

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "F", MUMBAI
Before Shri Pawan Singh (JM) & Shri Rifaur Rahman
ITA No. 4487/Mum/2018 (Assessment year : 2007-08)

Jasani (formerly Ratilal Becharlal & Sons) HW 6010, Tower H, 6 th Floor, Bharat Diamond Bourse, Bandra Kurla Complex, Bandra (East) Mumbai-400002 PAN : AAAFR7913B	Vs	ACIT -16(3) Room No. 206, 2 nd Floor, Matru Mandir, Mumbai-400007
APPELLANT		RESPONDEDNT

Appellant by	Shri Apurva Shah AR
Respondent by	Shri Mohammed Rizwan Add. CIT (Sr DR)
Date of hearing	09-12-2019
Date of pronouncement	09-12-2019

ORDER

PER PAWAN SINGH, JM :

1. This appeal by assessee is directed against the order of learned Commissioner of Income tax (Appeals) {CIT(A)}-29, Mumbai dated 13-04-2018, which in turn arises from penalty order passed u/s 271(1)(c) for assessment year 2007-08. The assessee has raised the following grounds of appeal:-

“The Commissioner of Income Tax (Appeals) - 29, Mumbai erred:

1. in confirming levy of penalty of Rs. 8,883/- u/s 271 (1) (c) of the Income Tax Act,1961.”

2. The brief facts of the case are that assessee is a firm engaged in the business of export / import of manufacturing of diamonds, filed its return

of income for AY 2007-08 declaring total income of Rs.14.67 crores. The case was selected for scrutiny. The assessee reported international transactions with its associated enterprises (AE). Accordingly, reference was made to Transfer Pricing Officer (TPO) for computation for arm's length price (ALP) with regard to the international transaction. Consequent upon determination of ALP, the assessing officer (AO) passed draft assessment order, wherein the AO, besides other additions / disallowances, disallowed depreciation on laptop. The AO while making disallowance noted that assessee could not produce invoice / bill and accordingly depreciation of Rs. 29,609/- was disallowed. On objection before the Dispute Resolution Panel (DRP), the disallowance was upheld. Accordingly, finally disallowance on depreciation was made in assessment order passed u/s 143(3) r.w.s. 144C. On further appeal before Tribunal, the additions// disallowances on depreciation was upheld.

3. The AO issued show cause notice u/s 274 r.w.s. 271(1)(c) dated 21-10-2011 and again on 23-08-2013. The assessee filed its reply, wherein the assessee prayed for dropping the penalty proceedings. The reply furnished by the assessee was not accepted by the AO. The AO noted that disallowance of depreciation for Rs.29,609/- was made in assessment order on which minimum penalty @100% of tax sought to be

evaded is Rs.8,883/-; hence, the AO levied penalty of Rs.8,883/- in his order dated 30-03-2013. On further appeal before CIT(A), the action of AO levying penalty was confirmed. Thus, further aggrieved by the order of Ld. CIT(A), the assessee has filed present appeal before Tribunal.

4. We have heard the submission of Ld. authorised representative (AR) of the assessee and Ld. departmental representative (DR) for Revenue and perused the material available on record. The Ld. AR of the assessee submits that assessee is a taxpayer in higher tax bracket and offered a taxable income of Rs.14.67 crores. During the assessment the assessee could not produce the invoice for purchase of laptop of Rs.98,696/-. Cost of purchase was added in the schedule of fixed assets. The assessee claimed depreciation on such laptop. However, the depreciation of Rs.29,609/- was disallowed in absence of evidence of purchases. The AO has not doubted the use of laptop for the purpose of business. The Ld.AR for assessee fairly submits that on objection before DRP and on further appeal before Tribunal, the assessee was not granted relief on such depreciation. The Ld. AR for assessee submits that mere disallowance would not lead to furnishing of inaccurate particulars when use of laptop for the purpose of business is not disputed by AO. The Ld.AR for the assessee further submits that the disallowance was made for the reasons that assessee was unable to produce the receipt / purchase

invoice of laptop. The Ld.AR for the assessee submits that in the reply to show cause notice under section 274 rws 271(1) (c), the assessee has shown reasonable cause in its reply dated 28-08-2013. The Ld.AR for the assessee finally submits that the assessee could not produce the receipt due to bona fide reasons and otherwise, the assessee had no occasion to furnish inaccurate particulars as the assessee has shown a taxable income of about Rs.15 crores. The Ld.AR prayed for deletion of entire penalty u/s 271(1)(c).

5. On the other hand, the Ld. DR for the revenue relied upon the orders of lower authorities.
6. We have considered the rival submissions of both the parties and have gone through the record of case. We have carefully perused the assessment order, penalty order and order of Id CIT(A). The AO during the assessment proceedings noted that the assessee in the block of assets has added the cost of laptop. The assessee was asked to furnish invoice of purchase of laptop. The assessee filed credit card statement showing the payment of the purchase. The AO noted that the payment was made by the partner of the assessee firm. The AO further noted that the assessee could not file any evidence that payment was made for the purchase of laptop. The AO by taking view that assessee could not file evidence for acquisition of laptop. Accordingly depreciation of

Rs.29,609/- was disallowed in the draft assessment order. The objection raised by assessee before DRP, with regard to disallowances of depreciation, was rejected. On depreciation amount of Rs.29,609/-, the AO levied penalty u/s 271(1)(c) being 100% of tax sought to be evaded. The further appeal the Id. CIT(A) confirmed the action of AO by referring the ingredients of Explanation 1 to section 271(1)(c). In our view, the Explanation 1 deals with the deemed concealment. The AO levied penalty for furnishing inaccurate particulars; however, the Id. CIT(A) while confirming the penalty at para 3.3.10 referred the ingredients of Explanation 1 to section 271(1)(c), which deals with deemed concealment. We have also noted that the use of laptop for the purpose of business is not disputed. The AO before making disallowance has not verified the credit card statement. In our view, the disallowance was made in absence of purchase bill/ invoice only. In fact, the purchase is not in dispute. In our view the particulars furnished by assessee was not inaccurate but could not be substantiated for want of documentary evidence. Therefore, in our view it was not fit case for levying penalty neither for furnishing inaccurate particulars of income or for treating it as a concealment of income. Hence, we direct the AO to delete the entire penalty.

7. In the result, appeal of the assessee is allowed.

Order pronounced in the open court on 09th December 2019, while hearing the appeal.

Sd/-

Sd/-

(Rifaur Rahman)	(Pawan Singh)
ACCOUNTANT MEMBER	JUDICIALMEMBER

Mumbai, Dt : 9th December, 2019

Pk/-

Copy to :

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

/True copy/

By order

Asstt. Registrar, ITAT, Mumbai