

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'SMC-1' NEW DELHI**

BEFORE SHRI H. S. SIDHU, JUDICIAL MEMBER

**I.T.A. No. 3486/Del/2016
Assessment Year: 2002-03**

M/S COSMOS FIBRE GLASS LTD., VS.
C/O M/S RRA TAXINDIA
D-28, SOUTH EXTENSION,
PART-I, NEW DELHI – 49
(PAN: AAACC0289Q)

DCIT, CIRCLE 3(1),
NEW DELHI

(ASSEESSEE)

(RESPONDENT)

Assessee by: DR. RAKESH KUMAR GUPTA, ADV. &
SH. SOMIL AGGARWAL, ADV.

Revenue by: SH. F.R. MEENA, SR. DR.

ORDER

This appeal is filed by assessee against the order dated 29.12.2015 passed by the Ld. CIT(A)-2, New Delhi relating to Assessment Year 2002-03.

2. The grounds raised read as under:-

“1. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of AO in levying penalty of Rs. 1,78,500/- and that too without assuming jurisdiction as per law and without considering the facts and circumstances of the case.

2. *That in any case in any view the matter, action of Ld. CIT(A) in confirming the action of AO in levying penalty u/s. 271(1)(c) is bad in law and against the facts and circumstances of the case.*
3. *That the assessee craves the leave to add, alter or amend the grounds of appeal at any stage and all the grounds are without prejudice to each other.*

3. At the threshold, I note that Registry has raised the objection of shortage of Tribunal fee by Rs. 6007/- at the time of filing the appeal. However, in this connection, Ld. Counsel of the assessee has stated that in view of the Hon'ble High Court of Patna decision dated 6.5.2008 reported in (2009) 310 ITR 0195, in the case of Dr. Ajith Kumar Pandey vs. Income Tax Appellate Tribunal, the objection of the Registry is not valid and the fee filed by the Assessee i.e. Rs. 500/- is sufficient and therefore, the Appeal of the Assessee is maintainable and may be heard on merit.

3.1 Ld. DR did not raise any serious objection to this proposition.

4. I have heard both the parties and perused the records especially the Hon'ble High Court of Patna decision dated 6.5.2008 reported in (2009) 310 ITR 0195, in the case of Dr. Ajith Kumar Pandey vs. Income Tax Appellate Tribunal, wherein the Hon'ble High Court has held that a person aggrieved by an order imposing penalty, if

approaches the Tribunal by preferring an appeal, imposition of penalty, having no nexus with the total income of the assessee, it would not be discernible what is the total income of assessee and accordingly, such an appeal will be covered by Cl. (d) of s. 253(6) and fee payable before the Tribunal is Rs. 500/- only. Therefore, in view of the aforesaid judgment the objection raised by the Registry is not tenable, hence, the same is dismissed and accordingly, the present Appeal is treated as maintainable and is being heard on merits.

5. The brief facts of the case are that assessment was completed vide order u/s 143(3) dated 04.03.2005 at an income of Rs. 1,50,720/-. Later on, the case was opened within the meaning of section 147 and was assessment u/s 147 r.w.s. 143(3) of the Act was completed on 14.12.2009 at an income of Rs.6,50,720/-. Aggrieved with this order, the assessee preferred an appeal before the Ld. CIT(A). The Ld. CIT(A) vide his order dated 22.06.2010 dismissed the appeal of the assessee.

5.1 Further, the assessee filed an appeal against the order of Ld. CIT(A) before the ITAT. The ITAT vide its order passed in ITA No. 4246/De1|2010 dated 31.12.2010 restored back the case to the file of the AO for fresh adjudication. The reassessment was completed u/s 147 r.w.s. 254 on 15.12.2011 at an income of Rs.6,50,720/-

after making addition on account of unexplained cash credit. The assessee preferred an appeal before the Ld. CIT(A). The Ld. CIT (A) vide his order dated 25.02.2013 in Appeal No. 255/11-12 confirmed addition on the ground.

5.2. In the absence of any reply to the Penalty notices, the AO observed that he has no other alternative except to impose penalty u/s 271 (l)(c) of the Act on the basis of material available on record. Since, the above addition was treated as concealed income and inaccurate particulars of income of the assessee. Therefore penalty proceedings u/s 271(1) (c) of the I.T. Act, 1961 were initiated by issue of notice u/s 274 read with section 271 of the I.T. Act, 1961 dated 15.12.2011. Another notice was issued to the assessee on 22.11.2013 fixing the hearing on 20.12.2013 providing an opportunity to show cause why penalty u/s 271(1)(c) should not be levied. No reply was received by the AO. After introduction of Explanation to Section 271(1)(c) the revenue is not required to prove mens rea on the part of the assessee. AO observed that the assessee has furnished inaccurate particulars of income to the extent of Rs. 5,00,000 because the assessee company made certain claims by way of business expenditure in the return of income but was not able to substantiate these claims. Hence, the AO held that the assessee company in default in furnishing inaccurate particulars

of its income and impose a penalty of Rs. 1,78,500/- @100% of the tax sought to be evaded vide his order dated 31.3.2014 passed u/s. 271(1)(c) of the I.T. Act, 1961.

6. Aggrieved with the penalty order, assessee appealed before the Ld. CIT(A), who vide impugned order dated 29/12/2015 has upheld the penalty and accordingly, dismissed the appeal of the Assessee.

