

आयकर अपीलीय अधिकरण, इन्दौर न्यायपीठ, इन्दौर

**IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE**

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

**ITA No.602/Ind/2017
Assessment Year: 2012-13**

Swastika Commodities Pvt. Limited 48, Jaora Compound, M.Y.H. Road, Indore-452001	बनाम/ Vs.	ACIT, Circle-5(1), Indore
(Appellant)		(Revenue)
P.A. AACCS3050K		
Appellant by	None	
Respondent by	Shri Yogeesh Mishra Sr. DR	
Date of Hearing:	17.10.2018	
Date of Pronouncement:	23.10.2018	

आदेश / O R D E R

PER MANISH BORAD, A.M:

This appeal of Assessee pertaining to A.Y. 2012-13 is directed against the order of Ld. Commissioner of Income Tax(Appeals)-II, Indore, (in short 'CIT(A)'), dated 01.05.2018 which is arising out of the order u/s 143(3) of the Income

Tax Act 1961(hereinafter called as the 'Act') framed on 24.03.2015 by ACIT-5(1), Indore.

2. Non appears at the assessee's behest. Case heard with the assistance of Ld. Departmental Representative (DR).

3. The assessee has raised following grounds of appeal:

"As regards addition on account of penalty imposed by NCDEX and MCX of Rs.23,000/-

This ground of appeal is with regard to disallowance of penalty imposed by NCDEX and MCX of Rs.23,000/-. As penalty imposed by NCDEX and MCX is for the violation its bylaws and regulation cannot be termed as violation of statutory laws, disallowance of same by the Assessing Officer was unjustified in law so same should be deleted and allowed as deduction u/s 37 of the Income Tax Act, 1961.

Further, the assessee has not furnished any inaccurate particulars of the total income and has not suppressed its taxable income and hence the penalty proceeding u/s 271(1)(c) of the I.T. Act, 1961 must not be initiated."

4. Brief facts of the case as culled out from the records are that the assessee is a Private Limited Company engaged in the business of commodities, broking and trading. The Income of Rs. 26,88,080/- declared in the e-return filing on 29.09.2012. The case was selected for scrutiny through CASS. Notices u/s 143(2) and 142(1) of the Act served upon the assessee. Assessment was completed after making addition at Rs.23,000/- on account of penalty

imposed by NCDEX & MCX and disallowance of various expenses at Rs.1,15,700/-. Income assessed at Rs.28,26,780/-.

5. Aggrieved the assessee preferred an appeal before the Ld. CIT(A) and partly succeeded.

6. Now the assessee is in appeal before the Tribunal raising sole grievance against finding of Ld. CIT(A) confirming the addition for disallowance of penalty imposed at Rs. 23,000/- by NCDEX & MCX.

7. The Ld. DR supported the order of the lower authorities.

8. We have heard the rival contentions and perused the material available on record placed before us. The assessee during the course of business of commodities broking and trading paid penalty of Rs.23,000/- levied by the NCDEX & MCX. Both the lower authorities were of the view that alleged expenditure being penalty in nature is not allowable as business expenditure u/s 37 of the Act.

9. We find that Hon'ble Apex Court in the case of CIT vs. AHMEDEABAD COTTON MFG.CO. LTD. [1994] 205 ITR 163 (SC) held that "*what needs to be done by an assessing authority under the I.T. Act, 1961, in examining the claim of an assessee that the payment made by such assessee was a deductible expenditure under Section 37 of the I.T. Act*

although called penalty is, to see whether the law or scheme under which the amount was paid required such payment to be made, as penalty or as something akin to penalty, that is imposed by way of punishment for breach or infraction of the law or the statutory scheme. If the amount so paid is found to be not a penalty or something akin to penalty due to the fact that the amount paid by the assessee was in exercise of the option conferred upon him under the very law or scheme concerned, the assessing authority has to regard such payment as business expenditure of the assessee, allowable under [Section 37](#) of the I.T. Act, as an incident of business laid out and expended wholly and exclusively for the purposes of the business.”

10. We also find that the Hon'ble Bombay High Court in the case of M/s. The Stock and Bond Trading Company, in ITANo.4117 of 2010) while adjudicating similar issue held that, “As regards the second question is concerned, the finding of fact recorded by the CIT(A) and upheld by the ITAT is that payment made by the assessee to the Stock Exchange for violation of their regulation are not an account of an offence which is prohibited by law. Hence, the invocation of explanation to section 37 of the Income Tax Act, 1961 is not justified.”

11. In the light of the above judgments and examining the facts of the instant appeal, we find that the impugned penalty has been paid to NCDEX & MCX which are recognized commodity exchanges and various type of charges in the name of penalty are levied on the members so as to smoothly conduct the business on commodity exchanges and also to make sure that the assessee adheres to the rules and regulations formed for carrying on the transactions on the exchange. Respectfully, following the above judgments, we are of the considered view that the alleged amount cannot be categorized as a penalty levied for committing any offence which is prohibited by law, and therefore, the same should be allowed as business expenditure u/s 37 of the I.T. Act. Thus, ground raised by the assessee is allowed.

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

Order was pronounced in the open court on 23.10.2018.

Sd/-
(KUL BHARAT)
JUDICIAL MEMBER

Sd/-
(MANISH BORAD)
ACCOUNTANT MEMBER

Indore; दिनांक Dated : 23 / 10/2018

Patel, P.S./नि.स.

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

By order
Assistant Registrar