

IN THE INCOME TAX APPELLATE TRIBUNAL “H” BENCH, MUMBAI

BEFORE SHRI M. BALAGANESH, AM AND SHRI AMARJIT SINGH, JM

आयकर अपील सं/ I.T.A. No. 4861/Mum/2015

(निर्धारण वर्ष / Assessment Year: 2006-07)

M/s. Khandwala Securities Ltd. Vikas Bldg, G-7, Ground Floor, Green Street, Fort, Mumbai-400023.	बनाम/ Vs.	ITO 4(3)(2) 6 th Floor, Aayakar Bhavan, Maharshi Karve Road, Mumbai-400020.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAACK2214P		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)
Assessee by:	Shri V. M. Chavda (AR)	
Revenue by:	Shri Manoj Kumar Singh (DR)	

सुनवाई की तारीख / Date of Hearing: 24/06/2019

घोषणा की तारीख /Date of Pronouncement: 31/07/2019

आदेश / ORDER

PER AMARJIT SINGH, JM:

The assessee has filed the present appeal against the order dated 15.07.2015 passed by the Commissioner of Income Tax (Appeals)-9, Mumbai [hereinafter referred to as the “CIT(A)”] relevant to the A.Y. 2006-07 in which the penalty levied by the AO has been order to be confirmed.

2. The assessee has raised the following grounds: -

- “1. The Ld. Commissioner of Income Tax (Appeals)-9, Mumbai, erred in not appreciating that all the material facts relevant for making assessment were on the record of the Ld. AO and the assessee had not concealed particulars of its income or furnished any



inaccurate particulars of income making it liable to penalty u/s 271(1)(c) of the I.T. Act.

2. The Ld. Commissioner of Income Tax (Appeals)-9, Mumbai, further erred in not appreciating that the assessee's claims were supported by judgments of Tribunals and High Courts and no penalty u/s 271(1)(c) could be levied merely because of difference in opinion.
3. *The above Grounds of appeal are without prejudice to each other.*
4. *The appellant craves leave to amend or later any of the above grounds of appeal or to add new grounds of appeal during the course of appeal proceedings."*

3. The brief facts of the case are that the assessee filed its return of income on 17.11.2006 declaring total income to the tune of Rs. Nil. The return was processed u/s 143(1) of the I.T. Act, 1961 on 25.12.2007. Thereafter, the case was selected for scrutiny and notices u/s 143(2) & 142(1) of the Act were issued and served upon the assessee. On verification, it was found that the assessee paid the interest free advances to two concerns namely Ms/.Shree Rama Polysynth P. Ltd. and M/s. Vimpsan Investment Pvt. Ltd. The assessee paid a sum of Rs.1.80 crores to M/s. Shree Rama Polysynth P. Ltd. and Rs.3.50 crores to M/s. Vimpsan Investment Pvt. Ltd. Notice was given to explain that why the proportionate interest paid by you on borrowed fund should not be disallowed u/s 36(1)(iii). After the reply of the assessee, the proportionate interest in sum of Rs.10,63,267/- was disallowed and added to the income of the assessee u/s 36(1)(iii). The assessee also earned dividend income from investment in the equity-shares of Rs.2,25,712/-. The AO applied the



provisions u/s 14A r.w. of the Act Rule 8D of the Rules and assessed the expenditure to earn the exempt income in sum of Rs.97,595/- and added to the income of the assessee. The write back of principal amount of debentures in sum of Rs.85,00,000/- was also assessed as taxable income in view of the provisions u/s 28(iv) and alternatively Section 56 and added to the income of the assessee. The assessee also claimed the prior period expenses in sum of Rs.8,07,920/- which was disallowed and added to the income of the assessee. The assessee claimed the repairs, maintenance & office expenses in sum of Rs.2,45,750/- which was treated as capital expenses and depreciation @ 15% was allowed, hence, an amount of Rs.29,912/- was added to the income of the assessee. The assessee also claimed the depreciation upon the UPS battery @ 60% which was found allowable to the extent of 15%, hence, an amount of Rs.31,649/- was added to the income of the assessee. The total income of the assessee was assessed to the tune of Rs. Nil. The AO also initiated the penalty upon the above mentioned disallowances. Thereafter, the penalty proceeding was initiated and the AO also levied the penalty in sum of Rs.31,88,103/- u/s 271(1)(c) of the Act. Feeling aggrieved, the assessee filed an appeal before the CIT(A) who dismissed the appeal of the assessee, therefore, the assessee has filed the present appeal before us.

