

IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "C", PUNE

BEFORE SHRI R.S. SYAL, VICE PRESIDENT AND
SHRI PARTHA SARATHI CHAUDHURY, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.426/PUN/2015
निर्धारण वर्ष / Assessment Year : 2003-04

DCIT, Circle-8,
Pune

Vs.

Atlas Copco (India) Limited,
Mumbai-Pune Road,
Dapodi, Pune – 411 012
PAN : AAACA4074D

(Appellant)

(Respondent)

Assessee by

Shri R. Murlidhar &
Shri Prashant Gandhi

Revenue by

Ms. Kesang Y. Sherpa, CIT

Date of hearing

19-07-2019

Date of pronouncement

19-07-2019

आदेश / ORDER

PER R.S.SYAL, VP :

This appeal by the Revenue is directed against the order passed by the Commissioner of Income-tax (Appeals) on 21-01-2015 deleting the penalty of Rs.5,22,06,833/- imposed by the Assessing Officer (AO) u/s.271(1)(c) of the Income-tax Act, 1961 (hereinafter called 'the Act') in relation to the assessment year 2003-04.

2. Briefly stated, the facts of the case are that the assessment order in this case was passed u/s 144 of the Act on 31-07-2006 determining total income at Rs.73,02,28,900/- as against the declared income of Rs.54,64,90,594/-. Thereafter, the AO imposed penalty with reference to certain additions. The assessee challenged the same before the Id. CIT(A), who preferred to delete the penalty. The Revenue is aggrieved by the deletion of penalty. Challenge to the deletion of the penalty is in respect of certain items of additions/disallowances, which we will take up for consideration and decision.

3. The AO made disallowance towards expenses incurred for increase in share capital after amalgamation u/s.35DD of the Act. He also made an addition on account of disallowance of warranty claim. He further made an addition u/s.35DDA of the Act. Penalty was imposed w.r.t. such additions, which came to be deleted in the first appeal.

4. It is pertinent to mention that the quantum cross appeals of the assessee as well as the Revenue for the year under consideration came up for adjudication before the Tribunal in ITA No.1676/PUN/2011 and ITA No.54/PUN/2012. Vide order dated

18-07-2019, the Tribunal has deleted the above three additions. Since the very foundation for the imposition of penalty, being the additions made in the assessment, ceases to exist, there can be no question of imposition of any penalty thereon. We, therefore, accord our *imprimatur* to the view taken by the Id. CIT(A) on the above issue.

5. The next item on which the AO imposed penalty is disallowance out of certain Miscellaneous Expenses. The assessee claimed deduction of Rs.8,91,41,639/- under the head “Miscellaneous Expenses”. The AO made disallowance at 50% of such expenses. The Id. CIT(A) confirmed the addition in respect of expenses on warranty provision, expenses on gifts, donations and fees for handling shares in entirety. For the remaining expenses, he restricted the disallowance to 25% as against 50% made by the AO. This matter came up for consideration before the Tribunal. The deduction in respect of warranty expenses has been held to have been rightly sustained. Similar is the position regarding expenses on gifts and donations. However, deduction on account of share handling expenses has been allowed by the Tribunal. Out of the remaining additions sustained by the Id. CIT(A) at 25%, the

Tribunal restricted such disallowance to 15%. From the above narration of facts, it is clear that the authorities below have made disallowance primarily on *ad hoc* basis. Even in respect of certain specific expenses for which the Id. CIT(A) and the Tribunal sustained the disallowances, the reason is not the concealment by the assessee or furnishing of any inaccurate particulars by the assessee, but non-availability of relevant evidence to substantiate the claims. In such circumstances, we are satisfied that no fault can be found with the Id. CIT(A) in deleting the penalty on addition towards disallowance out of Miscellaneous expenses.

