

**IN THE HIGH COURT OF DELHI AT NEW DELHI**

ITA 240/2009

**THE COMMISSIONER OF INCOME TAX II ..... Appellant**

Versus

**LIQUID INVESTMENT and TRADING CO. .... Respondent**

05.10.2010

Present: Mr. Sanjeev Sabharwal, Advocate, for the appellant.

Mr. Ajay Vohra and Ms. Kavita Jha, Advocates, for the respondent.

Both the CIT(A) as well as the ITAT have set aside the penalty imposed by the Assessing Officer under Section 271(1)(c) of the Income Tax Act, 1961 on the ground that the issue of deduction under Section 14A of the Act was a debatable issue. We may also note that against the quantum assessment where under deduction under Section 14A of the Act was prescribed to the assessee, the assessee has preferred an appeal in this Court under Section 260A of the Act which has also been admitted and substantial question of law framed. This itself shows that the issue is debatable. For these reasons, we are of the opinion that no question of law arises in the present case.

This appeal is accordingly dismissed.

A.K. SIKRI, J.

REVA KHETRAPAL, J.

OCTOBER 05, 2010

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
INDORE BENCH, INDORE  
BEFORE SHRI JOGINDER SINGH, J.M. AND SHRI R.C.SHARMA, A.M.**

**PAN NO. : ACYPJ4630R**

**I.T.A.No. 272/Ind/2011  
A.Y. : 1994-95**

Shri Yugal Kishore Jajoo, Prop. M/s. Impellers India, 27/34, Pologround, Indore.	vs.	Dy. CIT, 4(1), Indore
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Appellant

Respondent

Appellant by	:	Shri Pankaj Shah and Shri G. J. Shah, CAs
Respondent by	:	Shri R. A. Verma, Sr. DR
Date of Hearing	:	31.01.2013
Date of pronouncement	:	12.02.2013

**ORDER**

**PER R. C. SHARMA, A.M.**

This is an appeal filed by the assessee against the order passed by the CIT(A) dated 19<sup>th</sup> July, 2011, for the assessment year 2004-05, in the matter of imposition of penalty u/s 271(1)(c) of the Income-tax Act, 1961.

-: 2: -

2. Rival contentions have been heard and records perused. In the instant case, the assessee is engaged in manufacturing of textile machinery from aluminium scrap. During the year under consideration, the assessee has shown gross profit of 18.23 % which was better than the gross profit rate of 15.78 % shown in the last year. During the course of scrutiny assessment, the Assessing Officer made addition on account of bogus purchases and job work and also for delayed payment of P. F. & E. S. I. In the quantum appeal, the CIT(A) deleted all the additions however, in an appeal filed by the Revenue before the Tribunal, the Tribunal have again confirmed the additions made by the Assessing Officer. Against the order of I.T.A.T., the assessee has approached to the Hon'ble High Court, which has accepted substantial question of law. The fact that CIT(A) has deleted the addition as sustained by the Assessing Officer and which have again been confirmed by the Tribunal itself indicate that additions so made are debatable.

3. Shri Pankaj Shah, C. A. appeared on behalf of the assessee and submitted that since the CIT(A) has allowed the

claim and High Court has admitted the appeal, the issue has become debatable, therefore, no penalty can be imposed. For this purpose, reliance was placed on the decision of I.T.A.T., Mumbai Bench in the case of K. G. Nariman, 33 TTJ 565. Our attention was also drawn to the relevant observation contained in Full Bench decision of Hon'ble Supreme Court in the case of Santosh Hosiery, 3 SCC 179, wherein it was held that “**To be substantial a question of law must be debatable**”. Reliance was also placed on observation of Hon'ble Supreme Court in the case of Hero Vinod vs. Sheshamal, AIR 2006 S.C. 2234, wherein it was held that “**substantially question of law involves a debatable legal issue.**” Our attention was also invited to various citations of judgments as contained at page 2 of synopsis in support of the proposition that this principle has been impliedly followed in these cases, where it is held that no penalty can be levied if issue is admitted by the Hon'ble High Court as it automatically becomes debatable. The ld. Authorized Representative further contended that no satisfaction has been recorded in the assessment order by the Assessing Officer, therefore, no penalty can be levied, in view

-: 4: -

of the decision of Indore Bench in the case of Sarita Agarwal, 17 ITJ 193, wherein it was held that no penalty is leviable u/s 271(1)(c), when the Assessing Officer has not recorded satisfaction that there was concealment or inaccurate particulars of income in assessment order. Our attention was also invited to recent decision of Delhi Bench of I.T.A.T. dated 13<sup>th</sup> July, 2012, in the case of Global Green Company Limited vs. D. CIT, (I.T.A.No.1390/Del/11), where following Delhi High Court decision in the case of Madhu Shree Gupta, 317 ITR 107 (Del), it was held that Section 271(1)(c) penalty not valid if “satisfaction” not recorded in the assessment order (After considering the insertion of Explanation 1B to Section 271(1)(c) vide Finance Act 2008). As per ld. Authorized Representative, since in the assessee’s case the Assessing Officer has not recorded his satisfaction in the assessment order the initiation of penalty is not valid and it was prayed to be deleted.

