

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'SMC' NEW DELHI**

BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER

**ITA No. 4699/Del/2018
Assessment Year: 2007-08**

M/s Quartz Commercial Pvt. Ltd., Flat No. 10, C-1/2, Model Town, Delhi. PAN No. AAACQ0081E	vs	ITO Ward 20(3) New Delhi.
APPELLANT		RESPONDENT

Assessee by	Shri Praveen Kumar, Manager
Revenue by	Shri S.L. Anuragi, Sr. DR

Date of Hearing	04.12.2018
Date of Pronouncement	11.12.2018

ORDER

This appeal by assessee has been directed against the order of Ld. CIT(Appeals)-7, New Delhi dated 18.05.2018 for AY 2007-08, challenging the levy of penalty u/s 271(1)(c) of the Income Tax Act, 1961.

2. Briefly the facts of the case are that assessment in this case was originally completed u/s 143(3) of the Act on 30.12.2009. In this order, the assessee company was held as an entry operator a sum of Rs. 7,87,000/- being 0.5% of the total entries operated during the year at Rs. 15.70 crores was assessed as its income. The order was confirmed by the CIT(A). The assessee preferred appeal before the ITAT which vide order dated 01.03.2013 remitted the matter to the file of AO with a direction that books of accounts

be examined and give a finding thereon. The AO issued various notices but assessee was reluctant to attend initially but joined the assessment proceedings at the fag end of the proceedings. The books of accounts were produced and examined. The assessee did not have any operational income and the expenses debited as ROC fee and Audit fee and claimed these as a loss in the return. A perusal of the bank account maintained with Karnataka Bank Ltd. revealed that after 01.04.2006 there was entry of receipts of Share Application Money on 21.03.2007 which was immediately transferred to another Company as Share Application Money. Other entries of Rs. 12 crores are receipt from three companies namely: M/s Platinum Agencies Pvt. Ltd., M/s Redium Consultancy Services Pvt. Ltd. and M/s Laurels Properties Pvt. Ltd. On the same date there were transfers to three companies as Share Application Money i.e. M/s Redium Consultancy Services Pvt. Ltd., M/s Platinim Agencies Pvt. Ltd., M/s Laurels Properties Pvt. Ltd. In fact there is increase in share capital of Rs. 39,25,000/- besides share premium of Rs. 15,30,75,000/-. All were considered as the sham transactions as discussed in the original assessment order as the assessee is engaged in providing accommodation entries to various companies of its group companies or clients. The AO noted that the commission charged is between 0.5% to 2% to be most conservative only 0.5% of the total entries operated by the assessee during the year was treated as income of assessee during the year which worked out to Rs. 7,85,000/-. From the perusal of the books of accounts, AO noted

that there is a sale of share of Rs. 4 lakhs which also is a sham transaction and 0.5% of the same worked out to Rs. 2,000/-. The AO, accordingly, made addition of Rs. 7,87,000/-. The penalty proceedings u/s 271(1)(c) of the Act were accordingly initiated. The AO in the penalty order noted that the Ld. CIT(A) as well as ITAT have dismissed the appeal of assessee. The AO, therefore, noted that assessee has furnished inaccurate particulars of income and, as such, liable for penalty u/s 271(1)(c) of the Act on this addition. The AO, accordingly, levied the penalty u/s 271(1)(c) of the Act. The assessee preferred appeal before the Ld. CIT(A). The assessee filed written submission before Ld.CIT(A) and in which it was submitted that addition is made on mere estimation, therefore, penalty is not leviable. The Ld. CIT(A), however, confirm the levy of penalty and dismiss the appeal of assessee.

3. I have heard the Manager of the Assessee Company and Ld. Sr. DR. It is argued on behalf of the assessee that addition is made purely on estimate, therefore, it is not a case of furnishing inaccurate particulars of income. The assessee relied upon the following decisions:

1. Order of ITAT Delhi 'F' Bench in the case of Pragati Foods Pvt. Ltd. vs. ITO (ITA No. 914/Del/2010 dated 06.05.2010);
2. Judgment of Delhi High Court in the case of CIT vs. Aero Traders Pvt. Ltd. (ITA No. 1097/Del/2009 dated 25.01.2010)

3. Order of ITAT Delhi 'F' Bench in the case of Prashant Aggarwal vs. ACIT and others dated 14.11.2017.

4. On the other hand, Ld. DR relied upon orders of the authorities below.

5. I have considered the rival submissions and perused the material available on record. The AO noted after examination of the books of accounts that there are entries of receipt of share application money which was immediately transferred to another company as share application money. The AO, therefore, formed an opinion that entries have been transferred subject to charging commission. The AO estimated the commission income and made the addition of Rs. 7,87,000/-. The AO noted that commission is charged in such circumstances between 0.5% to 2% and only on conservative side, AO applied 0.5% for assessing the commission income. Thus, the AO in the assessment order as well as in the penalty order could not make out a case as to how inaccurate particulars have been furnished by the assessee. The addition seems to have been made purely on estimate basis. No facts have been given in the orders of the authorities below as to how the estimates have been made. The AO merely presumed that on receiving share application money entry and transferring such entry, assessee would have received the commission income for rotating those entries. The quantum and penalty proceedings are independent to each other. The AO has not been able to make out a case as to how assessee furnished inaccurate particulars while

estimating the commission income on presumptions. The decisions relied upon by Ld. Counsel for assessee clearly apply to the fact that on estimate basis in such circumstances penalty need not to be levied.

6. I, accordingly, set aside the orders of the authorities below and cancel the penalty.

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

Order pronounced in the open court.

Sd/-
(BHAVNESH SAINI)
JUDICIAL MEMBER

Dated: 11.12.2018
*Kavita Arora

Copy forwarded to:

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

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ASSISTANT REGISTRAR
ITAT NEW DELHI

Date of dictation	06.12.2018
Date on which the typed draft is placed before the dictating Member	11/12
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	11/12
Date on which the fair order comes back to the Sr. PS/PS	11/12
Date on which the final order is uploaded on the website of ITAT	11/12
Date on which the file goes to the Bench Clerk	11/12
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	