area of 6100 sq. ft. at monthly rent of Rs. 3,20,000/- per month with deposit of Rs. 7 lacs. from Anokhi Reality. Thus, the rent of Indore property comes to Rs. 2.15 per sq. ft. (4,30,000/20,000) whereas rent for Ahmedabad property comes to Rs. 52.45 per sq. ft. (3,20,000/6100). Hence, the property taken by the assessee on rent from sister concern M/s P.T. Education P. Ltd. at much lesser rent in comparison to property at Ahmedabad. Therefore, we are of the view that there is no excess payment to sister concern on account of rent as held by the lower authorities. Therefore, the addition of Rs. 13,20,000/- made on this account is deleted. Accordingly, ground no. 2 is allowed.

5. Since the quantum addition has been deleted by the I.T.A.T. Indore Bench vide its order passed in I.T.A.No. 83/Ind/2015 dated 30.05.2017, the penalty will not

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survive. The penalty amounting to Rs. 14,09,770/- u/s 271(1)(c) imposed by the AO and confirmed by the Ld. CIT(A), is deleted.

6. In the result, the appeal filed by the assessee is allowed.

The order pronounced in the open court on 25.05.2018.

Sd/-
(मनीष बोरड)
लेखा सदस्य
(MANISH BORAD)
ACCOUNTANT MEMBER

Sd/-
(कुल भारत)
न्यायिक सदस्य
(KUL BHARAT)
JUDICIAL MEMBER

Indore; दिनांक Dated : 25/05/2018

CPU*/SPS

Copy to: Assessee/AO/Pr. CIT/ CIT (A)/ITAT (DR)/Guard file.

By order

-: 6 :-

Private Secretary/DDO, Indore