

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

**BEFORE SMT DIVA SINGH, JUDICIAL MEMBER
AND
SH.O.P.KANT, ACCOUNTANT MEMBER**

**I.T.A .No.-1296/Del/2015
(ASSESSMENT YEAR-2008-09)**

ITO, Ward-56(3), New Delhi. (APPELLANT)	vs	Rang Tarang Paints Corner, 1/5824, Loni Road, Shahdara, Delhi-110032. PAN-AADFR6360F (RESPONDENT)
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Appellant by	Sh.Yatendra Singh, Sr.DR
Respondent by	Sh.V.Raja Kumar, Adv.

Date of Hearing	16.11.2015
Date of Pronouncement	16.12.2015

ORDER

PER DIVA SINGH, JM

The present appeal has been filed by the Revenue assailing the correctness of the order dated 22.12.2014 of CIT(A)-19, New Delhi pertaining to 2008-09 assessment year on the following grounds:-

1. *“On the facts and in the circumstances of the case, the order of the Ld. CIT (A) is bad in law and not in consonance with the facts of the case.*
2. *On the facts and in the circumstances of the case, the Ld. CIT(A) had erred in deleting the penalty of Rs. 6,18,000/- under section 271(1)(c) by relying on the Hon'ble Supreme Court's decision in the case of M/s Price Waterhouse Cooper Pvt Ltd reported in 348 ITR 306 wherein facts of the case were totally different.*
3. *On the facts and in the circumstances of the case, the Ld. CIT (A) had erred in deleting the penalty of Rs. 6,18,000/- under section 271(1)(C) ignoring the decisions of the Supreme court in the case of MAK DATA Pvt Ltd in which facts were similar to that of the assessee's case.*
4. *The appellant craves leave to add, allow or amend any/ all the grounds of appeal before or during the course of hearing of the appeal.”*

2. The relevant facts of the case are that the returned income of Rs.3,70,479/- was assessed at the income of Rs.23,21,438 by the Assessing Officer. As a result of which the penalty proceedings u/s 271(1)(c) were initiated and considering the facts that in the survey carried out by the department on 27.09.2007 wherein the assessee had made a disclosure of Rs.20 lakhs and offered the same for taxation despite which the said amount was not added in the returned income. The AO in the penalty proceedings required the assessee to explain why penalty proceedings u/s 271(1)(c) should not be initiated against the assessee. Considering the reply of the assessee and not convinced with the same the penalty @ 100% of the tax on concealed income of Rs.20 lakhs was imposed. As a result of the penalty of Rs.6,18,000/- the assessee came in the appeal before the First Appellate Authority where Various arguments were advanced. Considering the reply of the assessee, the CIT(A) proceeded to quash the penalty order taking into fact the facts as set out in para 7 of the impugned order and the decision of the Apex Court in the case of M/s Price Waterhouse Cooper Pvt. Ltd. 348 ITR 306.

3. Aggrieved by this, the Revenue is in appeal before the Tribunal.

4. The Ld. Sr DR relied upon the penalty order. However the Ld. Sr. DR was unable to rebut the findings of facts recorded in para 7 nor controverted these as are found set out in the impugned order.

5. The Ld. AR on the other hand heavily relied upon the impugned order.

6. Having considered the facts on which there is no dispute, we find that the conclusion of the Ld. CIT(A) cannot be faulted with. The peculiar facts and circumstances as brought out in para 7 remaining unassailed, we uphold the finding. The relevant para is reproduced hereunder for ready-reference:

7. *“During the appellate proceedings, the appellant's Authorized Representative vide his written submission filed on 15.12.2014 had stated that the appellant was under the bonafide belief that the additional income of Rs. 20,00,000/- was to be added by the Assessing Officer during the assessment proceedings and was not aware that it was to be offered by them while filing the original return of income on 30.09.2008. Though this explanation appears a little farfetched, the assessment order and penalty order are silent regarding the reasons for the appellant filing the revised return after including the additional income of Rs. 20,00,000/- offered during the survey on 27.09.2007. There is no dispute on the point that the appellant offered Rs. 20,00,000/- during the survey but failed to*

include the offered income in their original return filed on 30.09.2008. As per the penalty order, it was only because the Assessing Officer had issued notice under section 143(2) on 17.08.2009 that the appellant filed a revised return on 22.01.2010 to include the additional income offered of Rs. 20,00,000/-. The fact that the appellant had already paid the tax of Rs.6,00,000/- in August 2008 immediately after the survey on the additional income offered of Rs.20,00,000/-, indicates that the issue notice under section 143(2) subsequently on 17.08.2009 may not have prompted the appellant to include the additional income of Rs. 20,00,000/- offered during the survey in their revised return filed on 22.01.2.010. As the assessment order and penalty order are silent regarding the events leading the appellant to file a revised return by including the additional income of Rs.20,00,000/- offered during the survey, it is difficult to concur with the Assessing Officer that the appellant had furnished inaccurate particulars of income in their original return of income filed on 30.09.2008. Moreover, the appellant during the penalty proceedings vide their submissions dated 25.05.2011 had stated that this inadvertent omission in the original return was subsequently rectified by them by filing a revised return on 22.01.2010. In the penalty order, this explanation of 'inadvertent omission' in the original return of income filed on 30.09.2008 is not refuted by the Assessing Officer and instead he had merely stated in the penalty order that the hearing notice under section 143(2) dated 17.08.2009 forced the appellant to file a revised return on 22.01.2010 by including the additional income of Rs. 20,00,000/- offered during the survey."

6.1. Accordingly on a consideration of the submissions of the parties and on account of non-rebuttal of material facts as set out hereinabove, we find that the impugned order deserves to be upheld. The said order was pronounced on the date of hearing itself in the open Court.

7. In the result, the departmental appeal is dismissed.

The order is pronounced in the open court on 16th of December, 2015.

Sd/-

Sd/-

(O.P.KANT)
ACCOUNTANT MEMBER

(DIVA SINGH)
JUDICIAL MEMBER

Dated: 16 /12/2015

Amit Kumar

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI