

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'H' : NEW DELHI**

**BEFORE SHRI G.C. GUPTA, VICE PRESIDENT AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER**

**ITA Nos.4304/Del/2013 & 4305/Del/2013
Assessment Years : 2009-10 & 2008-09**

**Assistant Commissioner of
Income Tax,
Bhiwani.**

(Appellant)

**Vs. M/s Vikas WSP Limited,
Railway Road,
VPO. Siwani,
District Bhiwani,
Haryana.**

**PAN : AAACV7816Q.
(Respondent)**

**ITA Nos.4003/Del/2013 & 4004/Del/2013
Assessment Years : 2008-09 & 2009-10**

**M/s Vikas WSP Limited,
Railway Road,
VPO. Siwani,
District Bhiwani,
Haryana.**

**PAN : AAACV7816Q.
(Appellant)**

**Vs. Assistant Commissioner of
Income Tax,
Bhiwani.**

(Respondent)

**Revenue by : Shri O.P. Meena, CIT-DR.
Assessee by : Shri Sunil Mathur, ITP.**

**Date of hearing : 10.09.2015
Date of pronouncement : 05.10.2015**

ORDER

PER BENCH :

These cross-appeals by the Revenue and the assessee for the assessment years 2008-09 and 2009-10 are directed against the order of learned CIT(A), Rohtak dated 2nd May, 2013. These are being disposed of with this consolidated order.

2. The assessee has moved an application for adjournment of the case which was rejected by the Bench.
3. The grounds of appeal of the Revenue in assessment year 2008-09 are as under:-

"1. On the facts and in the circumstances of the case, the Id.CIT(A) has erred in law in reducing the penalty from 50% to 10% of the outstanding demand on account of self assessment tax; levied by the AO u/s 221(1) read with Section 140A(3) of the IT Act, 1961.

2. On the facts and in the circumstances of the case, the Id.CIT(A) failed to appreciate that quantum of penalty levied by the JCIT, Bhiwani Range, Bhiwani is reasonable, fair and appropriately levied @ 50% of the total demand outstanding on account payment of self assessment tax. The maximum penalty leviable u/s 221(1) of the IT Act is equal to the amount of tax in arrears.

3. On the facts and in the circumstances of the case, the Id.CIT(A) has erred in law in allowing the relief by relying on the decision of Delhi High Court passed in the case of CIT(TDS) Delhi-XVII Vs. Global Infosystems Ltd. [2007] 165 Taxman 486 (Del.). The facts and circumstances of the case of M/s Global Infosystems Ltd. are not similar to the facts and circumstances of this case as the penalty in M/s Global Infosystems Ltd. was imposed on delayed payment of TDS and in this case, the penalty is on account of non-payment of outstanding demand of Self Assessment which was determined by the assessee itself at the time of filing return of income and later on also, assessee defaulted after taking upon itself the responsibility of payment through instalments.

4. The CIT(A) has erred in not appreciating that the Joint Commissioner of Income Tax, Bhiwani Range, Bhiwani has passed the subject order after duly application of mind and using his discretion in fair and logical way."

4. The grounds of appeal of the assessee for the assessment year 2008-09 are as under:-

"1. That the Worthy Commissioner of Income Tax (Appeals), Rohtak has erred in restricting the penalty levied u/s 221(1) to 10% of the outstanding tax demand, which works to Rs.1,04,66,483/-.

2. Notwithstanding the above said ground of appeal, it is submitted that the action of the Worthy CIT(A) in restricting the penalty levied u/s 221(1) to 10% of the tax demand is against the facts and circumstances of the case."

5. The grounds of appeal of the Revenue in assessment year 2009-10 are as under:-

"1. On the facts and in the circumstances of the case, the Id.CIT(A) has erred in law in reducing the penalty from 50% to 10% of the outstanding demand on account of self assessment tax; levied by the AO u/s 221(1) read with Section 140A(3) of the IT Act, 1961.

2. On the facts and in the circumstances of the case, the Id.CIT(A) failed to appreciate that quantum of penalty levied by the JCIT, Bhiwani Range, Bhiwani is reasonable, fair and appropriately levied @ 50% of the total demand outstanding on account payment of self assessment tax. The maximum penalty leviable u/s 221(1) of the IT Act is equal to the amount of tax in arrears.

3. On the facts and in the circumstances of the case, the Id.CIT(A) has erred in law in allowing the relief by relying on the decision of Delhi High Court passed in the case of CIT(TDS) Delhi-XVII Vs. Global Infosystems Ltd. [2007] 165 Taxman 486 (Del.). The facts and circumstances of the case of M/s Global Infosystems Ltd. are not similar to the facts and circumstances of this case as the penalty in M/s Global Infosystems Ltd. was imposed on delayed payment of TDS and in this case, the penalty is on account of non-payment of outstanding demand of Self Assessment which was determined by the assessee itself

at the time of filing return of income and later on also, assessee defaulted after taking upon itself the responsibility of payment through instalments.

4. The CIT(A) has erred in not appreciating that the Joint Commissioner of Income Tax, Bhiwani Range, Bhiwani has passed the subject order after duly application of mind and using his discretion in fair and logical way."

