[2019] 74 ITR (Trib) (S. N.) 49 (Chandigarh)

[BEFORE THE INCOME-TAX APPELLATE TRIBUNAL — CHANDIGARH "SMC" BENCH]

DHARAM PAL AGGARWAL

v.

ASSISTANT COMMISSIONER OF INCOME-TAX

N. K. SAINI *(Vice-President)*

August 26, 2019.

SS ▸ ITA 1961, ss 36(1)(iii), 37
AY ▸ 2013-14
HF ▸ Assessee

INCOME FROM OTHER SOURCES—DEDUCTIONS—INTEREST ON BORROWED CAPITAL—INTEREST-FREE ADVANCES TO FRIENDS AND RELATIVES—WHETHER INTEREST BEARING FUNDS UTILISED FOR BUSINESS PURPOSE—ORDER OF TRIBUNAL ALLOWING INTEREST EXPENSES IN ASSESSEE'S CASE FOR EARLIER YEAR NOT MADE AVAILABLE EITHER TO ASSESSING OFFICER OR COMMISSIONER (APPEALS)—REMAND FOR ADJUDICATION OF LIMITED ISSUE—INCOME-TAX ACT, 1961, S. 36(1)(iii).

BUSINESS EXPENDITURE—USE OF TELEPHONE AND CAR FOR PERSONAL USE NOT RULED OUT—DISALLOWANCE RESTRICTED TO ONE-TENTH OF EXPENSES INCURRED BY ASSESSEE ON TELEPHONE, CAR AND DEPRECIATION RESTRICTED INSTEAD OF ONE-FIFTH WORKED OUT BY ASSESSING OFFICER—ASSESSING OFFICER SHOULD GIVE BENEFIT OF DISALLOWANCE ALREADY MADE BY ASSESSEE—INCOME-TAX ACT, 1961, S. 37.

During the course of assessment proceedings the Assessing Officer noticed that the balance-sheet for the year 2013-14 revealed that the assessee had given interest-free advances to friends and family which were not for the purpose of earning income from other sources as was the requirement of section 57(iii) of the Income-tax Act, 1961. The assessee had debited Rs. 5,66,645 on account of interest on the car loan in the profit and loss account and had claimed deduction of interest under section 57 to the extent of Rs. 40,22,756. The loans to friends and relatives outstanding in the balance-sheet were at Rs. 5 lakhs to D and Rs. 11,65,869 to S. Some loan accounts were squared up in the proprietorship during the year 2013-14. The Assessing Officer held that the interest could not allowed under section 57(iii) and since there was no business purpose involved in the loans and advances which had been squared up during the year 2013-14, the interest could not be allowed under section 36(1)(iii). The Assessing Officer worked

out the disallowance at Rs. 15,44,043. The Commissioner (Appeals) held that the assessee had failed to distinguish between the source of borrowed funds or own funds for the purpose of deduction under section 57 and upheld the disallowance of Rs. 15,44,043 made by the Assessing Officer under section 57. On appeal :

Held, *(i) that the claim of the assessee was that interest bearing funds were utilised for business purposes and the interest paid in similar circumstances was allowed in the earlier year 2012-13 by the Tribunal in the assessee's case. However the order had not been made available either to the Assessing Officer or to the Commissioner (Appeals). Therefore on this limited issue the matter was remanded to the Assessing Officer to be adjudicated by keeping in view the observations given in the order, in accordance with law.*

Held also, *that the use of telephone and car for personal purposes could not be ruled out. However the disallowance made by the Assessing Officer and sustained by the Commissioner (Appeals) at one-fifth of the expenses was excessive. Therefore to meet the ends of justice, the disallowance was restricted to one-tenth of the expenses incurred by the assessee on telephone, car and depreciation. While restricting the disallowance the Assessing Officer should also give the benefit of the disallowance already made by the assessee at Rs. 1,74,371.*

I. T. A. No. 91/Chd/2019 (assessment year 2013-14).

Ashwani Kumar, Chartered Accountant, for the assessee.

Smt. Chandrakanta, Senior Departmental representative, for the Department.

For the order please go to : *http://www.taxlawsonline.com/sn*

[2019] 74 ITR (Trib) (S. N.) 51 (Delhi)

[BEFORE THE INCOME-TAX APPELLATE TRIBUNAL — DELHI "B" BENCH]

DOLLY SABHARWAL

v.

INCOME-TAX OFFICER

MS. SUCHITRA KAMBALE *(Judicial Member)* and
PRASHANT MAHARISHI *(Accountant Member)*

August 23, 2019.