6. The next addition which was the subject matter of penalty by the AO is the claim made by the assessee for reduction in sale price of shares by Rs. 7.50 crore lodged in revised return thereby reducing the amount of capital gain already shown from the transfer of shares in the original return. Pursuant to the sale of shares, some dispute arose between the assessee and the buyer on the sale price of shares. Accordingly, reduction in sale price of shares came to be accepted by the assessee in a succeeding year by means of an agreement. Pursuant to such proceedings taking place in a later year when the assessment proceedings for the current year were going

on, the assessee filed a revised return claiming reduction in capital gain in the year under consideration. The AO did not allow claim. It is a matter of record that such deduction was allowed by the AO in the assessment for A.Y. 2005-06 when agreement for reduction in sale price was finalized. Thus, it is overt that though the assessee reduced the amount of sale consideration of shares during the course of assessment proceedings by means of a revised return, however, the fact was appropriately brought to the notice of the Department. It is not the case of the Revenue that the assessee lodged a false claim or attempted to revise its income in a frivolous manner. Rather, the assessee agreed for reduced sale price of shares in a succeeding year by means of an agreement, for which deduction has been admittedly granted by the AO himself in such a later year. This manifests that the assessee cannot be considered to have either concealed its income or furnished inaccurate particulars of its income on this item. As such, we are satisfied that the Id. CIT(A) was justified in deleting the penalty on this score.

7. The next item on which the AO imposed penalty is disallowance of legal expenses for want of necessary evidence. The assessee claimed deduction of Rs.15,11,694/- and Rs.7,11,325/-

towards legal charges paid to Crawford Bayley, Advocates and Solicitors. The assessee was required to produce the bills in respect of the aforesaid payments. The assessee could produce the bill for Rs.15,11,694/-. Since the remaining bill of Rs.7,11,325/- could not be produced, the AO made the addition. This led to the imposition of penalty on such disallowance. The Id. CIT(A) deleted the penalty.

8. Having heard both the sides and gone through the relevant material on record, it is found as an admitted position that the assessee did make payment of Rs.7,11,325/- to Crawford Bayley by cheque. Simply because the relevant bill could not be produced, may be a ground for making disallowance, but cannot constitute bedrock for the imposition of penalty. We, therefore, hold that the Id. CIT(A) was justified in deleting the penalty on this count.

9. The last item is difference in capital gain on account of sale of mutual funds units, treated by the AO as 'Income from other sources'. The AO noticed that the claim of the assessee for capital gain was not reconciling with profit from redemption of mutual fund units. He, therefore, added the differential amount of Rs. 7.98

lakh. This was visited with penalty, which came to be deleted by the Id. CIT(A) in the first appeal.

10. Here again, we find that the Id. CIT(A) was justified in deleting the penalty. The addition was made simply because of non-reconciliation of the amount of capital gain. It is not a case as if the assessee fraudulently lowered the amount of capital gain for the purpose of taxation. In such circumstances, we uphold the impugned order in deleting the penalty.

11. In the result, the appeal is dismissed.

Order pronounced in the Open Court on 19th July, 2019.

Sd/-
(PARTHA SARATHI CHAUDHURY)
JUDICIAL MEMBER

Sd/-
(R.S.SYAL)
VICE PRESIDENT

पुणे Pune; दिनांक Dated : 19th July, 2019
सतीश

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

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent;
3. The CIT(A)-I, Nashik
4. The CIT-V, Pune
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, पुणे
“सी” / DR ‘C’, ITAT, Pune;
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune

		Date	
1.	Draft dictated on	19-07-2019	Sr.PS
2.	Draft placed before author	19-07-2019	Sr.PS
3.	Draft proposed & placed before the second member		JM
4.	Draft discussed/approved by Second Member.		JM
5.	Approved Draft comes to the Sr.PS/PS		Sr.PS
6.	Kept for pronouncement on		Sr.PS
7.	Date of uploading order		Sr.PS
8.	File sent to the Bench Clerk		Sr.PS
9.	Date on which file goes to the Head Clerk		
10.	Date on which file goes to the A.R.		
11.	Date of dispatch of Order.		

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