आयकर अपीलीय अधिकरण, मुंबई न्यायपीठ,D,मुंबई।

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES "D", MUMBAI

श्री संजय गर्ग, न्यायिक सदस्य **एवं**

श्री अश्वनी तनेजा, लेखा सदस्य**,** के समक्ष

Before Shri Sanjay Garg, Judicial Member, and
Shri Ashwani Taneja, Accountant Member

ITA NO.1660/Mum/2012
Assessment Year: 2002-03
&
ITA NO.1661/Mum/2012
Assessment Year: 2003-04

Rochem Separation Systems (I) P. Ltd., 101 HDIL Tower, Anant Kanekar Marg, Bandra(E) Mumbai-400050	**बनाम**/ Vs.	ACIT Cen Cir 10 8th Floor, CGO Bldg. Annex, M. K. Marg, Mumbai-400020
(Appellant)		(Revenue)
P.A. No. AABCR1955P		

Appellant by	Shri S.C. Gupta (AR)
Revenue by	Shri B.S. Bist (Sr. DR)

सुनवाई की तारीख / **Date of Hearing :**	**04/10/2016**
आदेश की तारीख /**Date of Order:**	**19/10/2016**

आदेश / O R D E R

Per Ashwani Taneja (Accountant Member):

These appeals have been filed by the Assessee against the common order of Ld. Commissioner of Income Tax (Appeals),

Mumbai-37,{(in short 'CIT(A)'}, passed against penalty order u/s 271(1)(c) for Assessment Years 2002-03 & 2003-04 on the following grounds:

> *"The CIT (A) erred in law and on facts in confirming the penalty of Rs. 2,39,112/- (being proportionate penalty on disallowance for higher education expenses) u/s 271(1)(c) of the Income tax Act on the disallowance made by the assessing officer for higher education expenses incurred by the assessee company and confirmed by the Hon'ble ITAT though the issue is a debatable issue and there is no finding that the appellant furnished any incorrect particulars in the return of income as in the profit and loss account the expenditure incurred on higher education was separately shown and no particulars were concealed. Therefore, the penalty levied u/s 271(1)(c) merely because the disallowance is confirmed by the Hon'ble ITAT, should be deleted."*

2. During the course of hearing, arguments were made by Shri S.C. Gupta, Authorised Representative (AR) on behalf of the Assessee and by Shri B.S. Bist, Departmental Representative (DR) on behalf of the Revenue.

3. The identical ground has been raised in both the years. The similar issue is whether the levy of penalty u/s 271(1)(c) on the disallowance made by the AO for higher education expenses incurred by the assessee company related to Mr. Prerak Goel is justified or not.

3.1. The brief background in this case is that a search and seizure operation u/s 132 of the I. T. Act, 1961 was carried out on 10.08.2005 at the business premises of various companies of Rochem Group and residential premises of directors of the said companies. Subsequently, assessment proceedings were carried out u/s 153A of the Act. Notice u/s 153A was issued by the AO, in response to which return was

filed by the assessee u/s 153A. It was noted by the AO from the said return that assessee had claimed expenses on the education of Mr. Prerak Goel for Rs.6,69,142/- for A.Y. 2002-03 and Rs.8,53,286/- for A.Y. 2003-04. These expenses were incurred by the assessee for MBM training course at Manila. It was replied by the assessee that expenses were reimbursed for education of Mr. Prerak Goel as he was working as apprentice with the company and also furnished an undertaking that he would serve the company for a minimum continuous period of five years. The assessee submitted detailed justification for business necessity of expenses, but the AO was not satisfied and therefore, disallowance was made. Subsequently, the said disallowance was confirmed in appeal by the Ld. CIT(A) as well as by the Tribunal vide its order dated 16th May 2011. Therefore, the AO initiated penalty proceeding and levied the penalty. Subsequently, penalty was confirmed by the Ld. CIT(A) in the impugned order against which appeal has been filed before us by the assessee.

3.2. During the course of hearing before us, it was submitted by the Ld. Counsel that genuine claim was made by the assessee under the belief that these expenses are allowable as business expenses in the hands of the assessee. Full facts have been disclosed in this regard; genuineness of expenses has not been doubted by the lower authorities. The only allegation of the lower authorities is that business necessity of the same could not be established by the assessee. It was further submitted that in any case impugned amount has been brought to tax as income in the hands of Mr. Prerak Goel

u/s 2(24)(iv) of the Act. Thus, it shows that there was no motive on the part of the assessee to evade taxes. The expenses have been disallowed only on the ground that the recipient happens to be close relative of the Directors. But, no defects have been pointed out in the evidences submitted to the lower authorities to substantiate these expenses. Under these circumstances, it was not a case of concealment or furnishing inaccurate particulars of income. Thus, penalty has been wrongly levied and should be deleted.

3.3. Per contra, it was submitted by the Ld. DR that the expenses have been incurred in relation to education of Mr. Prerak Goel who is son of the Director of the assessee company and he was not employee of the company. Under these circumstances, the disallowance was rightly made by the AO and also confirmed by the Tribunal. Under these circumstances, penalty has been rightly levied upon the said disallowance and the same should be confirmed.

3.4. In rejoinder, Ld. Counsel submits that this is a debatable issue and therefore, penalty levied in many cases upon identical disallowance has been deleted in many cases. He placed reliance upon the judgment of Mumbai Bench of the Tribunal in the case of ACIT v. Vijay Jyot Seats Ltd. (ITA No.4441/Mum/2007 dated 02.02.2010), M/s. Westin Hospitality Services Pvt. Ltd. vs. DCIT, (ITA Nos. 1274 & 1275/Mum/2013 dated 27.08.2014) and of High Court of Punjab & Haryana in case of CIT vs. Mehta Engineers Ltd. Ludhiana in ITA No. 599 & 600 of 2007 dated 7th February 2008, and High Court of Delhi in the case of M/s. Kostub

Investment Ltd. v. CIT in ITA No.10/2014 dated 25th February 2014. He vehemently contended that in view of these judgments, the penalty is not leviable upon the assessee.

3.5. We have gone through the facts of the case and arguments made by both the sides as well as orders passed by the lower authorities and also the order passed by the Tribunal in quantum appeal. It is not disputed before us that the payment was made and duly substantiated by the assessee with the help of evidences. It is also not disputed that Shri Prerak Goel was working as apprentice with the said company and resolution was passed by the company for financing his education expenses on the basis of his undertaking tendered by him committing himself for working with the company for a minimum period of five years. Copy of detailed resolution justifying the business necessity of education of Mr. Goel for the business of the company has been placed before us. Our attention was drawn upon the undertaking submitted by the Mr. Goel as well. Nothing adverse has been brought on record by the lower authorities while levying penalty with respect to these crucial evidences. Undeniably, the Tribunal has found in the quantum appeal that the assessee could not properly substantiate the business necessity of these expenses. But, the fact remains that these expenses were incurred by the assessee as admitted by the lower authorities also and in the opinion of the assessee these expenses were incurred for the business purpose of the assessee. The belief of the assessee about the business utility of these expenses is a reasonable belief and not something

purely imaginary or farfetched. Thus, explanation tendered by the assessee during the course of penalty proceedings can be said to be a plausible explanation. The amount of expenses has been disallowed as the AO had different opinion whereby these expenses were found to be devoid of any business necessity. But, we find that on this issue two opinions are possible, and thus there was apparently a difference in the opinion between the AO and assessee. It is also noted that complete facts with respect to impugned expenses were made available before the lower authorities. Full disclosure of facts and related information was made available by the assessee. Under these circumstances, we doubt if this claim can be categorized as the one giving rise to 'concealment of income or furnishing of inaccurate particulars of income'. It is further noted by us that penalty was levied under similar situations in many cases which had subsequently been tested in courts. In the case of **ACIT v. Vijay Jyoti Seats Ltd. (supra)** penalty levied with respect to similar disallowance was found not sustainable and therefore it was deleted by the Tribunal by observing as under:

> *"7. We have carefully considered the submissions of the rival parties and perused the material available on record. It is settled law that penalty under section 271(1)(c) is a civil liability and the revenue is not required to prove willful concealment as held by the Hon'ble Supreme Court in case the of Union of India vs. Dharmendra Textiles and Processors (2008) 306 ITR 277(SC). However, each and every addition made in the assessment cannot automatically lead to levy of penalty for concealment of income. A case for imposition of penalty has to be examined in terms of the provisions of Explanation 1 to section 271(1)(c). Secondly, it is also a settled legal*

position that penalty proceedings are different from assessment proceedings. The finding given in the assessment though is a good evidence but the same is not conclusive in penalty proceedings as held by the Hon'ble Supreme court in the case of Anantharam Veerasinghaiah & Co. vs. CIT ((1980) 123 ITR 457 (SC). 8. In the instant case the penalty has been imposed on the sustenance of disallowance of higher education expenses amounting to Rs.14,35,000/- claimed by the assessee on the education of Ms. Janaki Motasha, daughter of one of the Directors of the company. We further find that there is no dispute that in support of the claim of deduction, the assessee has filed copy of MOU between the assessee co. and Ms. Janaki Motasha, list of share holders, resolution of Board of Directors approving education expenses of Ms. Janaki Motasha, copy of Board Exam Certificate of Ms. Janaki Motasha showing her educational qualification before she was sent abroad for higher education, copy of Degree conferred on Ms. Janaki Motasha by Rensselaer Polytechnic Institute, New York(USA) and salary certificate issued to Ms. Janaki Motasha for the Assessment Years 2005-06 and 2006-07 to show that Ms. Janaki Motasha took up the employment with the assessee immediately after completing her higher education. We further find that the disallowance was sustained by the Tribunal on the ground that it was the duty of the parents of the employee to provide education to her, the study course for which the employee was sponsored was not "seat designing" but was "information technology", her designation was "Marketing Executive" and not "Designer of Seats". Thus, there is a complete mismatch between the degree acquired by her and the business of the company and the job entrusted to her after her return, the expenditure incurred by the assessee has no nexus either with the business of the assessee or the job being actually performed by her in the assessee company, the company's decision to sponsor her studies was guided more by family considerations than business consideration and the issue is covered against the assessee by the decision of Hon'ble Jurisdictional High Court in the case of CIT vs. Hindustan Hosiery Industries (supra). The Tribunal has also distinguished the decision of the Hon'ble Jurisdictional