4. Ld. Authorized Representative placed reliance on the decision of I.T.A.T, Mumbai Bench in the case of Chempur vs. ITO, I.T.A.No.451/M/2006, wherein it was held that penalty

-: 5: -

u/s 271(1)(c) cannot be imposed in case where purchases are treated as bogus since assessee has failed to produce the parties before Assessing Officer for examination. As per Id. Authorized Representative, facts in assessee's case are similar to this decision, therefore, in view of this judgment, it was prayed that penalty should be deleted.

5. With regard to penalty on alleged bogus purchases, it was submitted by Id. Authorized Representative that there was full and adequate disclosure by the assessee and no penalty is called for in such case. Precise contentions of Mr. Shah was as under :-

a. Purchases and amount payable to parties was fully disclosed in profit and loss account and balance sheet and the same were audited u/s 44AB of the Act.

b. Name, addresses and Bank account details of creditors were furnished to the Assessing Officer. Also all payments for purchases were made through account payee cheques.

-: 6: -

(Patna HC in the case of Addl CIT vs. Bahri Bros. P.Ltd.,(154 ITR 244) has held that the very fact that all the transactions were entered into between the parties through account payee cheque makes the question of identity of creditors fall into oblivion and it becomes absolutely irrelevant. Therefore, in assessee's case no question of concealment arises especially when all transactions were through account payee cheque).

c. Certificate for Consumption for aluminium scrap for misc. products certified by Chartered Engineer (copy at page 50 of paper book ).

d. Copy of item-wise month-wise production being certified by Chartered Engineer was submitted for substantiating that the purchases were genuine and had nexus with the production.

e. Copy of Sales Invoices from the Creditors with Sales tax Registration No. was submitted.

-: 7: -

f. Copy of Sales tax Registrations of creditors and their Sales tax assessment records were also submitted.

g. Various other documents which are attached in the paper book were submitted.

As per Id. Authorized Representative , after perusal of aforesaid documents, it can be concluded that there was full and adequate disclosure and in such circumstances where there is no concealment no penalty is called for.

6. With regard to the legal issue to the effect that no penalty can be imposed when there are two views, the submission of the Id. Authorized Representative Mr.Shah was as under :-

“When an appeal is admitted as substantial question of law, there has to be two views. When two views are there penalty cannot be levied.

*“A point of law which admits of no two opinions may be a proposition of law but cannot be a substantial question of*

*law.” – Santosh Hazari v. Purshottam Tiwari ( 3 SCC 179)  
(Full Bench) S. C.*

*“A question of law on which there is great divergence of  
judicial opinion will be substantial question of law.”(Para  
6)- Rimmalapudi S. Rao ( AIR 1951 Mad 969) (Mad H.C.).*

*“if there is room for reasonable doubt or difference of  
opinion on the question, then it would be a substantial  
question of law.” (Para 11) Rimmalapudi S. Rao ( AIR  
1951 Mad 969) (Mad H.C.).*

In Sir Chunilal’a case, the Constitution Bench expressed agreement with the following view taken by a Full Bench of the Madras High Court in Rimmalapudi Subba Rao vs. Noony Veeraju (Sir Chunilal case, SCR p. 557) AIR 1951 Mad 969, (1951) – *When a question of law is fairly arguable, where there is room for difference of opinion on it or where the Court through it necessary to deal with that question at some length and discuss alternative views, then the question would be a substantial question of law.*

In assessee's case the issues are substantial question of law as per MP HC, therefore, it is evident that there are different views possible. Moreover, there is also **difference of view** between **first and second appeal**.

The assessee places reliance on following cases where it is held that no penalty is leviable where two views are possible :

CIT vs. Late G. D. Naidu and others, (165 ITR 63 ) (Mad).  
CIT vs. Calcutta Credit Corporation, (166 ITR 29) (Cal)  
CIT vs. Amarnath, (143 CTR 148 (All).  
Alpha Associates vs. DCIT (66 TTJ 758) (Bom)  
DCIT vs. Rahoul Siemens Engg. (P) Ltd. (140 Taxman 100) (Del).