SS ▸ ITA 1961, s 144
AY ▸ 2012-13
HF ▸ Department

BEST JUDGMENT ASSESSMENT—ASSESSING OFFICER GIVING OPPORTUNITY TO ASSESSEE—ASSESSEE NOT APPEARING BEFORE COMMISSIONER (APPEALS)—ASSESSEE NOT PROVING THROUGH DOCUMENTARY EVIDENCE THAT ESTIMATION TAKEN BY ASSESSING OFFICER ON HIGHER SIDE—ADDITIONS MADE BY ASSESSING OFFICER JUST AND PROPER—INCOME-TAX ACT, 1961, S. 144.

The Assessing Officer observed that the assessee understated the opening stock with the closing stock of the last year by Rs. 1.50 crores. From the working of the trading account of this year, the gross profit rate came to 4 per cent. As these goods worth Rs. 1.5 crores were sold outside the books, at a higher rate, the Assessing Officer estimated 8 per cent. as the gross profit on these sales outside the books and addition of Rs. 12 lakhs was made to the income of the assessee. The Assessing Officer also made addition of Rs. 31,90,544 and Rs. 12,78,194 at 8.5 per cent. on account of accrued interest. The Assessing Officer further added Rs. 2,99,323 and Rs. 73,47,500 as unexplained unsecured loans and cash deposits as the assessee could not prove their genuineness. The Assessing Officer disallowed brought forward losses of Rs. 53,400 in the absence of documentary evidence. The Commissioner (Appeals) confirmed the addition. On appeal :

Held, *that the assessment order was passed under section 144 of the Income-tax Act, 1961 despite giving opportunity to the assessee. At the time of appeal proceedings before the Commissioner (Appeals), the assessee had not appeared before the Commissioner (Appeals) as well. The assessee filed proceedings before the Tribunal but did not follow the appeal proceedings either by herself or through her representative. The assessee had not proved through documentary evidence that the estimation taken by the Assessing Officer was on the higher side. Therefore, the additions made by the Assessing*

Officer were just and proper. The Assessing Officer had taken cognizance of the investment made in Government and other securities which the assessee should have offered for taxation. Therefore, the Assessing Officer had rightly made the addition in respect of accrued interest. The investments were made in Government and other securities which were duly increased in the particular year. Therefore without the details filed by the assessee during the assessment proceedings, the Assessing Officer rightly made the addition under section 69B on account of unexplained investment. Without any confirmation as regards unexplained unsecured loans, the Assessing Officer had rightly made the addition. The brought forward losses were not supported by any evidence, and the Assessing Officer had made a proper addition.

I. T. A. No. 3468/Delhi/2017 (assessment year 2012-13).

None appeared for the assessee.

Surendra Meena, Senior Departmental representative, for the Department.

For the order please go to : http://www.taxlawsonline.com/sn

[2019] 74 ITR (Trib) (S. N.) 52 (Delhi)

[BEFORE THE INCOME-TAX APPELLATE TRIBUNAL — DELHI "G" BENCH]

SUB DIVISIONAL OFFICER CIVIL, PANIPAT

v.

INCOME-TAX OFFICER (TDS)

AMIT SHUKLA *(Judicial Member)* and
DR. B. R. R. KUMAR *(Accountant Member)*

August 23, 2019.

SS ▸ ITA 1961, ss 200(3), 200A, 234E
AY ▸ 2013-14, 2015-16
HF ▸ Assessee

PENALTY—DEDUCTION OF TAX AT SOURCE—FEES FOR LATE FILING OF STATEMENT OF TAX DEDUCTED AT SOURCE—PROVISION FOR LEVY OF FEE BROUGHT WITH EFFECT FROM JUNE 1, 2015—ASSESSEE FILING CHALLAN AND STATEMENT MUCH PRIOR TO THIS DATE—DEMAND LIABLE TO BE CANCELLED—INCOME-TAX ACT, 1961, SS. 200(3), 200A, 234E.

Section 234E of the Income-tax Act, 1961 provides that when a person fails to deliver or cause to be delivered a statement within the time prescribed under section 200(3), that person shall be liable to pay fee in the manner provided therein. Thus, the fee under section 234E is leviable if the statement

is not filed as prescribed under section 200(3) which in turn provides that the statement has to be filed after the payment of tax to the prescribed authority. Rule 31A(4A) of the Income-tax Rules, 1962 provides for filing of the challan-cum-statement within seven days from the date of deduction.

On the ground of delay in filing of statement of tax deducted at source for various quarters of 2013-14 and 2014-15 a demand was been raised under section 200 for failure by the assessee to comply with section 200A. Fees were levied for late filing of statement of tax deduction at source under section 234E. Before the Commissioner (Appeals) the assessee contended that the fee under section 234E could be only charged after June 1, 2015 because the provision under section 200A for levy of such fee has been brought in the statute with effect from June 1, 2015. The Commissioner (Appeals) rejected the contention on the ground that the order had been passed after June 1, 2015, therefore, fees were leviable. On appeal :

Held, *that sub-section (3) of section 200 provides that the person deducting any sum in accordance with the provisions of Chapter XVII shall after paying the tax deducted to the credit of the Central Government within the prescribed time prepare such statement for such period as may be prescribed. The provisions of section 200A provide that where the statement of tax deduction at source has been made by the person deducting any sum under section 200, such statement shall be processed in the manner given therein. Clause (c) of section 200A was substituted by the Finance Act 2015 with effect from June 1, 2015. In this case the demand had been raised purely on the ground that the statement had not been furnished for the tax deduction at source. The relevant provision of section 200(3) read with rule 31A(4A) only referred to filing of the challan-cum-statement after the tax has been paid. The word "challan" in the rule indicates that the tax must stand paid and that is how form 26QB is generated. Thus, it could not be held that there was any violation of section 200(3). The provision for levy of fee under section 200A in accordance with the provision of section 234E was brought on to the statute with effect from June 1, 2015. Since the challan and statement had been filed much prior to this date, no such tax could be levied under section 200A. Thus no fee was leviable on the assessee under section 234E in violation of section 200(3) because the assessee had furnished the statement immediately after depositing all the tax without any delay. Accordingly, the demand on account of 234E was cancelled.*

FATHERAJ SINGHVI *v.* UNION OF INDIA [2016] 289 CTR 602 (Karn) *relied on.*

I. T. A. Nos. 5919, 5920, 5922, 5923 and 5924/Delhi/2016 (assessment years 2013-14 and 2015-16).

Vipul for the assessee.

S. S. Rana, Commissioner of Income-tax-Departmental representative, and *N. K. Bansal*, Senior Departmental representative, for the Department.

For the order please go to : http://www.taxlawsonline.com/sn

[2019] 74 ITR (Trib) (S. N.) 54 (Mumbai)

[BEFORE THE INCOME-TAX APPELLATE TRIBUNAL — MUMBAI "B" BENCH]

BHAWANI SINGH RATHORE

v.

ASSISTANT COMMISSIONER OF INCOME-TAX

MAHAVIR SINGH *(Judicial Member)* and
M. BALAGANESH *(Accountant Member)*

August 23, 2019.

SS ▸ ITA 1961, s 37
AY ▸ 2010-11
HF ▸ Assessee

BUSINESS EXPENDITURE—BOGUS PURCHASES—PROFIT EARNED BY ASSESSEE OUT OF SUCH TRANSACTIONS ALONE TAXABLE—ADOPTION OF PROFIT AT 5 PER CENT. ON DISPUTED PURCHASES WOULD MEET ENDS OF JUSTICE—INCOME-TAX ACT, 1961, S. 37.

The assessee was in the business of trading in building materials and was engaged in contract business running two concerns. The assessee purchased from 15 parties to the tune of Rs. 1,42,01,390. The Assessing Officer alleged that these parties were reflected in the information received from the Sales Tax Department as hawala dealers engaged in providing accommodation bills. Goods were delivered to the assessee by way of purchases made by the assessee in the grey market and these 15 parties were unverifiable at the end of the Assessing Officer. The assessee had made corresponding sales in respect of these purchases made from the grey market. The Assessing Officer estimated 12.5 per cent. on the gross value of purchases as profits earned by the assessee in these transactions and made an addition in the sum of Rs. 17,75,174, which was upheld by the Commissioner (Appeals). On appeal :

Held, *that what was to be taxed was only the profits earned by the assessee out of such transactions. The assessee had disclosed a gross profit of 7.90 per*

cent. and 6.38 per cent. in the two concerns for the year ended March 31, 2010 as per the tax audit report. Adoption of profit at 5 per cent. on the disputed purchases would meet the ends of justice. The Assessing Officer was directed accordingly.

I. T. A. No. 3117/Mumbai/2018 (assessment year 2010-11).

Bhupendra Shah for the assessee.

Ms. N. Hemalatha for the Department.

For the order please go to : http://www.taxlawsonline.com/sn

[2019] 74 ITR (Trib) (S. N.) 55 (Delhi)

[BEFORE THE INCOME-TAX APPELLATE TRIBUNAL — DELHI "G" BENCH]

STANDARD CHARTERED GRINDLAYS PTY. LTD.

(formerly known as Standard Chartered Grindlays Bank Ltd.)

v.

