

आयकर अपीलीय अधिकरण, मुंबई "ई" खंडपीठ
Income-tax Appellate Tribunal -"E"Bench Mumbai
सर्वश्री राजेन्द्र,लेखा सदस्य एवं सी. एन. प्रसाद,न्यायिक सदस्य
Before S/Shri Rajendra,Accountant Member and C.N. Prasad,Judicial Member
आयकर अपील सं./ITA/2839/Mum/2012,निर्धारण वर्ष /Assessment Year: 2002-03

M/s. Soma Papers & Industries Ltd. Indian Mercantile Chambers 3 rd Floor, 14 R Kamani Marg Ballard Estate,Mumbai-400 001. PAN:AAACS 6835 Q	Vs.	DCIT, Circle 2(3) Mumbai.
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(अपीलार्थी /Appellant)

(प्रत्यर्थी / Respondent)

Revenue by:Shri J. Saravanan-DR

Assessee by: Dr. K. Sivaram & Ms. Neelam Jadhav

सुनवाई की तारीख / **Date of Hearing: 04.07.2016**

घोषणा की तारीख / **Date of Pronouncement: 24.08.2016**

आयकर अधिनियम,1961 की धारा 254(1)के अन्तर्गत आदेश

Order u/s.254(1)of the Income-tax Act,1961(Act)

लेखा सदस्य राजेन्द्र के अनुसार PER RAJENDRA, AM-

Challenging the order of the CIT(A)-6,Mumbai,dated 17.02.2012,the Assessee has filed the above appeal.The solitary ground raised by the assessee is with regard to levy of penalty u/s. 271(1)(c) of the Act.

2.Assessee-a public limited company, engaged in the business of manufacture and sale of coated paper and board, filed its return of income for the year under consideration on 30.10.2002,declaring loss of Rs.1.45Crores. Subsequently a revised return was filed on 17.06.2003,declaring revised loss at Rs.1.11 crores. The Assessing officer (AO) completed the assessment u/s.143(3) of the Act on 28.03.2005, assessing total loss at Rs.23,58,890/-.

Brief facts :-

3.During the assessment proceedings the AO had made following additions/disallowances and initiated penalty proceedings u/s. 271 for filing inaccurate particulars

(i) disallowance u/s. 224 r.w.s.36(1) –Rs.1.77 lakhs

ii) addition of income as per TDS certificate –Rs.5.21 lakhs

iii) disallowance of claim of Debit balance written off –Rs.9.15 lakhs

iv) bogus purchases –Rs.17.29 lakhs

v) disallowance on account of bogus sundry creditors – Rs.3.77 lakhs

vi) disallowance on account of discount paid –Rs.44,876/-

The FAA upheld all the additions except disallowance at Sl.No.3 i.e. debit balances written off of Rs.9.15 lakhs.

In its reply to penalty notice assessee sought adjournment. As per the AO assessee did not furnish any explanation. He held that by making the claims of deduction the assessee had filed inaccurate particulars of its total income. He levied penalty of Rs.10.17 lakhs u/s. 271(1)(c) of the Act.

4. Aggrieved by penalty order of AO the assessee preferred an appeal before the FAA. Before him it was argued that assessee had made all the payments for provident fund and ESIC before due date except for the two items, that the payment was made before due date of filing of return of income, that the disallowance made by AO was not as per provisions of the Act, that the assessee had not furnished any inaccurate particulars of income, that the assessment proceedings and penalty proceedings were two separate proceedings, that assessee had filed a bonafide explanation with regard to difference in TDS certificate of Rs.5.21 lakhs, that the difference had arisen since the company had credited income net of expenses, that the AO had considered the gross amount of job work, that assessee had not claimed any expense separately in the P&L account, that reconciliation of difference could not be made on account of factory being closed, that it was not a case of filing of inaccurate particulars about difference in sundry creditors (Rs.3.77 lakhs), that the difference was because of various reasons like non passing of entry of discount, non reconciliation of sales figure etc. that no penalty u/s. 271 could be levied for such differences. About the discount paid of Rs.44,876/- it was contended that because of closure of the factory and disconnection of electricity supply the assessee could not file reconciliation. About the difference in purchases (Rs.17.

29lakhs),the assessee stated that factory premises was closed, that the computer was not functioning, the assessee could not reconcile the difference, that no opportunity was given by AO to reconcile the difference,that there was no malafide intention on part of the assessee for not appearing before the FAA during the quantum proceedings,that assessee wanted to cut cost of litigation, that the Tribunal had quashed the penalty levied by the AO, while deciding the appeal for the AY 2004-05.

