

IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE

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

ITA No. 535/Ind/2017
A.Y. 2010-11

M/s. Anupam Texfab Pvt. Ltd., Burhanpur
PAN – AAICA 7806 P :: Appellant

Vs

ACIT-Khandwa :: Respondent

ITA No. 536/Ind/2017
A.Y. 2010-11

M/s. JDM Builders & Developers Pvt. Ltd., Burhanpur
PAN – AAMCS 9359 P :: Appellant

Vs

ACIT-Khandwa :: Respondent

Assessee by	Shri Pankaj Shah, CA
Department by	Shri P.K. Mitra, Sr. DR
Date of hearing	09.10.2018
Date of pronouncement	23.10.2018

O R D E R

Per Shri Kul Bharat, JM

Both these above appeals are filed by the above assesseees against the orders of Id. CIT(A)-II, Indore dated 27.4.2017 challenging the confirmation of penalty at Rs.60,000/- & Rs.80,000/-, respectively, imposed by the Assessing Officer u/s 271(1)(c) of the I.T. Act.

ITA No.535/Ind/2017 in case of Anupam Textfab P. Ltd.

2. Facts, in brief, are that the assessee is a private limited co. and has income from interest during the year under consideration. During survey action, the assessee surrendered Rs.40 lacs on account of unexplained share application money and the same was considered as other income in the P & L account and on this declared income, certain expenses of Rs.1,55,324/- were claimed as deductions which were set off from the income declared. However, the Assessing Officer disallowed the same and imposed the penalty at Rs.60,000/- on account of furnishing inaccurate particulars of income and Id. CIT(A) also confirmed the penalty on the ground that the set off was not intention of the Legislature.

3. Before us, learned Counsel for the assessee submitted that the year under consideration is prior to insertion to section 115BBE in the I.T. Act and based on certain judicial pronouncements, the said allowance of expenses from declared income was permissible. He relied on the following judicial pronouncements in favour of his plea:

- i. DCIT vs. Radhey Developers India Ltd.; 329 ITR 1 (Guj)
- ii. Satish Kumar Goyal; ITA No.143/Against/2014.

Thus, he submitted that no penalty can be sustained when the claim is supported by judicial pronouncements and also when debatable claim/divergent views exist between different judicial authorities on an issue.

4. On the other hand, Id. Sr. DR supported the orders of the Revenue Authorities.

5. We have heard both the parties and perused the orders of lower authorities. We find that in the impugned order, the Id. CIT(A) has himself noted that section 115BBE was not in existence at that point of time. In the case of Satish Kumar Goyal (supra), the ITAT, Agra Bench has allowed business loss set off against deemed income u/s 68 holding amended Section 115BBE as prospective. However, divergent views of various judicial authorities exist on this issue. Thus, the issue has become debatable and therefore, in principle, the Id. CIT(A) should have deleted the penalty. Accordingly, we direct the Assessing Officer to delete the penalty.

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

ITA No.536/Ind/2017 in case of JDM Builders & Developers P. Ltd.

7. Both the parties submitted that the facts and circumstances are identical to that of Anupam Texfab P. Ltd. and the decision taken in the case of Anupam Texfab P. Ltd. will prevail in the case of present assessee too. Thus, following the above order in the case of Anupam Texfab P. Ltd., we direct the Assessing Officer to delete the penalty of Rs.80,000/- in the present appeal too. Accordingly, this appeal of the assessee is also allowed.

8. Finally, both the appeals filed by the respective assesseees are allowed.

Order was pronounced in the open court on 23.10.2018.

Sd/-
(MANISH BORAD)
ACCOUNTANT MEMBER

Sd/-
(KUL BHARAT)
JUDICIAL MEMBER

Dated : 23.10.2018

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Appellant/Respondent/CIT(A)/Pr.CIT/DR, Indore