High Court in Sakal Papers Pvt. Ltd. (supra), relied on by the learned Counsel for the assessee holding that the facts in the present case are completely different and the ratio laid down in the present case is not applicable to the facts of the present case. 9. There is no dispute that the assessee has made the above claim on the basis of the documentary evidence (supra), supported by the decision of Hon'ble Jurisdictional High Court in Sakal Papers Pvt. Ltd. (supra). In CIT vs. Airlines Financial Support Services (I) Ltd. (2009) 24 DTR (Bom) 124 it has been held that the assessee having claimed certain expenditure as revenue expenditure bonafide relying on a decision of the Jurisdictional High Court it cannot be said that the predicates of section 271(1)(c) were satisfied for imposing penalty merely because the AO held that it was capital expenditure. 10. Further it has been repeatedly held by the Courts that when the facts are clearly disclosed in the return of income, penalty cannot be levied. Merely because an amount is not allowed or taxed to income, it cannot be said that the assessee had filed inaccurate particulars or concealed any income chargeable to tax. Even if some deduction or benefit is claimed by the assessee wrongly but bonafide and no malafide can be attributed, the penalty would not be levied. In this view of the matter and in the absence of any other contrary material placed on record by the revenue we respectfully following the ratio of the decisions relied on by the learned Counsel for the assessee hold that there was no deliberate omission on the part of the assessee either for the purpose of concealment of income or furnishing of inaccurate particulars and accordingly we are inclined to uphold the finding of the learned CIT(A) in deleting the penalty imposed by the AO. The grounds taken by the revenue are therefore rejected. 11. In the result revenue's appeal stands dismissed. Order pronounced in the open court on 02.02.2010."

3.6. Similar view has been taken in another case by the Mumbai Bench in the case of **M/s. Westin Hospitality Services Pvt. Ltd. vs. DCIT, (supra)**. It is further noted that similar issue came up before **Hon'ble Punjab and Haryana**

High Court in the case of CIT vs. Mehta Engineers Ltd. (supra) wherein Hon'ble High Court deleted the penalty by observing *inter-alia* as under:

> *"We have heard the counsel for the appellant and perused the impugned order. Undisputedly, in this case, the assessee had only claimed certain expenditure incurred on the education of Mr.Varun Mehta on the basis of a written agreement, according to which, he was to serve the company for at least three years after finishing his studies abroad. It is neither the case of the revenue nor there is any material to this effect available on the record that the said agreement was false and fabricated document. Moreover, there is no such finding recorded by any adjudicating authority. Therefore, in view of the said fact and the finding of fact recorded by the ITAT as reproduced above, we are of the opinion that the Commissioner of Income Tax (Appeals) has rightly deleted the penalty while coming to the conclusion that it is not the case where the assessee had claimed intentionally and deliberately the expenditure in order to evade the tax liability. Thus, we do not find any ground to interfere in the finding of fact recorded by no substantial question of law is involved in both the appeals and the same are hereby dismissed."*

3.7. Therefore, in view of the legal position as discussed above and facts of this case brought before us, we find that penalty is not sustainable in both the years and therefore same is directed to be deleted. Both the appeals are allowed and penalty of Rs.2,39,112/- for A.Y. 2002-03 and Rs.3,14,520/- for A.Y. 2003-04 are directed to be deleted.

4. In the result, appeals of the Assessee are allowed.

Order pronounced in the open court on 19th October, 2016.

Sd/-	Sd/-
(Sanjay Garg)	(Ashwani Taneja)
न्यायिक सदस्य / JUDICIAL MEMBER	**लेखा सदस्य** / ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated : 19/10/2016

*Patel, P.S.*नि.स.

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT, Mumbai.
4. आयकर आयुक्त / CIT(A)- , Mumbai
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Dy./Asstt. Registrar)

आयकर अपीलीय अधिकरण, मुंबई **/ ITAT, Mumbai**