DEPUTY DIRECTOR OF INCOME-TAX (INTERNATIONAL TAXATION)

N. K. BILLAIYA *(Accountant Member)* and
SUDHANSHU SRIVASTAVA *(Judicial Member)*

August 20, 2019.

SS ▸ ITA 1961, s 37
AY ▸ 2002-03
HF ▸ Assessee

BUSINESS LOSS—BANK ISSUING NINE ACCOUNT PAYEE CHEQUES TO ASSESSEE-BANK—ASSESSEE ENCASHING CHEQUES AND CREDITING PROCEEDS TO ACCOUNT OF INDIVIDUAL—DISPUTE ARISING BETWEEN PARTIES WHEN SECURITIES SCAM CAME INTO LIGHT—SUPREME COURT DIRECTING ASSESSEE TO DEPOSIT AMOUNT WITH INTEREST—NO REASON FOR OTHER BANK TO GIVE ACCOUNT PAYEE CHEQUES TO ASSESSEE WHEN IT HAD NO BUSINESS DEALINGS WITH ASSESSEE—NO REASON WHY ACCOUNT PAYEE CHEQUES CREDITED IN ACCOUNT OF INDIVIDUAL—TRANSACTION NOT IN ORDINARY COURSE OF BUSINESS—NOT BUSINESS LOSS—INCOME-TAX ACT, 1961.

BUSINESS EXPENDITURE—EXPENSES INCURRED OUTSIDE INDIA—ASSESSEE NOT MAKING CLAIM IN RETURN BUT FURNISHING CERTIFICATE ISSUED BY CHARTERED ACCOUNTANT—ASSESSEE TO DEMONSTRATE ITS CLAIM OF EXPENDITURE WITH SUPPORTING EVIDENCE AND ASSESSING OFFICER TO

EXAMINE CLAIM AND DECIDE ISSUE AFRESH AS PER PROVISIONS OF LAW—INCOME-TAX ACT, 1961, S. 37.

During the period between March 23, 1992 and April 20, 1992, the assessee received nine cheques from the National Housing Bank drawn on the Reserve Bank of India. All the cheques were crossed account payee cheques and the assessee-bank was the payee in all the cheques. All the cheques were encashed by the assessee and proceeds were credited to the account of H. In May 1992, when the securities fraud came to light, a dispute arose between the assessee and National Housing Bank with respect to the cheques aggregating to Rs. 506.54 crores. The National Housing Bank claimed a refund for the amount of cheques. The claim was denied by the assessee. The assessee stated that the cheques were for the benefit of H and, therefore, the assessee was not liable to repay the amount. Pursuant to the directive issued by the Reserve Bank of India the assessee made a deposit of Rs. 506.54 crores with the National Housing Bank with the condition that the amount shall be refunded upon the settlement of the dispute. The assessee approached the Supreme Court and the Supreme Court directed the assessee to deposit the amount of Rs. 912.22 crores along with interest at 18 per cent. in a term deposit in the name of the Registrar of the Supreme Court with the State Bank of India. Pursuant to the directions of the Supreme Court, the assessee deposited a sum of Rs. 1529.9 crores to the National Housing Bank. The assessee claimed a loss of Rs. 506.54 crores, which had been shown as an extraordinary item in its profit and loss account for the year ended on March 31, 2002. The Assessing Officer made an addition of Rs. 506,54,54,478. The Commissioner (Appeals) confirmed the addition. On appeal :

Held, *that the assessee received Rs. 506.54 crores from the National Housing Bank and it had to repay the amount to the National Housing Bank. The proceeds were credited in the account of H and subsequently, the entire transaction was burnt in the fire of security scam. There was no reason why the National Housing Bank gave nine account payee cheques to the assessee amounting to Rs. 506.54 crores when it had no business dealings with the assessee and when the cheques were account payee cheques, why the proceeds were credited in the account of H. The entire transactions were peculiar and were not done in the ordinary course of business. The repayment of Rs. 506.54 cores even if it enured loss to the assessee, could not be considered as deductible business loss.*

M. P. VENKATACHALAPATHY IYER *v.* CIT [1951] 20 ITR 363 (Mad) *and* ASSOCIATED BANKING CORPORATION OF INDIA LTD. *v.* CIT [1965] 56 ITR 1 (SC) *distinguished.*

The assessee claimed deduction of sums under the head "expenses incurred outside India". The Assessing Officer found that the assessee had not made any such claim to deduction in the return for expenses incurred outside India for income-tax cost and business support cost. Since no such claims were made in the return, the Assessing Officer denied the claim and this was confirmed by the Commissioner (Appeals). On appeal :

