

THE INCOME TAX APPELLATE TRIBUNAL
"G" Bench, Mumbai
Shri Shamim Yahya (AM) & Shri Amarjit Singh (JM)

I.T.A. No. 4379/Mum/2018 (Assessment Year 2005-06)
I.T.A. No. 4380/Mum/2018 (Assessment Year 2006-07)

M/s. Shreenath Motors Pvt. Ltd. Morya Estate, New Link Road Andheri West Mumbai-400 053. PAN : AAAFC0033D (Appellant)	Vs.	DCIT, Circle-5(3) Aayakar Bhavan M.K. Road Churchgate Mumbai-400020. (Respondent)
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Assessee by	Shri S.C. Tiwari
Department by	Shri T.S. Khalsa
Date of Hearing	23.02.2021
Date of Pronouncement	01.03.2021

ORDER

Per Shamim Yahya (AM) :-

These are appeals by the assessee against common order of learned Commissioner of Income Tax (Appeals) [in short learned CIT(A)] dated 23.4.2018 were in following penalties levied under section 271 (1) c have been confirmed.

Assessment year	Amount
2005-06	2,13,928/-
2006-07	1,91,250/-

2. Brief facts of the case leading to the levy of penalty at that in one of the assessment years there was disallowance of directors remuneration and payment to the management Institute for the directors education expenses. This disallowance was of the ground that the said director was young and son of the one of the other directors of the company. In another year the disallowance was on account of travelling expenses of the director with respect to the portion of travelling expenses attributed to the travel of the wife of the director. This was done by the AO on the ground that assessee could not

establish that there was any evidence that the director was required to take the wife into some social meetings during travelling.

3. These disallowances were confirmed up to the level of ITAT. Penalty on the disallowances were levied and confirmed by the learned CIT(A).

4. Against this order assessee is in appeal before us.

5. We have heard both the parties and perused the records. We find that penalty in this case has been levied on disallowance of directors remuneration and travelling expenses. From the facts narrated above we find that assessee has duly made the claim. All aspects are disclosed. There is no furnishing of inaccurate particulars or concealment of income. Honourable Supreme Court in the case of Reliance Petro Products Pvt. Ltd., (322 ITR 158)(SC) has held that mere rejection of the claim of the assessee cannot ipso facto lead to the conclusion that the assessee should be visited with the regours of penalty under section 271(1)(c) of the Act. In our considered opinion this proposition is duly applicable on the facts of the present case. It cannot be said that assessee's claim was ex facie bogus. Hence rejection of the said claim cannot warrant levy of penalty under section 271(1)(c) of the Act.

6. Furthermore we find that a larger bench of honourable Supreme Court in the case of Hindustan Steel Vs. State of Orissa (83 ITR 26) has expounded that the authority may not levy penalty if the conduct of the assessee is not found to be contumacious. In the present case we are of the considered opinion that assessee's conduct is not contumacious to warrant levy of penalty. Accordingly in the background of aforesaid discussion and precedents, we set aside the orders of authorities below and delete the penalty.

7. In the result, appeals by the assessee stand allowed.

Pronounced in the open court on 1.3.2021.

Sd/-
(AMARJIT SINGH)
JUDICIAL MEMBER

Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER

Mumbai; Dated : 01/03/2021

Copy of the Order forwarded to :

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

//True Copy//

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BY ORDER,

(Assistant Registrar)
ITAT, Mumbai