

IN THE INCOME TAX APPELLATE TRIBUNAL
"H" BENCH, MUMBAI

BEFORE SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER AND
SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER

ITA No.1723/Mum./2019
(Assessment Year : 2014-15)

M/s. Kaypan Vinijya Pvt. Ltd.
02, Vardhman Complex
LBS Marg, Vikhroli (West)
Mumbai 400 083
PAN-AAACK3290K

...Appellant

v/s

Income Tax Officer
Ward-6(3)(3), Mumbai

.....Respondent

Assessee by : None
Revenue by : Shri Tejinder Pal Singh Anand

Date of Hearing- 17/08/2022

Date of Order- 11/11/2022

ORDER

PER SANDEEP SINGH KARHAIL, J.M.

The present appeal has been filed by the assessee challenging the impugned order dated 20/11/2018, passed under section 250 of the Income Tax Act ('the Act') by the learned Commissioner of Income Tax (Appeals)-12, Mumbai, [*learned CIT(A)*], for the assessment year 2014-15, which in turn, arose from the order dated 09/06/2017, passed under section 271(1)(c) of the Act.

2. When this appeal was called for hearing, neither anyone appeared on behalf of the assessee nor was any application seeking adjournment filed. Therefore, we proceed to dispose off this appeal ex-parte qua the assessee after hearing the learned Departmental Representative ('learned DR') and on the basis of material available on record.

3. In this appeal, the assessee has raised the following grounds:

"i) On the facts and in the circumstances of the case and in law, the learned CIT(A) erred in confirming the penalty u/s. 271(1)(c) of Rs.88,150/-.

ii) On the facts and in the circumstances of the case and in law, the learned CIT(A) erred In holding that the appellant had intentionally claimed wrong claims and thus there was mens rea in the case for the appellant.

iii) On the facts and in the circumstances of the case and in law, the learned C.I.T.(A) erred in the following expenses are not covered by debts claim u/s. 36(1)(vii) of the Income Tax Act, 1961, and, therefore, was liable to penalty u/s. 271(1)(c).

Sr. no.	Name of Person	Amount	Nature of transactions
i)	Suryakant Malekar	Rs.93,333	Sale consideration of car to the employee, written-off
ii)	Vikrant Patil	Rs.11,000	Advance paid to staff, written off
iii)	Balmer Lawrie & Co. Ltd.	Rs.1,07,156	Amount paid to purchase material, written off
iv)	United Arab Shipping Agency	Rs.58,603	Advance paid for clearing & forwarding expenses, written off
v)	Shri Guru Krupa Shipping	Rs.15,177	Amount paid for clearing & forwarding of imported goods
	Total:	Rs.2,85,269	

iv) the appellant craves, leave to add, alter, amend or delete any ground(s) of appeal either before or during the course of hearing of the appeal."

4. The only grievance of the assessee is against the levy of penalty under section 271(1)(c) of the Act.

5. The brief facts of the case are: The assessee filed its return of income on 30/11/2014, declaring total income at Rs. 67,130. Assessment under section 143(3) of the Act was completed on 21/12/2016, determining the total income of the assessee at Rs. 3,60,150, inter-alia, after making an addition of Rs. 2,85,269, under section 36(1)(vii) of the Act on the basis that the conditions laid down in section 36(2) of the Act are not satisfied.

6. Meanwhile, the penalty proceedings vide notice dated 21/12/2016, issued under section 271(1)(c) of the Act were initiated. The Assessing Officer (AO) vide penalty order dated 09/06/2017, passed under section 271(1)(c) of the Act, levied a penalty of Rs. 88,155, on the basis that no justification with regard to the satisfaction of conditions laid down under section 36(2) was furnished by the assessee and thus, the assessee has deliberately tried to evade tax.

7. The learned CIT(A) vide impugned order dismissed the appeal filed by the assessee against the penalty order passed under section 271(1)(c) of the Act. Being aggrieved, the assessee is in appeal before us.

8. Having heard the submissions of learned DR and perused the material available on record, we find that during assessment proceedings it was observed that the assessee had written off a sum of Rs. 2,85,269, being advances given in previous assessment years as unrecoverable. The details are as under:

<i>Sr. no.</i>	<i>Name of Person</i>	<i>Amount</i>	<i>Nature of transactions</i>
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i)	<i>Suryakant Malekar</i>	<i>Rs.93,333</i>	<i>Sale consideration of car to the employee, written-off</i>
ii)	<i>Vikrant Patil</i>	<i>Rs.11,000</i>	<i>Advance paid to staff, written off</i>
iii)	<i>Balmer Lawrie & Co. Ltd.</i>	<i>Rs.1,07,156</i>	<i>Amount paid to purchase material, written off</i>
iv)	<i>United Arab Shipping Agency</i>	<i>Rs.58,603</i>	<i>Advance paid for clearing & forwarding expenses, written off</i>
v)	<i>Shri Guru Krupa Shipping</i>	<i>Rs.15,177</i>	<i>Amount paid for clearing & forwarding of imported goods</i>
	<i>Total:</i>	<i>Rs.2,85,269</i>	