Held, *that no such claim was made in the return. All the claims of expense had already been allowed by the Assessing Officer under section 44C. Neither the Assessing Officer nor the Commissioner (Appeals) had examined the claim in the light of the certificates issued by chartered account in this respect. In the interest of justice and fair play, the issue was remanded to the Assessing Officer. The assessee was directed to demonstrate its claim to deduction of expenditure with supporting evidence and the Assessing Officer was directed to examine the claim and decide the issue afresh as per the provisions of law after giving reasonable and sufficient opportunity of being heard to the assessee.*

I. T. A. No. 766/Delhi/2012 (assessment year 2002-03).

Ms. Shashi M. Kapila, Advocate, and *R. R. Marge*, Chartered Accountant, for the assessee.

G. K. Dhall, Commissioner of Income-tax-Departmental representative, for the Department.

For the order please go to : http://www.taxlawsonline.com/sn

[2019] 74 ITR (Trib) (S. N.) 57 (Ahmedabad)

[BEFORE THE INCOME-TAX APPELLATE TRIBUNAL — AHMEDABAD "SMC BENCH]

CITY MANAGER ASSOCIATION

v.

ASSISTANT COMMISSIONER OF INCOME-TAX

RAJPAL YADAV *(Judicial Member)* and
PRADIP KUMAR KEDIA *(Accountant Member)*

August 21, 2019.

SS ▸ ITA 1961, ss 11(1)(a), 143(1)(a), 154
AY ▸ 2015-16
HF ▸ Assessee

ASSESSMENT—PRIMA FACIE ADJUSTMENTS—RECTIFICATION OF MISTAKES—MISTAKE APPARENT FROM RECORD—DEBATABLE ISSUES—

Scope of section 154 for making prima facie adjustment while processing return under section 143(1)(a)—No prima facie adjustment permissible in ex parte proceedings—Whether assessee entitled for further exemption at fifteen per cent. of deemed income for taxation—Non-granting credit of tax deduction at source—Debatable issues—Rectification not amenable—Income-tax Act, 1961, ss. 11(1)(a), 143(1)(a), 154.

The assessee had accumulated income out of the income derived from the trust, which was not utilised for the objects of the trust. This accumulated income was 85 per cent. of the surplus. It was kept separately and was to be applied for the charitable objects of the trust in future years. However, during the year 2015-16 the assessee could not utilise that accumulated income and offered it for taxation at Rs. 8,79,000. The assessee's return was processed under section 143(1) of the Income-tax Act, 1961. The assessee was of the view that on this unutilised income, it was entitled for further accumulation at the rate of 15 per cent. The assessee was not granted credit for the tax deduction at source. A prima facie adjustment under section 154 of the Income-tax Act, 1961 was made and the assessee's claim was rejected and addition of Rs. 4,03,435 under section 11(1)(a) was made. The Commissioner (Appeals) did not bring any relief to the assessee. On appeal :

Held, *that whenever a debatable issue was involved an explanation of the assessee was required, and on such issue, no prima facie adjustment in an ex parte proceedings can be made. The two issues were debatable ones, where more than one opinion was possible. Adjustment under section 143(1)(a) was not permissible on both these aspects.*

CIT *v.* Natwarlal Chowdhury Charity Trust [1991] 189 ITR 656 (Cal) *relied on.*

I. T. A. No. 2337/Ahd/2017 (assessment year 2015-16).

Smt. Arti Shah, authorised representative, for the assessee.

Virendra Singh, Senior Departmental representative, for the Department.

For the order please go to : http://www.taxlawsonline.com/sn

[2019] 74 ITR (Trib) (S. N.) 59 (Ahmedabad)

[BEFORE THE INCOME-TAX APPELLATE TRIBUNAL — AHMEDABAD "A" BENCH]

SHRIRAM TUBES LTD.

v.

DEPUTY COMMISSIONER OF INCOME-TAX

RAJPAL YADAV *(Judicial Member)* and
PRADIPKUMAR KEDIA *(Accountant Member)*

August 28, 2019.

SS ▸ ITA 1961, ss 144, 147, 148
AY ▸ 2007-08
HF ▸ Assessee

INTERPRETATION OF TAXING STATUTES—PRINCIPLE OF EQUITY—NO EVIDENCE OF INTENTIONAL DISHONESTY OR IMPROPER MOTIVE ON PART OF ASSESSEE—INFERENCE ON FACTS SHOULD LEAD TO EQUITY AND JUSTICE—INCOME-TAX ACT, 1961.

REASSESSMENT—INCOME FROM UNDISCLOSED SOURCES—PRODUCTION OUTSIDE BOOKS—ENTIRE PRODUCTION CANNOT BE TREATED AS PROFITS WITHOUT SETTING OFF EXPENDITURE—ASSESSING OFFICER TO FIND OUT WHETHER EXPENDITURE ALREADY ACCOUNTED FOR IN BOOKS OF ACCOUNT—BOOKS IMPOUNDED BY EXCISE DEPARTMENT AND FACTORY PREMISES ATTACHED AND ASSESSEE NOT CARRYING OUT ANY BUSINESS THEREAFTER—ASSESSING OFFICER OUGHT TO HAVE CALLED FOR DETAILS FROM EXCISE DEPARTMENT AND DETERMINED ELEMENT OF INCOME INVOLVED IN PRODUCTION—EX PARTE ORDER OF ASSESSMENT AND PENALTY WITHOUT ADJUDICATING OBJECTION—POSSIBILITY OF NON-SERVICE OF ASSESSMENT ORDER STRICTLY IN COMPLIANCE WITH RULES NOT RULED OUT—MATTER REMANDED—INCOME-TAX ACT, 1961, SS. 147, 148.

BEST JUDGMENT ASSESSMENT—ASSESSING OFFICER MUST NOT ACT DISHONESTLY OR VINDICTIVELY OR CAPRICIOUSLY—ASSESSING OFFICER MUST MAKE WHAT HE HONESTLY BELIEVE TO BE A FAIR ESTIMATE OF PROPER FIGURE OF ASSESSMENT—FACTORS TO BE CONSIDERED—INCOME-TAX ACT, 1961, S. 144.

APPEAL TO COMMISSIONER (APPEALS)—CONDONATION OF DELAY—APPEALS AGAINST BEST JUDGMENT ASSESSMENT RAISING HUGE DEMAND AND LEVYING PENALTY—DELAY IN FILING APPEALS BEFORE COMMISSIONER (APPEALS) CONDONED SUBJECT TO PAYMENT OF COST OF RS. 50,000—COMMISSIONER (APPEALS) TO DECIDE APPEALS AFTER

PROVIDING DUE OPPORTUNITY OF HEARING TO ASSESSEE—INCOME-TAX ACT, 1961.

Though equity in taxation matters is not a sound principle for adjudicating controversies in taxation matters, where it is possible to draw two inferences from the facts and where there is no evidence of intentional dishonesty or improper motive on the part of the assessee, it would be just and equitable to draw an inference in such a manner that would lead to equity and justice.

The assessee manufactured copper tubes. The Investigation Wing intimated that the Excise Department had carried out search and investigation in the case of the assessee. During the course of investigation, it was found that the assessee had illegally removed copper mother tubes having a value of Rs. 6.08 crores during the period August 24, 2006 to October 10, 2006. Such copper tubes were manufactured outside the books and were removed without payment of excise duty. On the basis of the information, the Assessing Officer sought to reopen the assessment of the assessee and by notice under section 148 of the Income-tax Act, 1961. The Assessing Officer passed an ex parte assessment order making additions of Rs. 24,04,65,605 on account of unaccounted income earned from sale of copper tubes outside the books and Rs. 3,92,96,299 under section 43B on account of non-payment of statutory dues of excise department. Penalty proceedings under section 271(1)(c) were initiated against the assessee and in an ex parte order penalty of Rs. 8,09,40,722 was imposed. The assessee filed appeals before the Commissioner (Appeals) against the assessment order with a delay of 39 months in filing the appeal and with a delay of 27 months against the penalty order. The assessee filed application for condonation of delay before the Commissioner (Appeals) in both appeals. The delay was not condoned by the Commissioner (Appeals) and the appeals were dismissed as time barred. According to the Revenue authorities, this assessment order was served upon the assessee and dispatched at the address given in the return. But it was returned by the postal authorities in the same manner as the notice issued under section 148 was come back. On appeal :

Held, *(i) that the Assessing Officer had worked out the unaccounted production at Rs. 24,04,65,705. He treated this short-term production as undisclosed income of the assessee without correspondingly setting off the expenditure involved in this production. There was no finding that the expenditure was accounted for in the books of account. The case of the assessee was that books had been impounded by the Excise Department. Its factory premises were attached and it had not carried out any business thereafter. In this situation, the Assessing Officer ought to have called for details from the*

Excise Department and determined the element of income involved in this production instead of treating the gross production as profits of the assessee to be taxed. It was a negligent and irresponsible act at the end of the Assessing Officer even in an ex parte order. This action was further amplified while imposing penalty of more than Rs. 9 crores under section 271(1)(c). The conduct of the assessee also was not above board. The directors, to some extent must have information about the assessment proceedings, and the demand raised against the assessee in an ex parte assessment order. The possibility of non-service of the assessment order strictly in compliance with rules could not be ruled out. But once the assessee had been facing litigation with the Excise Department and the directors were aware about the notice under section 148, they should have been more vigilant in conducting the income-tax proceedings.

