

IN THE INCOME TAX APPELLATE TRIBUNAL

PUNE "A" BENCH : PUNE

BEFORE SHRI RAMA KANTA PANDA, VICE PRESIDENT  
AND  
SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER

I.T.A.No.287/PUN./2024  
Assessment Year 2016-2017

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| M/s. Midas Shelters Private Limited, 301/302, Jewel Tower, Lane No.5, Koregaon Park, Pune – 411 001. Maharashtra.<br>PAN AAHCM2907N<br>(Appellant) | vs. | The Income Tax Officer,<br>Ward – 14 (3), PMT Bldg.,<br>Swargate, Pune – 411 037.<br>Maharashtra.<br>(Respondent) |
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|----------------|--------------------------|
| For Assessee : | Shri Suhas P. Bora       |
| For Revenue :  | Shri Keyur Patel, CIT-DR |

|                         |            |
|-------------------------|------------|
| Date of Hearing :       | 03.06.2024 |
| Date of Pronouncement : | 03.06.2024 |

**ORDER**

**PER BENCH :**

This assessee's appeal for assessment year 2016-17, arises against the CIT(A), Pune-11, Pune's Din and Order No. ITBA/APL/S/250/2023-24/1054284936(1), dated 11.07.2023, in proceedings u/s.271(1)(c) of the Income Tax Act, 1961 (in short "the Act").

Heard both the parties. Case file perused.

2. The assessee's sole substantive issue raised herein regarding the correctness of sec. 271(1)(c) penalty of Rs.6,01,05,126/-; imposed by the Assessing Officer in his

order dated 28.06.2019 as upheld in learned CIT(A)'s ex-parte lower appellate discussion.

3. Learned CIT-DR vehemently argued that the assessee herein has been found to have furnished inaccurate particulars of income to the extent of Rs.17,36,74,082/- representing diversion of interest bearing funds to partners as interest free advances in the relevant previous year culminating in sec.36(1)(iii) disallowance in the corresponding sec.143(3) assessment dated 27.12.2018.

4. Learned counsel on the other hand invited our attention not only to the CIT(A)'s detailed discussion herein in para-4 onwards proceeding ex-parte but also to the fact that case law CIT vs Multiplan India (P.) Ltd. [1991] 38 ITD 320 (Del.); Estate of late Tukoji Rao Holkar vs. CWT 223 ITR 480 and CIT vs. B. Bhattachargee & Anr. 118 ITR 461 (SC) has been applied to affirm the impugned penalty. Mr. Bora further sought to buttress the point that both the learned lower authorities have wrongly recorded their unanimous finding of fact that the assessee had not filed any reply in penalty proceedings whereas the relevant factual position speaks otherwise. His further case is that it was a clear-cut case of "commercial expediency" wherein the assessee had made interest free advances to its related parties squarely covered by S.A Builders vs. CIT(A) [2007] 288 ITR 1 (SC).

5. The assessee's last submission before us is if one more effective innings is granted before the CIT(A), he would plead and prove all the relevant facts so as to rebut the corresponding findings in the Assessing Officer's impugned penalty order.

6. Faced with this situation and in light of the clinching fact that the learned CIT(A) has passed his order ex-parte wherein the assessee has been alleging to have filed his reply during penalty proceedings; we deem it appropriate in the larger interest of justice to restore the assessee's instant appeal back to the learned CIT(A) for his afresh appropriate adjudication preferably within three effective opportunities of hearing subject to the rider that the taxpayer herein shall plead and prove all the relevant facts consequential proceedings at its own risk and responsibility. Ordered accordingly.

7. Delay of 120 days in filing the instant appeal is condoned as per assessee's solemn averments in light of Collector, Land Acquisition vs., MST Katiji [1987] 167 ITR 471 (SC) having settled the law long back that all such technical aspects must make a way for the cause of substantial justice.

8. This assessee's appeal is allowed for statistical purposes in above terms.

Order pronounced in the open Court on 03.06.2024.

Sd/-  
[RAMA KANTA PANDA]  
VICE PRESIDENT

Sd/-  
[SATBEER SINGH GODARA]  
JUDICIAL MEMBER

Pune, Dated 03<sup>rd</sup> June, 2024

VBP/-

Copy to

|    |                             |
|----|-----------------------------|
| 1. | The appellant               |
| 2. | The respondent              |
| 3. | The CIT(A), Pune-11, Pune.  |
| 4. | The Pr. CIT, Pune concerned |
| 5. | D.R. ITAT, "A" Bench, Pune. |
| 6. | Guard File.                 |

//By Order//

//True Copy //

Sr. Private Secretary, ITAT, Pune Benches,  
Pune.