9. Accordingly, the assessee was asked to justify whether the conditions specified under section 36(2) are fulfilled in assessee's case, in order to claim deduction under section 36(1)(vii) of the Act. However, not agreeing with the submissions of the assessee, the AO vide order passed under section 143(3) of the Act disallowed the sundry balances written off of Rs. 2,85,269 under section 36(1)(vii) on the basis that the conditions laid down under section 36(2) of the Act are not satisfied. In the present case, the penalty of Rs. 88,155 was levied on the addition of Rs. 2,85,269 made vide assessment order on the basis that the assessee has not satisfied the conditions of section 36(2) of the Act.

10. From the statement of facts filed by the assessee before the learned CIT(A), we find that the assessee made the following submissions in respect of its claim under section 36(1)(vii) of the Act:

"Suryakant Mayakar

The Company has sold its vehicle to Suryokant Mayekar towards the union leader of employee of the company for a lumpsum consideration of Rs. 93,333/-

the amount remained unpaid since 23-12-2010 and it being not realizable in the due course of business the same has been w/off during FY 2013-14.

Vikrant Palit

On 03-05-2011 an advance of Rs. 11,000/- was paid to one Mr. Vikram Patil as a staff loan. The amount remained outstanding for more than 3 years and the employee also left the company. Therefore, the amount has been debited to sundry balances w/off.

Balmer Lawrie and Co. Ltd:

During the FY 2011-12 the company has made an advance payment for procuring certain material from M/s Balmer Lowrie and Co. Ltd a sum of Rs. 1,07,156/-, however, due to the dispute in quality and quantity of material the goods were not accepted by the Quality Control Department. The amount remained outstanding for the period of 3 years. Therefore the company has considered as Bad and Doubtful Debt.

United Arab Shipping Agency:

Payment mode to United Arab Shipping Agency during 2010-11 and 2012-13 total amounting to Rs.58,603/- for clearing and forwarding of importing goods were debited to their account and due to the dispute the amount was not adjusted against the purchase. Therefore the sum has been w/off as not recoverable in cash or kind.

Shree Gurukrupa Shipping:

Payment made to Shree Gurukrupa Shipping during 201-12 amounting to Rs. 15,177/- for clearing and forwarding of Importing goods were debited to their account and due to the dispute the amount was not adjusted against the purchase. Therefore the sum has been w/off as not recoverable in cash or kind."

11. From the perusal of aforesaid submissions made before the learned CIT(A), we find that in respect of each party, to whom advances/payments were made, the assessee provided its explanation for non-realisation of the amount resulting in its decision of writing off the same during the year under consideration. We find that the AO did not agree with the aforesaid factual explanation and made the addition disallowing the claim under section 36(1)(vii) r/w section 36(2) vide its order passed under section 143(3) of the Act. We further find that neither the AO nor the learned CIT(A) in the penalty

proceedings, found the assessee's explanation to be incorrect or without any basis. The Revenue also did not bring anything on record to controvert the aforesaid submission. There is no dispute on the fact that the assessee has not challenged the addition made vide the assessment order. However, at the same time, it is well established that quantum proceedings and penalty proceedings are separate in nature. Even if, for any reason, the assessee has not challenged the addition made in quantum proceedings, while deciding the issue of imposition of penalty regard must be had to the reasonable explanation furnished by the assessee. Considering the explanation as noted above, we are of the considered view that this is not a fit case for the levy of penalty under section 271(1)(c) of the Act. Accordingly, the grounds raised in the present appeal are allowed and the AO is directed to delete the penalty, as affirmed by the learned CIT(A).

12. In the result, the appeal by the assessee is allowed.

Order pronounced in the open Court on 11/11/2022

Sd/-
PRASHANT MAHARISHI
ACCOUNTANT MEMBER

Sd/-
SANDEEP SINGH KARHAIL
JUDICIAL MEMBER

MUMBAI, DATED: 11/11/2022

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The CIT(A);
- (4) The CIT, Mumbai City concerned;
- (5) The DR, ITAT, Mumbai;
- (6) Guard file.

Pradeep J. Chowdhury
Sr. Private Secretary

True Copy
By Order

Assistant Registrar
ITAT, Mumbai