

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'SMC-II', NEW DELHI
BEFORE SHRI N.K.SAINI, ACCOUNTANT MEMBER**

ITA No. 2629/Del/2015
Assessment Year: 2010-11

DCIT, Circle-1, Block-I-B, CGO Complex, Faridabad (Appellant)	Vs.	Achiever Builders Pvt. Ltd, Kalindi Hills, Near Sainik Colony, Sector-47, Faridabad PAN:AAFCA1265M (Respondent)
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Appellant by : Sh. Yatendra Singh, Sr. DR
Respondent by : Sh. Gurjeet Singh, CA

Date of Hearing : 22.07.2015
Date of pronouncement : 27.07.2015

ORDER

This is an appeal filed by the department against the order dated 27.02.2015 of Ld.CIT(A), Faridabad pertaining to the Assessment Year 2010-11.

2. Following grounds have been raised in this appeal:-

"1. On the facts and in the circumstances of the case, Ld. CIT(A) has erred on facts and in law in deleting the addition of Rs.30,06,908/- made by the Assessing Officer u/s 37 on account of penalty.

2. Ld. CIT(A) erred in not recognizing that this is a case of deliberate violation that cannot be equated with innocent violation. The Hon'ble Supreme Court in the case of M/s Prakash Cotton Mills Pvt. Ltd. Reported in 201 ITR 684 has also held that penal payments are to be distinguished for the purpose of allowability as deduction, and further held that authorities are obligated to determine the penal payment/ expenditure for disallowance u/s 37(1) of the Act.

3. On the facts and in the circumstances of the case, Ld. CIT(A) has erred on facts and in law in deleting the addition of Rs.30,06,908/- as the said amount of penalty was paid by the assessee with the object of gaining direct and immediate benefit, which is not allowable u/s 37 of the IT. Act, 1961.

4. The appellant craves for the permission to add, delete or amend the grounds of appeal before or at the time of hearing of appeal."

3. The only grievance of the department in this appeal relates to deletion of addition of Rs.30,06,908/- made by the AO u/s 37 of the Income Tax Act, 1961 (herein after referred to as 'the Act').

4. Facts of the case in brief are that the assessee filed its return of income declaring loss of Rs.65,18,580/- on 15.10.2010. Later on the case was selected for scrutiny. During the course of assessment proceedings the Assessing Officer noticed that the assessee had claimed deduction on account of compensation to customer amounting to Rs.36,06,908/-. He asked the assessee to explain as to why the said amount should not be disallowed. The AO did not find merit in the submission of the assessee by observing that the expenditure claimed was penal in nature and not allowable u/s 36 of the Act. He accordingly disallowed the same and made the addition to the income of the assessee.

5. Being aggrieved the assessee carried the matter to the Id CIT(A), who allowed the claim of the assessee by observing in para 10 to 13 as under:-

"10. I have considered the facts of the case together with the submissions of the appellant and the various judicial pronouncements relied upon by him in support of his contention. The appellant during the course of appellate proceedings while submitting that the aforesaid provision could not be treated as penalty which is covered u/s 37 relied upon the case of CIT vs Indo Asian Switch Gears Pvt. Ltd. (1996) 222 ITR 772/92 Taxman 86 (P&H), as per which penalty paid by appellant for late delivery of goods being breach of an agreement was incidental to business and therefore allowable u/s 37(1) of the Income Tax Act.

11. Further, the appellant also submitted that it is a covered case, in the similar case of the same assessee, wherein the additions to income on account of Compensation to Buyers was made by LD AO DOT, Circle I Faridabad for AY 2008-09 has been deleted by Hon'ble ITAT Court Delhi Bench vide its order dated 23.5.2014.

*12. The relevant part of the Hon'ble ITAT order is as below:
"The id. CIT(A) has very rightly held the nature of payment as compensatory and not penal. The case laws relied upon by Id. CIT(A) also supports the decision arrived by him. Therefore, we do not see any infirmity in this order. In the result, the appeal filed by the revenue is dismissed. Order pronounced in the open court on 23rd day of May, 2014."*

13. Thus, respectfully following the Hon'ble ITAT's order Ground No.2 of the appeal of the appellant is allowed."

6. Now the department is in appeal. The Id DR strongly supported the order dated 28.03.2013 passed by the AO and reiterated the observation made therein. In his rival submission the Id counsel for the assessee submitted that the issue is covered in assessee's favour vide order dated 23.05.2014 in ITA 513/Del/2013 for the Assessment

Year 2009-10 in assessee's own case. Copy of the said order was furnished which is placed on record.

7. I have considered the submission of both the parties and perused the material available on record. It is noticed that an identical issue having similar facts has been adjudicated in assessee's favour vide aforesaid order dated 23.05.2014 in assessee's own case for the preceding assessment year in ITA No.513/Del/2013, wherein relevant findings have been given in Para 6 which read as under:-

"6. We have heard the rival submissions of both the parties and have gone through the material available on record. We find that the payment made to its customers was in the form of compensation which was paid to its customers for delay in handing over the possession of properties and these payments were in accordance with clause 10 of agreement with its customers. The liability to pay such compensation arose in the course of business of assessee. This type of compensation is generally prevalent in the industries and builders generally offer some amount as compensation against delay in handing over the properties. The case laws relied upon by Ld Dr are distinguishable on the facts., In the case law of Jaya Ram Metal Industries, the penalty was paid as a fine to Central Excise Department for release of confiscated goods and it was held in that case that it was violation of law. The Ld CIT(A) has very rightly held the nature of payment as compensatory and not penal. The case laws relied upon by Ld CIT(A) also supports the decision arrived by him. Therefore, we do not see any infirmity in his order."

8. So, respectfully following the aforesaid referred to order dated 23.05.2014 in assessee's own case we do not see any merit in this appeal of the department.

9. In the result the appeal of the department is dismissed.

Order pronounced in the Open Court on 27th July, 2015.

-Sd/-

(N.K.SAINI)

ACCOUNTANT MEMBER

Dated:27th July, 2015
AKK

Copy forwarded to: -

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT

TRUE COPY

By Order,
ASSISTANT REGISTRAR