4. All the issues are in connection with the confirmation of the penalty levied by the AO which has been challenged by assessee



before us. The AO levied the penalty upon the addition basically on 5 issues. Firstly, the AO raised the penalty in connection with the disallowance of interest free advances u/s 36(1)(iii) in sum of Rs. 10,63,267/-. The said addition was deleted by Hon'ble ITAT in the assessee's own case in ITA. No.3100/M/2011 dated 03.08.2018. The relevant finding is hereby reproduced as under.:-

“After having meticulously gone through the facts of the present case, we find that Ld. CIT(A) cannot adopt two different principles for the same set of situations, since Ld. CIT(A) had already come to the conclusion that assessee had Rs. 111.67 crores own funds and more particularly, the factual position was very clear before Ld. CIT(A). Therefore, in such circumstances, Ld. CIT(A) could not have presumed that since the ICD was given on interest, that fact itself do not automatically leads to the conclusion that borrowed funds were utilized for advance of loan. When once the Ld. CIT(A) has taken a specific view by appreciating that the assessee had ‘sufficient own funds’ then in that eventuality, the Ld. CIT(A) could not have taken a different view merely on the ground that ICD was given on interest. Therefore, in such circumstances, we are of the considered view that Ld. CIT(A) was wrong in taking contrary view. Hence, we delete the disallowance of proportionate interest relating to loan of Rs. 3.50 crores given to M/s Vimpon Investment Pvt. Ltd and allow this ground of appeal raised by the assessee.”

5. Since the addition has been deleted by Hon'ble ITAT in ITA. No.3100/M/2011 dated 3.08.2018 in the assessee's own case, therefore, in the said circumstances, no penalty is leviable. So far as the disallowance u/s 14A is concerned, the AO assessed the expenditure to earn the exempt income in sum of Rs.97,595/-. However, in appeal the CIT(A) has restricted the said addition to the extent of 21,843/-. No doubt, two views were possible, therefore, the CIT(A) reduced the expenditure to earn the exempt income.



Moreover, disallowance of any claim nowhere attract the penalty in view of the law settled in **CIT Vs. Reliance Petroproduct (2010) 322 ITR 158 (SC)**. So far as the issue in connection with the write back of principal amount of debenture is concerned, the issues are pending before the Hon'ble High Court. However, at the time arguments, the Ld. Representative of the assessee has relied upon the decision of Hon'ble Supreme Court in the case of **Mahindra & Mahindra Ltd. (2018) 16 Supreme Court 79 (SC) and CIT Vs. M/s. Nayan Builders and Developers ITA. No. 415 of 2012**. The matter of controversy is pending before the Hon'ble High Court, therefore, in the said circumstances, the penalty is not justifiable being debatable issue. In this regard, we placed reliance upon the decision of Hon'ble Bombay High Court in case of **M/s. Nayan Builders and Developers (supra) and Mahindra & Mahindra Ltd. (supra)**. Restricting the claim of depreciation to the extent of 15% instead of 60% nowhere leads to levy the penalty u/s 271(1)(c) of the Act in view of the law settled in case of **Reliance Petroproduct (supra)**. Moreover, this issue has been decided in favour of the assessee by Hon'ble ITAT by virtue of order dated 03.08.2018 (supra). It is not a case of concealment of income or furnishing of inaccurate particulars of income. The disallowance of claim if any nowhere leads to the circumstances to levy the penalty in view of the decision of Hon'ble Supreme Court in case of **CIT Vs. Reliance Petroproduct (2010) 322 ITR 158 (SC)**, therefore, we are of the view that the penalty is



ITA. No.4861/M/2015
A.Y. 2006-07

not liable to be sustainable in the eyes of law, therefore, we set aside the finding of the CIT(A) on these issues and delete the penalty.

6. In the result, the appeal filed by the assessee is hereby ordered to be allowed.

Order pronounced in the open court on 31/07/2019.

Sd/-

Sd/-

(M. BALAGANESH)

(AMARJIT SINGH)

लेखा सदस्य / ACCOUNTANT MEMBER

न्यायिक सदस्य/JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated : 31/07/2019

Vijay/Sr. PS



ITA. No.4861/M/2015
A.Y. 2006-07

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

**उप/सहायक पंजीकार / (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai**