

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'A' NEW DELHI**

**BEFORE: SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER
AND
SHRI N.K. CHOUDHRY, JUDICIAL MEMBER**

**ITA No. 5613/Del/2016
Assessment Year: 2003-04**

M/s.Baweja Exports Pvt. Ltd.,
D-143, Defence Colony, New Delhi.
PAN: AABCB6318G
(Appellant)

vs. ACIT, Central Circle-3,
New Delhi.

(Respondent)

Appellant by : None
Respondent by : Shri Sanjay Kumar, Sr. DR

Date of hearing: 02.05.2022
Date of order : 25.05.2022

ORDER

PER N.K. CHOUDHRY, J.M.

This appeal has been preferred by the Assessee against the order dated 26.08.2016, impugned herein, passed by the Id. Commissioner of Income Tax (Appeals)-23, New Delhi (in short 'Id.Commissioner') u/s 271 of the Income Tax act 1961 (in short 'the Act') for the assessment year 2003-04.

2. In this case, as per information received by the department, the Assessing Officer recorded that the assessee company was the beneficiary in respect of as many as 56 transactions involving a total amount of Rs.2,72,50,000/- during the financial year 2002-03, on which the assessee was specifically asked to submit the necessary documents vis a vis complete details of transactions occurred between the parties in question and complete addresses along with Income-tax particulars, creditworthiness of the parties etc. to substantiate the genuineness of the transactions.

2.1 As per Assessment order, the Assessee though filed its written submissions dated 12.09.2013 while referring some decisions but failed to furnish the relevant information. While considering the reply of the assessee, it was held by the Assessing Officer that the case of the assessee is differentiable from the cases cited by the assessee. In the case of assessee, the entry operators have already accepted the fact that they are indulged in giving accommodation entries in lieu of cash from the interested parties. The Assessing Officer further observed that they have also given details of the modus operandi and list of the bank accounts used by them for money laundering operations.

2.2 The Assessing Officer further observed that the Apex Court has also dealt with the issue of tax avoidance in the case of McDowell & Co. Limited, wherein the issue of coloured transactions adopted by the company to avoid tax, has been discussed in length. The Assessing Officer further held that the assessee company had submitted the details as asked for in the case of some other parties, but when the notices u/s. 133(6) of the Income-tax Act, 1961 (in short "the Act") were sent to some parties to cross check the genuineness of the confirmations filed by the assessee, the same were returned back un-served. Therefore, while taking shelter of the decision of Hon'ble Supreme Court in the case of CIT vs. M/s. Lovely Exports (P) Ltd., (2008) 172 Taxman 44, it was held by the Assessing Officer that the contention of the assessee cannot be accepted as true because the information/details given by the assessee company during the course of assessment proceedings were not found genuine.

2.3 On dismissal of quantum appeals of the Assessee filed before the Id. CIT(A) and Hon'ble ITAT, the Assessing Officer decided the penalty proceedings on merits and came to the conclusion that the assessee has concealed the particulars of income and filed inaccurate particulars of

income. Hence, the assessee has committed default u/s. 271(1)(c) of the Act and therefore, the penalty @ 100% of the tax on concealed income of Rs.2,72,50,000/- was imposed.

3. The Assessee, being aggrieved, challenged the levy of penalty before the ld. Commissioner. The Assessee sought adjournments on more than 10 times from 9th April, 2014 to 24th February, 2015 and did not participate in the appellate proceedings for one or other reason and therefore, on non-compliance and in the constrained circumstances, the ld. Commissioner in the absence of submissions of the Assessee affirmed the penalty while considering the peculiar facts of the case that the penalty has been imposed in respect of the share application money which was held to have been received from accommodation entries by the Assessing Officer and confirmed by the ld. Commissioner and by Hon'ble Tribunal as well.

4. Against the confirmation of penalty by the ld. Commissioner, the assessee is in appeal before us.

5. Heard the ld. DR and perused the orders passed by the authorities below. Though the notices to the assessee in this case have been sent at the address given in form No. 36, however, the same returned back by postal department with the remark 'left', meaning thereby the Assessee's office is not situated at the address mentioned in Form No. 36 and/or the assessee has shifted somewhere. Hence, we are constrained to decide this appeal as ex-parte. We have given thoughtful consideration to the facts and circumstances of the case and the conclusion drawn by the authorities below in imposition of penalty and its confirmation and do not find any reason and/or material to controvert the findings of the authorities below. Hence, we are inclined not to interfere with the impugned order and thus, the appeal of the assessee is liable to be dismissed.

5. In the result, the appeal filed by the assessee stands dismissed.

Order pronounced in the open court on 25/05/2022.

Sd/-

(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER

Sd/-

(N.K. CHOUDHRY)
JUDICIAL MEMBER

Dated: 25/05/2022

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