

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'B' NEW DELHI

**BEFORE SHRI G.S. PANNU, VICE PRESIDENT
AND
SHRI K. NARASIMHA CHARY, JUDICIAL MEMBER**

ITA No. 5956/Del/2015
Assessment Year: 2008-09

Dy. CIT,
Circle-27(1),
New Delhi

Vs.

M/s Wasan Exports Pvt. Ltd.
5, Aradhana Enclave,
R.K. Puram, Ring Road,
New Delhi-110066

PAN:AAACW 0159P

(Applicant)

(Respondent)

Appellant by: Sh. Jagdish Singh, Sr. DR
Respondent by: Sh. Barun Kumar, CA

Date of hearing: 12/3/2020

Date of order : 20/3/2020

ORDER

PER K. NARASIMHA CHARY, J.M.

Challenging the order dated 20/08/2015 in appeal No. 93/14-15/CIT(A)-22, New Delhi passed by the learned Commissioner of Income Tax (Appeals)-22, New Delhi ("CIT(A)"), for Assessment Year: 2008-09 in the case of M/s Wasan Exports Private limited ("the assessee"), deleting the penalty levied under section 271(1)(c) of the Income Tax Act, 1961 (for short "the Act") in respect of the addition to the tune of Rs.1,64,

57,825/- as remission of liability under section 41(1) of the Act, Revenue preferred this appeal.

2. Brief facts of the case are that the assessee is a company engaged in the business of export of leather, leather shoes, leather shoe uppers etc and was mainly exporting the leather footwear to USSR, but with the collapse of USSR its business affected severely and there export receivables got stuck up and due to non-cooperation of banks their records became non-performing assets in 1996. In respect of two liabilities existed in their Balance Sheet at the beginning of the previous year relevant to the Assessment Year: 2008-09, namely, Rs.3,62,20, 030/- as secured loans and Rs.72,14,801/-as interest payable in current liabilities, the assessee got one-time settlement with the banker set Rs.200,00,000/-against both the liabilities and accordingly Rs.72,14,801/- being treated as income and access of secured loan for Rs. 1 64, 57, 837/- being remission of beauty transfer to general reserves. Learned Assessing Officer however, treated the capital remission of liability as Revenue income and included it in the taxable income and also levied penalty in that respect to the tune of Rs. 52, 99, 070/-under section 271(1)(c) of the Act.

3. Aggrieved by such levy of penalty, assessee preferred appeal before the Ld. CIT(A) and contended that there has not been any suppression of material facts on the issue and the addition was made on the basis of information available in the audited accounts filed and

further there is no evidence of judicial opinion on the issues involved in this matter. It was further contended that that is not a case where any material fact was not disclosed before the assessing officer, but inasmuch as the issue involved was a debatable issue, the bona fides of the assessee cannot be doubted and therefore, the penalty cannot be sustained.

4. On a perusal of the entire material before him, in the light of the submissions made on behalf of the assessee, Ld. CIT(A) reached a conclusion that the full material facts were disclosed before the assessing officer and the issue involved was a debatable issue and, therefore, the bona fides of the assessee cannot be doubted. Ld. CIT(A), therefore, deleted the penalty levied in respect of the addition of Rs.1, 64,57, 825/-.

5. It is the submission of the Ld. DR that the wrong claim made by the assessee amounts to the concealment of income and the Ld. CIT(A) erred in deleting the penalty levied in respect of such an act of the assessee. He made strong reliance on the penalty order. According to the Ld. DR, the assessee got settlement from the bank in which bank interest of Rs.72,14,801/-was wayward apart from favour of the principal to the tune of Rs. 1, 64, 57, 825/-and the assessee had declared only interest abortion as remission under section 41 (1) of the Act and not included the waiver of liability of bank loan of Rs. 1, 64, 57, 825/-towards income under section 41(1) of the Act but directly credited amount to the general reserves and since there is no segregation between the Revenue

liable tender capital liability, the remission of libelled in respect of the bank loan and bank interest are required to be treated as income under section 41(1) of the Act. On this premise he justified the order of the penalty and sought to the first appellate order to be set-aside.

6. Per contra, it is the submission on behalf of the assessee that there is no suppression of any material facts in this respect and the addition was made insofar as the sum of Rs. 1, 64, 57, 825/-is concerned, on the basis of information available in the audited accounts and therefore, the case on this aspect is not covered by either of the limbs of section 271(1)(c) of the Act of the Act. He placed reliance on the decision of the Hon'ble Apex Court in the case of *CIT vs. Reliance Petro Products Pvt. Ltd (2010) 189 taxman 322 (SC)* and also the addition of the Hon'ble jurisdictional High Court in the case of *Pr. CIT vs. Control and Switchgear Contractors limited (2016) 66 taxmann.com 345 (Delhi)*.

7. We have gone through the record in the light of the submissions made on either side. Issue, insofar as the deletion of penalty at attributable to the addition to the tune of Rs.1,64,57, 835/-is concerned, such an addition was claimed as a remission of capital liability by the assessee and, therefore, was transferred to general reserve by the assessee. The fact remains that the assessee had obtained war draft facility and a packing credit from state bank of be crore and report; that there is an outstanding amount payable to the bank in respect of both these accounts; that as a settlement with the bank and interest of

Rs.72,14, 801/-was we wouldn't apart from the waiver of the Prince will amount of Rs. 1, 64, 57, 825/-; and that the assessee offered the amount of Rs. 72, 14, 801/-being the remission of interest liability as a Income for Tax under section 41 (1) of the Act, whereas the amount of Rs.1,64, 57, 825/- was taken to general reserve and claimed as remission of capital liability.

8. On a careful consideration of the submissions made on behalf of the assessee that the issue was a debatable one, but set at a rest by the Hon'ble Supreme Court in the case of *CIT vs. Mahindra and Mahindra (2018) 404 ITR 1*, in such case the Hon'ble Apex Court held that Section 28(iv) of the IT Act does not apply on the present case since the receipts of Rs 57,74,064/- are in the nature of cash or money, and that Section 41(1) of the IT Act does not apply since waiver of loan does not amount to cessation of trading liability. It is a matter of record that the Respondent has not claimed any deduction under Section 36 (1) (iii) of the IT Act *qua* the payment of interest in any previous year.To this set of facts, the decision of the Hon'ble jurisdictional High Court in the case of control and switchgear contractors limited (supra) is applicable on its fours, and in such case the Hon'ble Delhi High Court held that when an issue is debatable obligation of 271(1)(c) of the Act is impermissible.

9. We are, therefore, in agreement with the findings of the Ld. CIT(A) that in this matter no material fact was concealed before the assessing officer and since the issue involved was a debatable issue, the bona fides

of the assessee cannot be doubted. While upholding the findings of the Ld. CIT(A) we find the appeal of the Revenue is devoid of merits and is liable to be dismissed. Appeal of the Revenue is accordingly dismissed.

10. In the result appeal of the Revenue is dismissed.

Pronounced in open court on this the 20th March, 2020.

Sd/-
(G.S. PANNU)
VICE PRESIDENT

Sd/-
(K. NARASIMHA CHARY)
JUDICIAL MEMBER

Dated: 20/3/2020

'VJ'

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI