

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

**BEFORE SHRI D. KARUNAKARA RAO, ACCOUNTANT MEMBER AND  
SHRI C.N. PRASAD, JUDICIAL MEMBER**

**ITA No.4609/M/2013  
Assessment Year: 2007-08**

Shri Trilokchand Sharma, Plot No.17/18, Sector 23, Marble Market, Kalamboli, Navi Mumbai <b>PAN: AJVPS 2819K</b>	Vs.	Income Tax Officer, Ward 2, 2 <sup>nd</sup> Floor, Trifed Tower, Opp. Khanda Colony, New Panvel – 410 206 Mumbai
(Appellant)		(Respondent)

**Present for:**

Assessee by : None  
Revenue by : Shri Akhilendra Yadav, D.R.

Date of Hearing : 07.11.2016  
Date of Pronouncement : 30.11.2016

**ORDER**

**Per C.N. Prasad, Judicial Member:**

This appeal is filed by the assessee against the order of the Commissioner of Income Tax (Appeals)-I, Mumbai [(hereinafter referred to as the CIT(A)] dated 28.02.2013 for the assessment year 2007-08 in confirming the penalty of Rs.91,610/- levied under section 271(1)(c) of the Act. In spite of issue of notice none appeared on behalf of the assessee or any adjournment is moved. In the circumstances, we dispose of this appeal by hearing the Ld. D.R. on merits.

2. The Ld. D.R. submits that the assessee an individual is engaged in the business of textiles weaving job work filed return of income on 02.01.2008 declaring income of Rs.1,06,575/-. The assessment was completed under section 143(3) of the Act on 28.12.2009 determining the income at Rs.4,70,693/-. The Ld. D.R. submits that while completing the assessment the Assessing Officer made addition of Rs.3,61,666/- on account of disallowance

of job work charges for the reason that the assessee according to the Assessing Officer inflated the expenditure by Rs.3,61,666/- on account of job work charges. The Ld. D.R. submits that at the time of original assessment proceedings the assessee contended that he gave work of weaving of cloth to various weavers at Bhivandi. Thus weavers wove/manufactured the goods at the loom owners' place. It was submitted that during the year under consideration various weavers have taken the goods from the assessee for weaving the goods at the loom owners' place by the parties referred to in assessment order. The assessee contended that in the books of account though it was shown that the creditors for weaving charge under loom owner account i.e. Kewal Textiles but assessee makes all the payments to the weavers and not to the loom owner. It was contended that the outstanding amount which is shown under the head Kewal Textiles for the seven creditors referred in the assessment order were paid subsequently. Therefore, it was contended that the job work charges payable to the creditors are genuine. However, the Assessing Officer treated these job work charges as not genuine. He concluded that assessee has inflated expenditure to that extent and the said expenses were disallowed and added back to the income.

3. The Ld. D.R. submits that penalty notice was issued to the assessee to explain as to why penalty under section 271(1)(c) of the Act should not be levied and the assessee replied that there is no concealment of income and the addition came to be made only on account of disallowance of job work charges without accepting the explanation that assessee has incurred these expenses towards job work through the weavers to the loom owners. The Ld. D.R. submits that the Assessing Officer levied penalty under section 271(1)(c) holding that Shri Jitendra P. Malade who is the brother of Shri Dhiraj P. Malade the owner of Kewal Textiles has given a statement stating that as on 31.03.07 no amount is outstanding to be paid by the assessee to Kewal Textiles. Based on these statements, the Assessing Officer came to the

conclusion that the assessee has concealed income or furnished inaccurate particulars and imposed penalty of Rs.91,610/- which the Ld. CIT(A) confirmed agreeing with the Assessing Officer that there is concealment of particulars of income. The Ld. D.R. vehemently supports the orders of the authorities below.

4. We have perused the orders of the authorities below and heard the Ld. D.R. The Assessing Officer levied penalty observing that the explanation given by the assessee that the credit balance in the name of Kewal Textiles on account of job work charges is genuine is not correct. The Assessing Officer observed that on independent enquiries the proprietor of Kewal Textiles has stated that there is no outstanding balance payable by assessee to them. Therefore the Assessing Officer concluded that the credit balance shown in the name of Kewal Textiles is not genuine and there is concealment of income by the assessee and levied penalty. The Ld. CIT(A) also confirmed the penalty agreeing with the view of the Assessing Officer.

5. We find that the assessee all along contended that Kewal Textiles is a loom owner where power loom cloth is manufactured by various weavers at Bhivandi. Kewal Textiles is the proprietary concern of Shri Dhiraj P. Malade. The assessee was contending that he gave work of weaving of cloth to various weavers at Bhivandi and these weavers wove the goods at the loom owners' place and all these weavers referred to in sl.no.1 to 7 in the assessment order. The assessee contended that the loom owner was shown as creditor and all the payments were made to the weavers and not to the loom owners. This is how the assessee shows in his books of accounts generally. It was contended that the outstanding amount shown under the head Kewal Textiles relates to the above said seven parties and in fact the assessee has made payments to all these seven parties in subsequent year and a statement of bank account for the subsequent period, the copy of ledger account in which the payments made to these weavers also reflected in the books. This explanation of the assessee was

not found to be false, neither the Assessing Officer has examined the seven parties independently to find out the truth rather he chose to rely on the statement of Shri Jitendra P. Malade who is the brother of Shri Dhiraj P. Malade proprietor of Kewal Textiles. Since the explanation of the assessee was not found to be false or not genuine and bonafide, we do not see that there is conscious concealment by the assessee in showing the outstanding creditors on account of job work charges. The submission of the assessee that he has paid the creditors in the subsequent years is also not found to be false. The assessee also produced the bank statements confirming the payments made to these seven weavers who weave the goods at the loom owner's place. In the circumstances, we hold that there is no concealment of income or furnishing of inaccurate particulars of income by the assessee and the disallowance of job work charges was made on account of difference of opinion. Thus, we reverse the orders of the authorities below and cancel the penalty levied under section 271(1)(c) of the Act.

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

**Order pronounced in the open court on 30.11.2016.**

**Sd/-**  
**(D. Karunakara Rao)**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**(C.N. Prasad)**  
**JUDICIAL MEMBER**

Mumbai, Dated: 30.11.2016.

\* 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.