

आयकर अपीलीय अधिकरण, मुंबई न्यायपीठ, D, मुंबई ।

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

श्री संजय गर्ग, न्यायिक सदस्य एवं

श्री अश्वनी तनेजा, लेखा सदस्य, के समक्ष

**Before Shri Sanjay Garg, Judicial Member, and
Shri Ashwani Taneja, Accountant Member**

**ITA NO.4519/Mum/2015
Assessment Year: 2008-09**

Invenioliife Technology P. Ltd. C-701, Shelter Complex, Sector -8, Khargar, Navi Mumbai- 410210 (Appellant)	बनाम/ Vs.	ITO Ward 3, 3 rd Floor, Trifed Tower, Opp. Khanda Colony, Panvel-410206, Dist. Raigad. (Revenue)
P.A. No. AABC16314B		

Appellant by	None
Revenue by	Shri Vachaspati Tripathi(DR)

सुनवाई की तारीख/ Date of Hearing :	06/10/2016
आदेश की तारीख / Date of Order:	26/10/2016

आदेश / O R D E R

Per Ashwani Taneja (Accountant Member):

This appeal has been filed by the Assessee against the order of Ld. Commissioner of Income Tax (Appeals), Thane-2, {(in short 'CIT(A)'}, dated 01.05.2015 passed against penalty order of the AO dated 18.04.2011 u/s 271(1)(c) for Assessment Year 2008-09.

3. During the course of hearing none appeared on behalf of the assessee despite the fact that on the earlier date this case was adjourned as per convenience assessee's counsel. Under these circumstances, we have no option but to proceed ex-parte qua the assessee.

3.1. The brief facts in this case are that during the year under consideration the assessee company had received unsecured loan of Rs.10,47,101/-, and out of the same loan of Rs.4,50,000/- was found to be unexplained. It was observed by the AO that assessee failed to explain the source with requisite documentary evidence. The AO had held that the impugned loans were bogus. Thereafter assessee had offered it to tax vide its letter dated 28.10.2010 and expressed inability to substantiate said loan amount. Subsequently, penalty proceedings were initiated and the AO levied the penalty by observing as under:

"In the above submission, the assessee has stated that the promoters -Directors had forwarded the said loans to the assessee Company with the sole intention of helping the Company cope with the initial phase of its survival. The assessee offered the amount for taxation with the plea of "buying peace of mind". But the assessee offered the amount to tax during assessment proceedings, only after having been failed to explain & substantiate the sources of such un-secured loans. So there is no voluntary disclosure made from the part of the assessee.

As per Explanation 1 to Sec. 271(1)(c), Where in respect of any facts material to the computation of the total income of any person under this Act, (A) such person fails to offer an explanation or offers an explanation which is found by the [Assessing Officer] or the [Commissioner (Appeals)] [or the Commissioner] to be false, or (B) such person offers an explanation which

he is not able to substantiate and fails to prove that such explanation is bonafide and that all the facts relating to the same and material to the computation of his total income have been disclosed by him,] then, the amount added or disallowed in computing the total income of such person as a result thereof shall, for the purposes of clause (c) of this sub-section be deemed to represent the income in respect of which particulars have been concealed.

In view of the above, the plea of the assessee cannot be accepted and Penalty u/s 271(1)(c) is leviable for the default as the assessee has not able to explain and substantiate the sources of un-secured loan to the extent of Rs. 4,50,000/-."

3.2. Being aggrieved assessee filed an appeal before the Ld. CIT(A) and there also no relief was given and penalty was confirmed by the Ld. CIT(A) by *inter alia* observing as under:

"I have carefully considered the submissions of the appellant, the observations of the AO in the penalty order; case laws relied upon by the appellant and the facts of the case.

(i) In the first place, the appellant submission itself is not clear as from whom the loans were obtained, either from relatives of Directors or from Directors itself because in the written submission above the appellant has stated that loans were taken from relatives of Directors whereas in ground No. 3 above, the appellant has referred of loans being taken from Directors. This shows the inconsistency submission of the appellant.

(ii) If the loans received from Directors or relatives were genuine, there is no reason for not able to explain the source of the loans as the loans were not taken from third parties. In many instances, unexplained cash credit is added as income mainly due to absence of loan confirmation or loan creditors not available, whereas in the case of the appellant, both confirmations and identity were established , however, the source has not been explained, therefore, the appellant has offered to tax after the

AO started the enquiries about loans. Hence, the agreed addition of these loans cannot be considered as voluntarily.

(iii) Had it not been taken up the case for scrutiny, the appellant would not have paid the tax. Even in the penalty proceedings, the appellant had not proved that it was not concealment or filing inaccurate particulars of income.

(iv) The appellant further stated that while filing return of income, due to lack of professional advice, the loans and advances has not been offered as income. This plea of the appellant is not acceptable as there is no excuse for ignorance of law and the reason given is beyond unacceptable explanation.

(v) The case laws relied upon by the appellant are not applicable in the case of the appellant as the facts and the circumstances are not the same.

In view of the above stated facts, the appeal of the appellant on this ground is rejected and the penalty order passed by the AO is upheld.”

3.3. During the course of hearing before us, Ld. DR submitted that penalty has been rightly confirmed as the impugned loan has been held to be bogus which has been accepted as such by the assessee as well. It is noted by us that no evidence has been furnished by the assessee in this regard. There is nothing before us to counter the adverse observation made by the AO and Ld. CIT(A) wherein impugned loan amount has been held to be bogus. Under these circumstances, we have no other option but to hold that the penalty has been rightly levied and confirmed by the Ld. CIT(A). Therefore appeal of the assessee is dismissed.

4. In the result, the appeal of the Assessee is dismissed.

Order pronounced in the open court on 26th October, 2016

Sd/-
(Sanjay Garg)

न्यायिक सदस्य / JUDICIAL MEMBER

Sd/-
(Ashwani Taneja)

लेखा सदस्य / ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated : 26/10/2016

Patel, P.S. नि.स.

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT, Mumbai.
4. आयकर आयुक्त / CIT(A)- , Mumbai
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR,
ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Dy./Asstt. Registrar)

आयकर अपीलीय अधिकरण, मुंबई / **ITAT, Mumbai**