

IN THE INCOME TAX APPELLATE TRIBUNAL,
SMC BENCH MUMBAI

BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER AND
SHRI AMARJIT SINGH, JUDICIAL MEMBER.

ITA No. 7402/Mum/2018
(Assessment Year : 2014-15)

Amit Rajaram Nar,
604, Kesar Asish Coop.Hsg,
Village Mouze, Kndivli,
Mumbai-400067.
PAN AECPN5244D.

Vs.

The Income-tax Officer,
33(1), Mumbai.

Appellant.

Respondent.

Assessee by : Shri Tanzil R. Padvekar.(A.R.)
Revenue by : Shri Akhtar Ali Ansari (D.R)

Date of Hearing : 06-01-2020.
Date of pronouncement : 16 -03-2020.

आदेश / ORDER

PER SHAMIM YAHYA, A.M.

This appeal by the assessee is directed against the order of learned CIT(Appeals) dated 27-07-2017 passed u/s 271(1)(c) of the Income-tax Act. The appeal relates to assessment year 2014-15. The issue is penalty u/s 271(1)(c) amounting to Rs.4,00,000/-

2. During the assessment proceedings it was noted by the AO that the assessee has debited commission expenses amounting to Rs.16,48,406/-. Out of this,

Rs.12,75,000/- was paid to three family members. The AO called for details and during the course of enquiry he issued summons u/s 131 to the three parties for examination. But there was no response. The assessee came forward and voluntarily offered the amount of Rs12,75,000/- being commission paid to three members to tax during the assessment proceedings. Accordingly this amount was disallowed and penalty proceedings were also initiated. The assessee's plea that the assessee has voluntarily offered the amount and hence penalty is not leviable was rejected by the AO. In the penalty order the AO inter alia, observed that the assessee has not submitted the copies of returns for assessment year 2014-15 of the three parties who have received the commission.

3. Against the levy of penalty, the assessee appealed before the learned CIT(Appeals). The learned CIT(Appeals) upheld the levy of penalty. In this decision the learned CIT(Appeals) held that the decision of Hon'ble Apex Court in the case of Reliance Petro Products stood distinguished by the decision of Hon'ble Delhi High Court in the case of Zoom Communication Pvt. Lt. 40 DTR 249.

4. Now the assessee is in appeal before us. We have heard both the counsel and perused the records. We find that the penalty has been levied in this case for disallowance of commission expenses. These commission expenses were provisions in the account. The payment by cheque subsequently in this regard was duly submitted before the AO. However, the AO sent notices u/s 131 to the recipient parties. In the meanwhile the assessee offered these sums for taxation as the assessee claimed that the assessee was not in a position to further substantiate justification of payment. In these facts we note that there is no denial that the payment has been done. It is only the non response to notice u/s 131 by the concerned parties which has led to the AO taking adverse inference against the assessee. The assessee has also in order to buy peace offered these amounts for

taxation in the course of assessment by the AO. Hence except for the non response by the concerned parties there is no material on record for the Revenue to disallow the payment. In this view of the matter, in our considered opinion, the assessee's conduct is bonafide and does not call for levy of penalty u/s 271(1)(c). In this regard we place reliance upon the decision of Hon'ble Apex Court in the case of Reliance Petro Products (supra). This decision has been erroneously distinguished by the learned CIT(Appeals) by referring the Delhi High Court decision in the case of Zoom Communication Pvt. Ltd. In Reliance Petro Products the Hon'ble Apex Court has expounded that in every case where the claim of the assessee is denied, it does not mean that the assessee needs to be visited with levy of penalty. We further find that the larger Bench of Hon'ble Supreme Court comprising three of their lordships in the case of Hindustan Steel Ltd. vs. State of Orissa vs. 83 ITR 26 has held that the authority may not levy penalty unless the conduct of the assessee is found to be contumacious. In this case, in our considered opinion, the conduct of the assessee is not at all contumacious warranting levy of penalty.

5. Accordingly in the background of aforesaid discussion and precedent, we set aside the orders of the authorities below and delete the penalty.
6. In the result, this appeal by the assessee stands allowed.

Order pronounced in the open court on this 16 /03//2020

Sd/-
AMARJIT SINGH
JUDICIAL MEMBER.

Sd/-
SHAMIM YAHYA
ACCOUNTANT MEMBER.

Mumbai; Dated 16 /03/ 2020

Wakode, *sr.ps*

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar)

ITAT, Mumbai