

INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "E": NEW DELHI
BEFORE SHRI H.S.SIDHU, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER
(Through Video Conferencing)

ITA No. 5992/Del/2017
(Assessment Year: 2013-14)

MI Torica India P. Ltd, B-64/1, Wazirpur Industrial Area, Delhi PAN: AAHCM4136B	Vs.	DCIT, Circle-16(2), New Delhi
(Appellant)		(Respondent)

Assessee by :	None
Revenue by:	Ms. Aman Preet, Sr. DR
Date of Hearing	24/12/2020
Date of pronouncement	24/12/2020

ORDER

PER PRASHANT MAHARISHI, A. M.

1. This appeal is filed by the assessee against the order of the Id CIT(A)-15, New Delhi dated 28.06.2017 wherein, penalty of Rs. 1,29,434/- u/s 271(1)(c) of the Income Tax Act, 1961 on addition of Rs. 3,98,934/- out of legal and professional fees levied by the Id AO as per order dated 28.09.2016 was confirmed. That is the only issue in this appeal.
2. Brief facts of the case shows that the assessee is a company who filed its return of income on 26.11.2013 declaring total loss of Rs. 53,41,415/-. During the course of assessment proceedings it was noted that a sum of Rs. 3,98,934/- is written back out of legal and professional expenses in the next year and therefore, the assessee was asked to justify the above expenses for this year. As the Id AR of the assessee did not file any justification the above. Hence , addition was made to the total income of the assessee and consequently loss was reduced by an order dated 03.03.2016 u/s 143(3) of the Act. As the Id AO recorded a satisfaction that the assessee has furnished inaccurate particulars of its income penalty proceedings u/s 271(1)(c) of the Act was initiated.

3. During the course of penalty proceedings assessee submitted that penalty cannot be levied as it is merely an expenditure debited in this year have been written back in the next year. The ld AO rejected the contention of the assessee and passed an order u/s 271(1)(c) of the Act on 28.09.2016 holding that the assessee has furnished inaccurate particulars and concealed the facts thereby leading to the concealment of income to the extent of Rs. 398934/- and therefore, he levied a penalty @100% of the tax amounting to Rs. 129434/- for furnishing of inaccurate particulars of income. The assessee challenged the same before the ld CIT(A) however, same was dismissed. Thus, the assessee is in appeal before us.
4. Despite notice none appeared on behalf of the assessee and therefore the issue is decided on the merits of the case.
5. The ld DR vehemently supported the orders of the lower authorities.
6. We have carefully considered the rival contention and also perused the orders of the lower authorities. The only issue in this appeal is that assessee has debited expenditure in legal and professional expenses for the impugned assessment year based on the mandate given to the professionals and service providers. This was provided for expenses in this year. This expenditure was not paid to those parties as those parties did not rendered the services, therefore, the above sum was reversed in the next year crediting the legal and professional expenditure account. Therefore in the assessment proceedings the legal and professional expenditure debited to the profit and loss account, which were reversed in the subsequent year and offered for taxation, was disallowed, and penalty on such disallowance was initiated and levied by the learned assessing officer. The facts leading to the provision of such expenditure explained by the assessee and mentioned in the findings of the learned CIT – A shows that In the present case the assessee has paid a sum of Rs. 101124/- to the SR Dinoidia and Co. for the purpose of reporting u/s 92E of the Act for the year ended on 31.03.2013. Therefore, on 31.03.2013 the provision of such services was made. Later on these services were provided by BSR & co. for amount of Rs. 137529/- . Therefore, the same expenses which were provided for in the impugned assessment year payable to SR Dinodia and Co. was written back in Financial Year 2013-14 to the legal and professional charges amount.

Therefore, naturally the above sum was provided for the services to be rendered for that year which was subsequently rendered by the some other firm and therefore, the same amount provided for as an expenditure was written back in the subsequent year and offered for taxation. Another sum of Rs. 330900/- was payable to Balaji Global Logistics for custom clearance. However, the above services were not rendered by that party and therefore, the above sum was written back to the legal and professional expenditure account in the next year and same services were rendered by the staff of the assessee. The assessee submitted the details of the legal and professional charges as well as the details of sum written back. As these full facts were disclosed by the assessee we do not find that assessee has furnished any inaccurate particulars of income. It is not unusual that a provision is required to be made for some payable professional based on the mandate for services to be rendered for that particular year. It is also not impossible that those professional do not render such services in the next year and instead of that some other professional render such services. In that case the provision of legal and professional fees made in the earlier year was reversed in the subsequent year. Thus even otherwise expenditure is debited in the one year and if not paid same is reversed in the next year. It is not the case of the AO that no such mandate for provision of services was available from the professionals. There may be many reasons for a professional to not to render those services even after agreeing a particular fees. It may be because of multiple reasons. However such provision of services and its subsequent revision may result in disallowance of the expenditure but certainly it cannot lead to levy of penalty u/s 271 (1) (C) of the income tax act for furnishing of inaccurate particulars of income. The learned that lower authorities have not considered the above explanation of the assessee for first making provision for expenditure and subsequently writing back in the subsequent year. According to us, there is no inaccurate particulars of any income furnished by the assessee in this case. Full facts were already disclosed before the assessing officer. The details furnished were also not found to be false. In view of this, we reverse the finding of the lower authorities and direct the ld AO to delete the penalty levied u/s 271(1)(c) of the Act for furnishing inaccurate particulars of income.

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

Order pronounced in the open court on 24/12/2020.

-Sd/-
(H.S.SIDHU)
JUDICIAL MEMBER

-Sd/-
(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Dated: 24/12/2020
A K Keot

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1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi