

IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'F' BENCH,
NEW DELHI

BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER, AND
MS. SUCHITRA KAMBLE, JUDICIAL MEMBER

ITA No. 2263/DEL/2017
[A.Y 2004-05]

M/s Perematt India Ltd
C - 125, Sector - 19
Noida

Vs. I.T.O
Circle - 1
Noida

PAN: AABCP 8215 G

(Applicant)

(Respondent)

Assessee By : None

Department By : Shri Surendra Pal, Sr. DR

Date of Hearing : 07.11.2019

Date of Pronouncement : 18.11.2019

ORDER

PER N.K. BILLAIYA, ACCOUNTANT MEMBER,

With this appeal, the assessee has challenged correctness of the order of the Commissioner of Income Tax [Appeals] - 1, Noida dated 23.02.2017 pertaining to assessment year 2004-05.

2. The sum and substance of the grievance of the assessee is that, in spite of the order for full and final settlement of tax arrears u/s 204(2) r.w.s 205 of the Finance Act, 2016 in respect of Direct Tax Dispute Resolution Scheme, 2016, the ld. CIT(A) confirmed the penalty levied u/s 271(1)(c) of the Income-tax Act, 1961 [hereinafter referred to as 'The Act'].

3. None appeared on behalf of the assessee. The ld. DR was heard at length and case records carefully perused.

4. We find force in the contention of the assessee. The order for full and final settlement of tax reads as under:

"ORDER FOR FULL AND FINAL SETTLEMENT OF
TAX ARREAR UNDER SECTION 204(2),
READ WITH SECTION 205 OF THE FINANCE ACT. 2016
IN RESPECT OF
THE DIRECT TAX DISPUTE RESOLUTION SCHEME. 2016

THE DIRECT TAX DISPUTE RESOLUTION SCHEME RULES. 2016

Whereas Perematt India Ltd.(PAN:- AABCP8215G)/ C-125 Sector-19 Noida-201301(Name and address of the declarant)(hereinafter referred to as declarant) had made a declaration under section 202 of the Finance Act, 2016;

And whereas the designated authority by order dated 23.09.2016.determined the amount of 67500/-rupees payable by the declarant in accordance with the provisions of the Scheme and granted a certificate setting forth therein the particulars of the tax arrear and the sum payable after such determination towards full and final settlement of tax arrear as per details given below;

And whereas the declarant has paid 67500/-rupees being the sum determined by the designated authority;

Now, therefore, in exercise of the powers conferred by sub-section (2) of section 204 read with section 205 of the Finance Act, 2016, it is hereby certified that-

- (a) a sum of Rs 67500/-has been paid by the declarant towards full and final settlement of tax arrear determined in the order dated 19.10.2016.
- (b) immunity is granted subject to the provisions contained in the Scheme, from instituting any proceeding for prosecution for any offence under the Income-tax Act/Wealth-tax Act or from the imposition of penalty under the said enactment [as per section 205(b)(ii) of the Finance Act, 2016], in respect of the disputed tax/disputed income as detailed in the table below:

Assessment year	Appeal reference number	Amount of disputed income	Amount of disputed tax
2004-05	75/201	69,38,604/-	2,70,000/-

5. We further find that the Board has issued clarifications on the Direct Tax Dispute Resolution Scheme, 2016, vide Circular No. 33/2016 dated 12.09.2016. Question No. 3 has been answered as under:

"Question No. 3 - Appeal against quantum as well as penalty under section 271 (l)(c) is pending before CIT(Appeals). If the assessee files a declaration in respect of the quantum appeal under the Scheme, what would be the fate of penalty appeal?"

Answer - As per the Scheme, in a case where disputed tax in quantum appeal is more than Rs.10 lakh, the declarant has to pay the disputed tax, interest and 25% of minimum penalty leviable. Further, in a case where the disputed tax in quantum appeal does not exceed Rs.10 lakh, the declarant is required to pay only the disputed tax & interest and there is no requirement for payment of any amount in respect of penalty leviable.

Section 205(b) of the Act provides immunity from imposition or waiver of penalty under the Income-tax Act or the Wealth-tax Act in respect of tax arrear covered in the declaration to the extent the penalty exceeds the amount of penalty referred to in section 202(1) of the Act. Hence, in both the situations (i.e. whether disputed tax in quantum appeal exceeds Rs.10 lakh or not), where a valid declaration under the Scheme is made in respect of quantum appeal, the appeal against penalty levied

under section 271(l)(c) of the Income-tax Act, relating to the quantum appeal pending before the CIT (Appeals) shall be deemed to be withdrawn and the penalty or the balance amount of penalty, as the case may be, shall be deemed to be waived."

6. Considering the order mentioned hereinabove, in the light of clarifications of the Direct Tax Dispute Resolution Scheme, 2016, we are of the considered view that the ld. CIT(A) ought to have considered the appeal as withdrawn. However, in not doing so, the order becomes erroneous in law and deserves to be set aside. We, accordingly, direct the Assessing Officer to delete the penalty so levied.

7. In the result, the appeal of the assessee in ITA No. 2263/DEL/2017 is allowed.

The order is pronounced in the open court on 18.11.2019.

Sd/-

**[SUCHITRA KAMBLE]
JUDICIAL MEMBER**

Sd/-

**[N.K. BILLAIYA]
ACCOUNTANT MEMBER**

Dated: 18th November, 2019

VL/

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar,
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
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	
Date on which the fair order comes back to the Sr.PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
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	