

आयकर अपीलीय अधिकरण "सी" न्यायपीठ पुणे में ।
IN THE INCOME TAX APPELLATE TRIBUNAL "C" BENCH, PUNE

BEFORE SHRI R.S.SYAL, VP AND
SHRI PARTHA SARATHI CHAUDHURY, JM

आयकर अपील सं. / ITA No.839/PUN/2017

निर्धारण वर्ष / Assessment Year : 2012-13

The Deputy Commissioner of Income Tax,
(International Taxation-1), Pune.

.....अपीलार्थी / Appellant

बनाम / V/s.

Faurecia Automotive Holdings,
Plot No. T-187, Pimpri
Industrial Area (B.G Block),
Behind Bhosari Police Station,
Bhosari, Pune-411 026.
PAN: AABCF6351K

.....प्रत्यर्थी / Respondent

Assessee by : Ms. Padmaja Likhite & Ms. Payal Gang
Revenue by : Shri Ashok Malviya

सुनवाई की तारीख / Date of Hearing : 17.07.2019

घोषणा की तारीख / Date of Pronouncement : 17.07.2019

आदेश / ORDER

PER PARTHA SARATHI CHAUDHURY, JM :

This appeal preferred by the Revenue emanates from the order of the
Ld.CIT(Appeals)-13, Pune dated 19.01.2017 for the assessment year 2012-13
as per the grounds of appeal on record.

2. The crux of the grievance of the Revenue in appeal is with regard to deletion of penalty levied u/s.271(1)(c) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') by the First Appellate Authority.

3. That with the permission of Bench at the outset, the Ld. AR of the assessee submitted that the penalty levied is with regard to receipt of IT support services. That for assessment year 2011-12, the Tribunal in assessee's own case in ITA No.2333/PUN/2016 dated 08.07.2019 observed that the Ld. CIT(Appeals) had deleted the penalty against which the Revenue had preferred appeal before the Tribunal. Therein, the Co-ordinate Bench of the Tribunal had observed as follows:

“4. We have heard both the sides gone through the relevant material on record. Quantum appeal of the assessee came up for consideration before the Tribunal in ITA No.784/PUN/2015, which has been disposed off vide a separate order dated 08.07.2019 by holding that Reimbursement of cost cannot be included in the total income of the assessee. Similarly, the other addition on account of receipt for IT support and Managerial Services has also been deleted by holding that the same is not includable in the total income of the assessee either as Royalty or Fees for technical services. Thus, it is seen that both the additions made in the assessment order stand deleted. Since the second addition, forming bedrock of the extent penalty, does not survive anymore, there remains no question of any penalty thereon. As such, we uphold the impugned order deleting penalty.”

3.1 The Ld. AR further pointed out that in assessee's own case in ITA No.804/PUN/2016 for assessment year 2012-13 dated 08.07.2019, the additions made by the Assessing Officer with regard to IT support services, that itself was deleted by the Tribunal following its own order for assessment year 2011-12 by observing as under:

“10. Here again, both the sides agree that the facts and circumstances of this ground are similar to those of the preceding year. In the order passed for the A.Y.2011-12, the Tribunal has held that the amount received by the assessee for rendering of IT support services and Managerial services can neither be construed as Royalty nor as Fees for technical services. Following, the same view, we direct to delete addition.”

The Ld. AR of the assessee therefore, prayed since quantum itself has been deleted, there is no justification for sustaining the penalty and hence, should be quashed.

4. The Ld. DR fairly conceded that the issue raised in the present appeal is squarely covered by the order of Tribunal in assessee's own case as stated by the Ld. AR.

5. We have perused the case records and heard the rival contentions. We have also given considerable thought to the judicial pronouncements placed before us. Firstly for assessment year 2011-12, the Tribunal had deleted the penalty with regard to the IT support services. Thereafter, following the said order, quantum was deleted for assessment year 2012-13. We find the Hon'ble Rajasthan High Court in the case of **CIT Vs. cosmopolitan Trading Corporation reported in 274 ITR 640** and Hon'ble Punjab & Haryana High Court in the case of **CIT Vs. Prakash Industries Ltd reported in 322 ITR 622** has held that when the entire additions had been deleted in the quantum appeal, no reason survives for sustaining the penalty.

In view of the above referred judgments and on examination of facts on record, relief provided to the assessee by the Ld. CIT(Appeals) is sustained.

6. In the result, **appeal of the Revenue is dismissed.**

Order pronounced on 17th day of July, 2019.

Sd/-
R.S.SYAL
VICE PRESIDENT

Sd/-
PARTHA SARATHI CHAUDHURY
JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 17th July, 2019.

SB

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT (Appeals)-13, Pune.
4. The CIT (IT/TP), Pune.
5. विभागीय प्रतिनिधि , आयकर अपीलीय अधिकरण, "सी" बेंच,
पुणे / DR, ITAT, "C" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

// True Copy //

आदेशानुसार / BY ORDER,

निजी सचिव / Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.

		Date	
1	Draft dictated on	17.07.2019	Sr.PS/PS
2	Draft placed before author	17.07.2019	Sr.PS/PS
3	Draft proposed and placed before the second Member		JM/AM
4	Draft discussed/approved by second Member		AM/JM
5	Approved draft comes to the Sr. PS/PS		Sr.PS/PS
6	Kept for pronouncement on		Sr.PS/PS
7	Date of uploading of order		Sr.PS/PS
8	File sent to Bench Clerk		Sr.PS/PS
9	Date on which the file goes to the Head Clerk		
10	Date on which file goes to the A.R		
11	Date of dispatch of order		