5.After considering the submission of the assessee, the FAA held that while deciding the appeal for earlier year the Tribunal had made certain observations, that the assessee was trying to mis-quote the order of the Tribunal and was attempting to mislead him. He further observed that additions on account of PF made by the AO were not justifiable and hence, penalty could not be levied for the said amount.With regard to other additions, the FAA held that assessee was given more than adequate opportunity, that it did not file explanation, that the it had concealed the income and furnished inaccurate particulars of income. Finally,he upheld the levy of penalty for the remaining disallowance/ additions made by the AO.

6.During the course of hearing before us, the assessee raised additional ground, vide letter 27.5.15.It was argued that it has raised only a legal ground and all the facts were available on record.The Departmental Representative(DR) left the issue of admission of additional ground to the discretion of the Bench.After considering the available material we are of the opinion that issue raised by assessee does not require the finding of facts outside the papers available on the file.As it is a purely legal ground the same is being admitted. The additional ground deals with penalty levied u/s. 271(1)(c)of the Act,on account of disallowance of Rs.17. 29 lakhs for bogus purchases.

6.1. Before us, the Authorised Representative (AR) referred to Pg. No.157-159 of the PB and stated that assessee had filed explanation of each and every item of additions/disallowances, that it was not a case of filing of inaccurate particulars. With regard to additional ground, he stated that AO had not initiated penalty with regard to alleged bogus purchases, that the penalty could not be levied if same was not initiated in the assessment order/proceedings. He relied on the judgment of the Hon'ble Allahabad High Court in the case of Triveni Engineering & Industries Ltd. (369ITR660).

He also relied upon the cases of Reliance Petro Products (322ITR158); SM Construction(60taxmann.com 135), and Control & Switchgear Contractors Ltd. (377ITR215). He referred to the order of the Tribunal for the earlier year where certain principles were laid down. The DR argued that assessee had not filed the reconciliation, that it had filed inaccurate particulars that it had not raised the issue of non-initiation of penalty proceedings with regard to bogus purchases.

7. We have heard the rival submissions and perused the material before us. We find that the FAA has not considered the submissions made by the assessee. It was specifically mentioned that factory premises were closed, that because of non-payment of dues electricity connection was disconnected, that the data was stored in the computer and could not be retrieved. In our opinion failure to file reconciliation statements was explained by assessee. Considering the peculiar facts and circumstances the FAA should have decided the issue on the basis of the explanation filed before him. The addition made in the quantum proceedings should not result into automatic levy of penalty. The FAA is supposed to give independent finding while deciding the penalty appeals. In the earlier year the Tribunal had also held that additions in the quantum could be justified, that the

same would not result in automatic levy of penalty. It is a fact that BIFR was approached by the company. The FAA had not dealt with the explanation filed by it. It is also fact that AO had not initiated penalty proceedings u/s 271(1)(c) of the Act on account of bogus purchases and hence no penalty could be levied for the said amount. After considering the above facts cumulatively we are of the opinion that the assessee had filed a bonafide explanation with regard to disallowance/ additions made for the year under consideration and that FAA was not justified in confirming the penalty order. The cases relied upon by the assessee support the view taken by us. So, reversing the order of the FAA we decide effective Ground of appeal in favour of the assessee .

As a result, appeal filed by the Assessee stands allowed.

फलतः निर्धारिती द्वारा दाखिल की गई अपील मंजूर की जाती है.

Order pronounced in the open court on 24th August, 2016.

आदेश की घोषणा खुले न्यायालय में दिनांक 24 अगस्त, 2016 को की गई ।

Sd/-

(सी. एन. प्रसाद / C.N. Prasad)

न्यायिक सदस्य / JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated : 24 .08.2016.

Jv. Sr. PS.

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

1. Appellant /अपीलार्थी

2. Respondent /प्रत्यर्थी

3. The concerned CIT(A)/संबद्ध अपीलीय आयकर आयुक्त, 4. The concerned CIT /संबद्ध आयकर आयुक्त

5. DR "K" Bench, ITAT, Mumbai /विभागीय प्रतिनिधि, खंडपीठ, आ.अ.न्याया.मुंबई

6. Guard File/गार्ड फाईल

सत्यापित प्रति //True Copy//

आदेशानुसार/ **BY ORDER,**

उप/सहायक पंजीकार **Dy./Asst. Registrar**

आयकर अपीलीय अधिकरण, मुंबई /ITAT, Mumbai.