



IN THE INCOME TAX APPELLATE TRIBUNAL

"C" BENCH, MUMBAI

BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER AND
SHRI MANOJ KUMAR AGGARWAL, ACCOUNTANT MEMBER

ITA no.1841/Mum./2018
(Assessment Year : 2014-15)

Popley diamond And Gold Plaza Pvt. Ltd.
188/A, Turner Road, Bandra (W)
Mumbai 400 050 PAN – AAACS5154L

..... Appellant

v/s

Dy. Commissioner of Income Tax
Circle-13(1)(2), Mumbai

..... Respondent

Assessee by : Shri Niraj Seth
Revenue by : Shri Manoj Kumar Singh

Date of Hearing – 11.04.2019

Date of Order – 29.05.2019

ORDER

PER SAKTIJIT DEY. J.M.

The aforesaid appeal has been filed by the assessee challenging the order dated 22nd November 2017, passed by the learned Commissioner (Appeals)-21, Mumbai, confirming penalty imposed under section 271(1)(c) of the Income Tax Act, 1961 (for short "*the Act*") amounting to ₹ 55,260, for the assessment year 2014-15.

2. There is a delay of 18 days in filing the present appeal. The assessee has filed an application seeking condonation of delay. After

considering the submissions of the learned Authorised Representative, we are satisfied with the delay in filing the appeal is due to a reasonable cause. Therefore, condoning the delay of 18 days, we admit the appeal for adjudicating on merit.

3. Brief facts are, for the assessment year under dispute, the assessee company filed its return of income of ₹ 9,63,13,650. In the course of assessment proceedings, the Assessing Officer noticed that in the tax audit report in Form no.3CD, the auditor has reported that an amount of ₹ 1,62,563, debited towards expenditure in Profit & Loss Account was paid without deduction of tax at source. When the Assessing Officer called upon the assessee to explain why such payment should not be disallowed, the assessee submitted that due to over sight, the amount was not added back to the total income in the computation of income. Thus, the Assessing Officer disallowed the amount of ₹ 1,62,563 under section 40(a)(ia) of the Act. On the basis of such disallowance, the Assessing Officer initiated proceedings for imposition of penalty under section 271(1)(c) of the Act alleging furnishing of inaccurate particulars of income and ultimately quashed the order on 27th September 2016, imposing penalty of ₹ 55,260, under section 271(1)(c) of the Act.

4. Though, the assessee challenged the penalty order before the first appellate authority, however, the penalty imposed was sustained by the learned Commissioner (Appeals).

5. The learned Authorised Representative submitted, the assessee cannot be accused of furnishing of inaccurate particulars of income since in the tax audit report itself the auditor has reported that the amount in dispute is disallowable under section 40(a)(ia) of the Act due to non-deduction of tax at source. He submitted, the tax audit report from which the Assessing Officer noticed the aforesaid fact was filed by the assessee along with return of income. He submitted, the assessee due to over sight could not add back the amount in the computation of income. He submitted, non-disallowance of the expenditure was due to bona fide mistake on the part of the assessee and the assessee cannot be accused of furnishing inaccurate particulars of income. Thus, he submitted, the penalty imposed under section 271(1)(c) of the Act should be deleted. In support of such contention, the learned Authorised Representative relied upon the following decisions:-

i) *Pricewaterhouse Coopers Pvt. Ltd. v/s CIT, [2012] 348 ITR 306 (SC);*

ii) *Nayan G. Shah v/s ITO, [2016] 386 ITR 304 (Guj.);*

- iii) Netambit Value First Services Pvt. Ltd. v/s DCIT, ITA no. 1704/Del./2016, dated 16.02.2018; and*
- iv) Tanushree Basu v/s ACIT, ITA no.2922/Mum./2012, dated 22.05.2013.*

6. The learned Departmental Representative strongly relied upon the observations of the Assessing Officer and the learned Commissioner (Appeals).

7. We have considered rival submissions and perused the material on record. From the assessment order itself it is evident that the Assessing Officer came to know about the non-deduction of tax at source on the payment of ₹ 1,62,563, from the tax audit report. The explanation of the assessee for non-deduction of tax at source is, due to oversight the assessee could not add back the amount disallowed under section 40(a)(ia) of the Act in the computation of income. In our view, the aforesaid explanation of the assessee appears to be plausible considering the fact that disallowance of the aforesaid amount was suggested by the tax auditor in the audit report. Moreover, since the assessee had furnished full particulars about the expenditure incurred including the fact of non-deduction of tax at source in the tax audit report itself, it cannot be accused of furnishing inaccurate particulars of income. Therefore, contention of the learned Authorised Representative that failure to disallow the amount under section

40(a)(ia) of the Act was due to a bona fide mistake is acceptable. Therefore, by applying the ratio laid down by the Hon'ble Supreme Court in Pricewaterhouse Coopers Pvt. Ltd. (supra) and other decisions cited before us by the learned Authorised Representative, we delete the penalty imposed of ₹ 55,260. Ground is allowed.

8. In the result, appeal is allowed.

Order pronounced in the open Court on 29.05.2019

**Sd/-
MANOJ KUMAR AGGARWAL
ACCOUNTANT MEMBER**

**Sd/-
SAKTIJIT DEY
JUDICIAL MEMBER**

MUMBAI, DATED: 29.05.2019

Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The CIT(A);*
- (4) *The CIT, Mumbai City concerned;*
- (5) *The DR, ITAT, Mumbai;*
- (6) *Guard file.*

*Pradeep J. Chowdhury
Sr. Private Secretary*

True Copy
By Order

Assistant Registrar
ITAT, Mumbai