(ii) That the assessee had raised a specific objection against the reopening of the assessment, pleading that notice was not served upon the assessee or not issued by the Department within six years from the end of the relevant assessment year. But this aspect had not been dealt with by the Assessing Officer even in the ex parte order. He ought to have adjudicated the objection whether or not the Assessing Officer had assumed jurisdiction validly first before taking the proceedings ex parte against the assessee. Even in an ex parte assessment order passed under section 144, according to the best judgment of the Assessing Officer, he had to bear in mind certain basic principles, viz. in making a best judgment assessment, the Assessing Officer must not act dishonestly or vindictively or capriciously. He must make what he honestly believe to be a fair estimate of the proper figure of assessment and for this purpose he must be able to take into consideration, local knowledge, the reputation of the assessee about his business, the previous history of the assessee or similarly situated assessees.

(iii) That neither had the Assessing Officer acted in a fair manner nor had the assessee prosecuted its income-tax proceedings before the Revenue authorities diligently. The punishment in the shape of tax liability on an addition of Rs. 27 crores amplified with the penalty of Rs. 9 crores was disproportionate to the negligence of the assessee. By condoning the delay nothing was being taken away on the merits from the Department. It would be a just an opportunity to the assessee to explain its case. If something had been done illegally against it, then that illegality should not be regularised on account of technicalities. Therefore, evaluating all these aspects, the delay in filing the appeals before the Commissioner (Appeals) deserved to be condoned subject to payment of cost of Rs. 50,000. Both the issues were remitted to the

Commissioner (Appeals) for fresh adjudication on the merits after providing due opportunity of hearing to the assessee.

I. T. A. Nos. 27 and 28/Ahd/2019 (assessment year 2007-08).

G. C. Pipara, authorised representative, for the assessee.

Smt. Aparna Agrawal, Commissioner of Income-tax-Departmental representative, for the Department.

For the order please go to : http://www.taxlawsonline.com/sn

[2019] 74 ITR (Trib) (S. N.) 62 (Delhi)

[BEFORE THE INCOME-TAX APPELLATE TRIBUNAL — DELHI "B" BENCH]

COMMITMENT MORTALITY VISION EDUCATION SOCIETY

v.

ASSISTANT COMMISSIONER OF INCOME-TAX

R. K. PANDA *(Accountant Member)* and
MS. SUCHITRA KAMBLE *(Judicial Member)*

August 29, 2019.

SS ▸ ITA 1961, ss 142(1), 271(1)(b)
AY ▸ 2007-08 to 2013-14
HF ▸ Department/Assessee

PENALTY—FAILURE TO COMPLY WITH NOTICES UNDER SECTION 142(1)—NO COMPLIANCE BY ASSESSEE WITH VARIOUS STATUTORY NOTICES ISSUED BY ASSESSING OFFICER FROM TIME TO TIME—NONE APPEARING FOR ASSESSEE—CONDUCT OF ASSESSEE SHOWING IT WAS A FIT CASE FOR LEVY OF PENALTY—NOTICE UNDER SECTION 142(1) ISSUED FOR ALL ASSESSMENT YEARS ON SAME DATE—LEVY OF PENALTY FOR ONE ASSESSMENT YEAR ALONE JUSTIFIED—PENALTY LEVIED FOR REMAINING YEARS DELETED—INCOME-TAX ACT, 1961, SS. 142(1), 271(1)(b).

A search and seizure operation under section 132 of the Income-tax Act, 1961 was carried out in respect of the F group of cases by the Investigation Wing and a survey under section 133A was carried out by the Investigation Wing on the assessee at premises situated at Delhi. The Assessing Officer issued notice under section 142(1). Another notice under section 142(1) was issued by the Assessing Officer calling for compliance with the previous notice. A third notice under section 142(1) with a questionnaire was issued by the Assessing Officer requesting for compliance with the prior notice. On the date fixed at the request of the assessee, the assessee filed an application

requesting for time of one month to prepare and submit documents. The assessee was allowed time. Since the assessee failed to comply with the notices issued, another notice under section 142(1) was issued by the Assessing Officer requesting for compliance with the previous notice. Finally notice under section 142(1) was issued along with the notice to show cause why an order imposing penalty under section 271(1)(b) should not be passed. Again there was non-compliance. The Assessing Officer noted that throughout the assessment proceedings the assessee failed to file the details called for in the questionnaire. He gave a final opportunity to the assessee by a notice. However, there was no compliance. The Assessing Officer, thereafter, issued notice under section 271(1)(b) and asked the assessee to file its reply. The assessee filed a letter in response to the notice issued by the Assessing Officer. The Assessing Officer was not satisfied with the submissions made by the assessee and levied penalty of Rs. 10,000 under section 271(1)(b). Similar penalty was levied for other years. The Commissioner (Appeals) confirmed the penalty. On appeal :