7. On the other hand, the ld. Sr. DR relied on the order of lower authorities and contended that since additions have been confirmed by the Tribunal, there is clear case of concealment of income and Assessing Officer was justified in levying the penalty u/s 271(1)(c) of the Income-tax Act, 1961. Further reliance was placed on the following judicial pronouncements :-

- (i) K.P.Madhusudanan, 251 ITR 99 ( S. C.0
- (ii) Chirag Metal Rolling Mills, 305 ITR 29 (MP)
- (iii) Dharmendra Textile Processors, 306 ITR 277 (S.C.)
- (iv) K.Shridharan & Co., 325 ITR 229 (Ker).
- (v) Harprasad & Co., 325 ITR 229 (Ker).
- (vi) Sankarlal Shri Niwas, 205 ITR 140 (Raj)

8. We have considered the rival submissions and have gone through the orders of the authorities below and also deliberated on the judicial pronouncement cited by the ld. Authorized Representative during the course of hearing before us. I.T.A.T., Indore Bench in the case of Late Mohd.Anwar Khan vs. ITO, in I.T.A.No. 343/Ind/2011 have held as under :-

*“3. We are consistently taking the view that where substantial question of law has been accepted by the Hon'ble High Court, the issue becomes debatable, therefore, no penalty can be imposed for such addition. I.T.A.T. in its order passed in I.T.A.No. 329/Ind/2012 dated 29<sup>th</sup> January, 2013, in the case of Surendra Singh Thakur vs. ITO, for the assessment year 1996-97 has observed as under :-*

*“8. It is clear from the order of the Hon'ble High Court that they have accepted substantial question of law with respect to the addition made on account of cash credit. In terms of decision of Ahmedabad Bench in the case of Rupam Mercantile, 91 ITD 1273, where a plea*

*for claim which is held by the High Court could have given rise to a substantial question of law, cannot be treated to be frivolous or mala fide so as to attract levy of penalty u/s 271(1)(c) of the Income-tax Act, 1961. Similar view was taken by the Hon'ble Bombay High Court in the case of Nayan Builders and Developers Private Limited, wherein it was held that when Hon'ble High Court admits substantial question of law on an addition, it become apparent that addition is certainly debatable and under such circumstances penalty cannot be levied u/s 271(1)(c) of the Income-tax Act, 1961. The admission of substantial question of law leads credence to the bona fides of the assessee. By following these decisions, similar view has been taken by the I.T.A.T., Indore Bench in the case of Kusum Oswal I.T(SS).A.No. 101/Ind/2009 dated 20<sup>th</sup> April, 2011. Respectfully following the decision of Coordinate Bench as narrated above, we do not find any substance in action of Assessing Officer for levy of penalty in respect of addition for which substantial question of law has been accepted by the Hon'ble High Court. Even on merits, there is no justification for imposition of penalty where the assessee has*

-: 12: -

*discharged the burden casted on it, notwithstanding the fact of confirmation of such addition by appellate authorities.”*

9. Furthermore, Hon'ble Delhi High Court in the case of CIT vs. Liquid Investment Limited, I.T.A.No. 240/2009 vide its order dated 5.10.2010 has clearly held that where High Court has accepted substantial question of law u/s 260A, this itself shows that issue is debatable. Accordingly, no penalty was imposable u/s 271(1)(c) of the Income-tax Act, 1961. Hon'ble Supreme Court in the case of Santosh Hosiery, Civil Appeal No. 1117 of 20001 in its order dated 3<sup>rd</sup> February, 2001, observed that “ To be substantial, a question of law must be debatable.” Hon'ble Supreme Court while deciding as to what is substantial question of law has held that same must be debatable.

10. In the instant case, the appeal against quantum additions was admitted by Hon'ble M.P. High Court vide order dated 6.9.2005, on the following substantial questions of law :-

-: 13: -

- 1) *Whether in the facts and circumstances of the case the Tribunal was right in law in directing depreciation on the estimated value of Rs. 18,00,000/- as against actual purchase value of Rs. 26,05,000/- on which assessee took over the asset ignoring basic valuation report of the Chartered Engineer ?*
- 2) *Whether in the facts and circumstances of the case the Tribunal was right in law in directing the outstanding liabilities against purchases of Rs. 8,34,690/- as income and the order of the Tribunal is perverse in law when purchases are assessed as genuine ?*
- 3) *Whether in the facts and circumstances of the case the Tribunal was right in directing the outstanding liabilities of job works of Rs. 3,490,395/- as income ignoring the detailed facts considered by CIT(A) and facts on records and the order of the Tribunal is perverse and bad in law ?*

11. In view of the above, respectfully following the decision of Coordinate Bench as well as propositions laid down by Hon'ble High Court and Supreme Court, as narrated above, we direct the Assessing Officer to cancel the penalty imposed u/s 271(1)(c) with respect to the additions so made by Assessing Officer which were deleted by CIT(A), and for which substantial question of law has been accepted by Hon'ble High Court. Agreeing with the contentions of Mr. Shah, we do not find any merit in the order of Assessing Officer for levying the penalty u/s 271(1)(c) of the Income-tax Act, 1961,

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

This order has been pronounced in the open court on 12<sup>th</sup> February, 2013.

**sd/-**  
**(JOGINDER SINGH)**  
**JUDICIAL MEMBER**

**sd/-**  
**(R. C. SHARMA)**  
**ACCOUNTANT MEMBER**

**Dated : 12<sup>th</sup> February, 2013.**

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