

**IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH "D", MUMBAI**

**BEFORE SHRI D.T. GARASIA, JUDICIAL MEMBER AND
SHRI RAJESH KUMAR, ACCOUNTANT MEMBER**

**ITA No.7388/M/2012
Assessment Year: 2006-07**

M/s. Ramanlal Vithaldas & Co., 333, Shaikh Memon Street, Corner of Mirchi Galli, Near Jumma Masjid, Mumbai – 400 002 PAN: AAAFR1209F	Vs.	Asst. Commissioner of Income Tax, 14(1), 2 nd Floor, Earnest house, Nariman Point, Mumbai - 400021
(Appellant)		(Respondent)

Present for:

Assessee by : Shri Nitesh Joshi, A.R.
Revenue by : Shri Purushottam Kumar, D.R.

Date of Hearing : 09.03.2017
Date of Pronouncement : 12.05.2017

ORDER

Per D.T. Garasia, Judicial Member:

The present appeal has been preferred by the assessee against the order dated 25.09.2012 of the Commissioner of Income Tax (Appeals) [hereinafter referred to as the CIT(A)] relevant to assessment year 2006-07.

2. The short facts of the case are that during the assessment proceedings, the Assessing Officer (hereinafter referred to as the AO) noted that assessee is maintaining a very high level of inventory which was unreasonably high with regard to the nature of credit of the assessee. The AO has levied the penalty on the ground that the loans of Rs.47,90,724/- were not genuine and interest of Rs.3,17,738/- claimed on this loan was also not genuine. Therefore, he added an amount of Rs.47,90,724/- under section 68 of the Act and Rs.3,17,738/- under section 36(1)(iii) of the Act, 1961. The AO has mentioned the names of the lenders against whom the confirmations with PAN numbers were not filed.

Therefore, AO has made the addition and Ld. CIT(A) has confirmed the same and Tribunal has confirmed the addition. Therefore, this penalty has been imposed by the AO and confirmed by the Ld. CIT(A).

3. During the course of hearing, the Ld. A.R. submitted that the addition has been made in respect of 15 loans listed in the assessment order from Sl.No.10 to 15 for which the confirmations have been filed. However, the AO stated that these were not filed and affidavit to this effect was filed before the ITAT. Secondly, there are four categories of loans. Category 1 includes loans where the confirmations were filed. Parties had PAN numbers and loans were also repaid during the year. Category- 2 represents loans where the loan confirmations were filed and the confirmations had addresses, though AO says there was no address. These two cases where the parties had lent money to PV. Sanghvi, HUF in past and on their direction the said loans were now transferred to assessee. Category 3 represents a loan where a confirmation along with PAN number was filed and category 4 represents the loan where confirmation with PAN number was filed still AO mentioned that no such confirmation was filed. It is the case where the information provided by the assessee is not found to be false. It is not a case where the AO attempted to trace the parties were nonexistent or that these were cash credits. It is not a case where the loans were bogus. The Ld. A.R. has relied upon the following judgments:

1. National Textile 249 ITR 125 (Guj.)
2. Bhogilal Virchand 127 ITR 591 (Bom.)
3. Sikri & Co. 106 ITR 682 (Kol.)

3. The Ld. D.R. relied upon the Revenue Authorities.

4. We have heard the rival contentions of both the parties. In the instant case we have gone through the order of miscellaneous application and in the miscellaneous application it was stated by the assessee that they have filed the

affidavit regarding the confirmation filed before the AO but that confirmation was not on the record therefore miscellaneous application was dismissed. In the instant case, the addition was confirmed by the Tribunal. The assessee disputed that he has filed the confirmation letter before the AO. Therefore, in our opinion, this is the case where the assessee has offered an explanation which was found by the AO to be false and the assessee was unable to substantiate his explanation, then the amount added to his income has been deemed to represent the concealed income. We find that section 68 permits the AO to treat unexplained cash credit as income or enabling provisions for making certain additions where there is failure by the assessee to give explanation or where the explanation is not to the satisfaction of AO. However, addition made on this count would not automatically justify the imposition of penalty under section 271(1)(c) by recourse only to Explanation 1 below section 271(1)(c). In order to justify the levy of penalty, two factors must co-exist. Firstly, there must be some material or circumstances leading to the reasonable conclusion that amount does represent assessee's income. It is not enough for the purpose of penalty that the amount has been assessed as income and secondly the circumstances must show that there was conscious concealment or act of furnishing of inaccurate particulars on the part of the assessee. The explanation does not make the assessment order conclusive evidence that the amount assessed was in fact the income of the assessee. No penalty can be imposed, if the facts and circumstances are equally consistent with the hypothesis that the amount does not represent concealed income as with the hypothesis that it does. If the assessee gives an explanation which is unproved but not disproved i.e. it is accepted but circumstances do not lead to reasonable and positive inference that the assessee's case is false, the explanation cannot help department. Because there will be no material to show that the amount in question is the income of the assessee. Therefore, we are of the view that in this case, it is the contention of the assessee that he has filed the confirmation in respect of category No.1 and the confirmation is also

produced during the penalty proceedings before us and in category No.2 confirmation was given but no PAN number was given. In category No.3 & 4 the confirmation was given, PAN number was available, therefore, we are of the view that in this case there is no finding by the AO showing that loans were bogus or the parties were nonexistent. We are of the view that in this case, the creditworthiness of the lenders was in doubt. Therefore, we are of the view that it is a case where the evidence was found to be inadequate. Therefore, presumptive addition has been made but there is no positive or reasonable inference or falsity information or falsity of the creditor, therefore we delete the penalty.

5. In the result, appeal of the assessee is allowed.

Order pronounced in the open court on 12.05.2017.

**Sd/-
(Rajesh Kumar)
ACCOUNTANT MEMBER**

**Sd/-
(D.T. Garasia)
JUDICIAL MEMBER**

Mumbai, Dated: 12.05.2017.

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The CIT (A) Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.