6. The grounds of appeal of the assessee for the assessment year 2009-10 are as under:-

"1. That the Worthy Commissioner of Income Tax (Appeals), Rohtak has erred in restricting the penalty levied u/s 221(1) to 10% of the outstanding tax demand, which works to Rs.1,65,67,048/-.

2. Notwithstanding the above said ground of appeal, it is submitted that the action of the Worthy CIT(A) in restricting the penalty levied u/s 221(1) to 10% of the tax demand is against the facts and circumstances of the case."

7. Learned DR submitted that learned CIT(A) has grossly erred in reducing the penalty from 50% to 10% of the outstanding demand on account of self assessment tax levied by the Assessing Officer u/s 221(1) read with Section 140A(3) of the Income-tax Act, 1961. He submitted that the maximum penalty leviable u/s 221(1) of the Act was equal to the amount of tax in arrears, whereas the Assessing Officer was reasonable and appropriately levied the penalty on 50% of the total demand and no reason has been given by the CIT(A) for reducing the penalty to 10% of the outstanding demand. He relied on the decision of Cochin Bench of the Tribunal in Hope Micro Credit Finance (P) Ltd. Vs. ACIT – [2014] 47 taxmann.com 422 (Cochin-Trib.), of Mumbai Bench of the Tribunal in Diamondstar Exports Ltd. Vs. ITO – [2014] 147 ITD 59 (Mumbai-Trib.), of Hon'ble Madras High Court in

Nachimuthu Industrial Association Vs. CIT – [1980] 123 ITR 611 (Mad.) and of Hon'ble Andhra Pradesh High Court in CIT Vs. Sreerama & Co. – [1975] 101 ITR 531 (AP) in support of the case of the Revenue.

8. The learned representative of the assessee has submitted that the assessee has paid the entire demand and has also suffered the interest for late payment thereof and, therefore, should not be visited with penalty u/s 221(1) read with Section 140A(3) of the Act.

9. We have considered the rival submissions and have perused the order of the Assessing Officer and learned CIT(A). We find that the assessee is engaged in the business of manufacturing of guar gum and has not paid any advance tax and the tax payable under self assessment tax at the time of filing of the return of income. The return was processed for the assessment year 2008-09 u/s 143(1) of the Act and the total demand including interest of ₹10,46,64,830/- was raised. However, the assessee has made only part payment of the demand on various dates from 20th August, 2010 to 20th January, 2011 totalling to ₹4,25,00,000/-. The installments given by the Department were partly honored by the assessee and there were defaults also in making the payment on the due dates as per the installment order. We find that for the assessment year 2008-09, the assessee has paid the entire demand of ₹10.46 crores except that of ₹1,21,64,826/- before the date of passing of penalty order u/s 221(1) on 17.11.2011. The CIT(A) has recorded that the assessee has paid the entire demand for both the assessment years 2008-09 and 2009-10 along with the amount due u/s 220(2) by 29.03.2012. The provision of Section 221(1) does not specify any minimum penalty but specifies that total amount of penalty shall not exceed the amount of tax in arrears. Considering the totality of facts and circumstances of the case, learned CIT(A) was of the view

that penalty at 50% of the outstanding demand was very harsh and unjustified. He has cited the decision of Hon'ble Delhi High Court in CIT Vs. Global Infosystems Ltd. – [2007] 165 Taxman 486 (Del) and has held that it would be deemed fair and reasonable to limit the penalty to 10% of the outstanding demand and reduce the penalty u/s 221(1) to ₹1.04 crores for assessment year 2008-09 and to ₹1.65 lakhs for assessment year 2009-10. We find that the assessee has paid the entire demand along with interest thereon by 29.03.2012. We are aware that the payment of the entire tax with interest shall not absolve the assessee from penalty provided u/s 221(1) of the Act. However, the penalty imposed u/s 221(1) of the Act should be reasonable considering the facts and circumstances of each case. The CIT(A) has passed a detailed speaking order for reducing the penalty to 10% of the outstanding demand. We are of the view that in the facts and circumstances of the case of the assessee, the penalty imposed at 10% of the outstanding demand for both the assessment years u/s 221(1) of the Act read with Section 140A(3) of the Act was just and fair and no interference in the order of learned CIT(A) is called for. Accordingly, the order of learned CIT(A) for both the assessment years is confirmed and the grounds of appeal of the Revenue and the assessee for both the assessment years are dismissed.

10. In the result, the appeals of the Revenue and the appeals of the assessee for both the assessment years are dismissed.

Decision pronounced in the open Court on 5th October, 2015.

Sd/-

(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Sd/-

(G.C. GUPTA)
VICE PRESIDENT

VK.

Copy forwarded to: -

1. Revenue : **Assistant Commissioner of Income Tax,
Bhiwani.**
2. Assessee : **M/s Vikas WSP Limited, Railway Road,
VPO. Siwani, District Bhiwani, Haryana.**
3. CIT
4. CIT(A)
5. DR, ITAT

Assistant Registrar