Held, *that there was no proper compliance by the assessee with the various statutory notices issued by the Assessing Officer from time to time for which the Assessing Officer levied penalty of Rs. 10,000 under section 271(1)(b) for each of the assessment years. The conduct of the assessee showed that it was a fit case for levy of penalty under section 271(1)(b) for non-compliance with the statutory notices issued from time to time. However, the penalty order showed that notice under section 142(1) was issued by the Assessing Officer for all the assessment years on the same date. The various other notices were also issued by the Assessing Officer on the same dates. Considering the totality of the facts of the case and in the interest of justice, the levy of penalty under section 271(1)(b) for one assessment year, i. e., assessment year 2007-08 alone was justified. The order of the Commissioner (Appeals) confirming the penalty for the assessment year 2007-08 was upheld. The penalty levied by the Assessing Officer and confirmed by the Commissioner (Appeals) for the remaining years was deleted.*

I. T. A. Nos. 1489 to 1495/Delhi/2017 (assessment years 2007-08 to 2013-14).

None appeared for the assessee.

Ms. Nidhi Srivastava, Commissioner of Income-tax-Departmental representative, for the Department.

For the order please go to : *http://www.taxlawsonline.com/sn*

[2019] 74 ITR (Trib) (S. N.) 64 (Delhi)

[BEFORE THE INCOME-TAX APPELLATE TRIBUNAL — DELHI "G" BENCH]

SAFETY PLUS POWER LTD.

v.

ASSISTANT COMMISSIONER OF INCOME-TAX

A. D. JAIN *(Vice-President)* and **N. K. BILLAIYA *(Accountant Member)***

August 29, 2019.

SS ▸ ITR 1962, r 46A
AY ▸ 2010-11
HF ▸ Assessee

APPEAL TO COMMISSIONER (APPEALS)—ADDITIONAL EVIDENCE—EX PARTE ASSESSMENT—ASSESSEE FILING DOCUMENTS BEFORE COMMISSIONER (APPEALS) BUT WITHOUT APPLICATION FOR ADMISSION OF ADDITIONAL EVIDENCE—TECHNICAL LAPSE—COMMISSIONER (APPEALS) TO ADMIT EVIDENCE AND DECIDE ISSUE AFRESH—INCOME-TAX ACT, 1961—INCOME-TAX RULES, 1962, r. 46A.

The assessment order passed under section 147 read with section 144 of the Income-tax Act, 1961 showed that though the Assessing Officer gave a couple of opportunities none attended the assessment proceedings which prompted the Assessing Officer to frame the assessment ex parte. In its grounds of appeal before the Commissioner (Appeals) the assessee raised a specific ground that it was willing and ready to provide all the required documents as required by the Assistant Commissioner. Though the assessee had filed the documents before the Commissioner (Appeals) the documents were not accompanied by any application for the admission of additional evidence under rule 46A of the Income-tax Rules, 1962. The Commissioner (Appeals) concluded that since sufficient opportunities were given to the assessee the evidence could not be admitted. Thereafter, the Commissioner (Appeals) confirmed the additions on the basis of the findings of the Assessing Officer. On appeal :

Held, *that technicalities should not come in the way of administration of justice. There may be many reasons because of which the assessee could not attend the assessment proceedings and to mitigate the lapses, the assessee did file the evidence before the Commissioner (Appeals) although without any application for the admission of additional evidence. Such technical lapses should not come in way of justice and, therefore, in the interest of justice and fair play, the issues were remitted to the Commissioner (Appeals). The assessee was directed to furnish all the evidence before the Commissioner (Appeals)*

and the Commissioner (Appeals) was directed to admit all the evidence and decide the issue afresh after giving a reasonable and sufficient opportunity of being heard to the assessee.

I. T. A. No. 2010/Delhi/2019 (assessment year 2010-11).

Salil Kapoor and *Sumit Lal Chandani*, Advocates, for the assessee.

N. K. Bansal, Senior Departmental representative, and *S. S. Rana*, Commissioner of Income-tax-Departmental representative, for the Department.

For the order please go to : *http://www.taxlawsonline.com/sn*