7. Against the above order of the Ld. CIT(A) dated 29.12.2015, assessee is in appeal before the Tribunal.

8. During the hearing, Ld. Counsel of the assessee has filed a Paper Book containing pages 1 to 60 having the copy of assessee's reply dated 21.12.2004 filed before AO during the course of assessment proceedings; copy of assessment order dated 4.3.2005; copy of assessee's reply dated 7.8.2009 filed before AO raising objections to the proceedings u/s. 148; copy of assessee's reply dated 9.11.2009 filed before the AO during the proceedings u/s. 147; copy of assessment order dated 14.12.2009 passed u/s. 147/143(3) of the Act; copy of order dated 22.6.2010 passed by Ld. CIT(A); copy of ITAT order dated 31.12.2010 in ITA No. 4246/Del/2010 for AY 2002-03; copy of assessee's reply dated 16.8.2011 filed before AO together with Annexures; copy of assessee's reply dated 14.9.2011 filed before the AO; copy of

assessee's reply dated 17.10.2011 filed before the AO together annexures; copy of assessee's reply dated 1.12.2011 filed before the AO; copy of assessment order dated 15.12.2011 passed by the AO u/s. 143(3) of the Act read with section 254 of the I.T. Act, 1961 for AY 2002-03 and copy of assessee's letter dated 25.2.2013 filed before the AO regarding the surrender of disputed amount; copy of order dated 25.2.2013 passed by the Ld. CIT(A); copy of reply dated 20.12.2013 filed before the AO during the course of penalty proceedings for AY 2002-03 and copy of written submissions dated 11.8.2015 filed before the Ld. CIT(A) He submitted that during the course of assessment proceedings, the assessee fully disclosed all the information asked for and has nowhere furnished any inaccurate particulars. It was the further contention that nowhere in the assessment order, it has been recorded that the assessee furnished inaccurate particulars of income. Therefore, he stated that no penalty can be levied in this case as it cannot be said that there was any attempt by the assessee to conceal particulars of income. In this behalf, he filed a copy of the decision rendered by the Hon'ble Supreme Court of India in the case of ***CIT vs. Reliance Petroproducts Pvt. Ltd. reported in (2010) 322 ITR 158 (SC)*** and stated that the present case is fully covered by said decision

and accordingly, requested that the penalty in dispute may be deleted.

9. On the contrary, Ld. DR relied upon the order of the authorities below and stated that the Ld. CIT(A) has passed a well reasoned order which does not need any interference, hence, the same may be affirmed.

10. I have heard both the counsel and perused the orders passed by the Revenue authorities alongwith documentary evidences filed by the assessee in the shape of paper book and the case law cited by him. From the records, it reveals that the AO levied penalty of Rs. 1,78,500/- passed u/s. 271(1)(c) of the I.T. Act, 1961 vide order dated 31.3.2014. The AO observed that company made certain claims by way of business expenditure in the return of income but was not able to substantiate these claims. However, the assessee's counsel contention was that the assessee did not claim any expenditure in its return of income and there is no concealment of income and facts on the part of the assessee. I find that there is no conclusive proof that the assessee concealed income or furnished inaccurate particulars of income. The AO has not brought enough incriminating material for concealment and there is no material for establishing the concealment independently in the given facts and circumstances of the penalty is not leviable, because

all the documents submitted by the assessee were neither rejected by the AO as false or incorrect facts nor AO had clinching any further evidence of concealment of facts. I further find that the assessee has admitted the addition only to avoid hazards of litigation and to buy the peace but the same do not constitute admission for the purpose of levying penalty.

10.1 I also find that section 271(1)(c) postulates imposition of penalty for furnishing of inaccurate particulars and concealment of income. On the facts and circumstances of this case the assessee's conduct cannot be said to be contumacious so as to warrant levy of penalty.

10.2 In this regard, I find that assessee's counsel reliance from the Hon'ble Apex Court decision in the case of ***CIT vs. Reliance Petro Products Ltd. in Civil Appeal No. 2463 of 2010*** is squarely applicable in the present case of the assessee. In this case vide order dated 17.3.2010 it has been held that the law laid down in the Dilip Sheroff case 291 ITR 519 (SC) as to the meaning of word 'concealment' and 'inaccurate' continues to be a good law because what was overruled in the Dharmender Textile case was only that part in Dilip Sheroff case where it was held that mensrea was a essential requirement of penalty u/s 271(1)(c). The Hon'ble Apex Court also observed that if the contention of the revenue is

accepted then in case of every return where the claim is not accepted by the Assessing Officer for any reason, the assessee will invite the penalty u/s 271(1)(c). This is clearly not the intendment of legislature.

10.3 I further place reliance from the Apex Court decision rendered by a larger Bench comprising of three of their Lordships in the case of ***Hindustan Steel vs. State of Orissa in 83 ITR 26*** wherein it was held that *"An order imposing penalty for failure to carry out a statutory obligation is the result of a quasi-criminal proceedings, and penalty will not ordinarily be imposed unless the party obliged either acted deliberately in defiance of law or was guilty of conduct contumacious or dishonest, or acted in conscious disregard of its obligation. Penalty will not also be imposed merely because it is lawful to do so. Whether penalty should be imposed for failure to perform a statutory obligation is a matter of discretion of the authority to be exercised judicially and on a consideration of all the relevant circumstances. Even if a minimum penalty is prescribed, the authority competent to impose the penalty will be justified in refusing to impose penalty, when there is a technical or venial breach of the provisions of the Act, or where the breach flows from a bonafide belief that the offender is not liable to act in the manner prescribed by the statute."*

11. In the background of the aforesaid discussions and precedents, I find that the levy of penalty in this case is not justified. Accordingly, I set aside the orders of the authorities below and delete the levy of penalty in dispute.

12. In the result, the appeal filed by the Assessee stands allowed.

Order pronounced in the Open Court on 02/02/2017.

SD/-

**[H.S. SIDHU]
JUDICIAL MEMBER**

Date 02/02/2017

“SRBHATNAGAR”

Copy forwarded to: -

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

TRUE COPY

By Order,

Assistant Registrar, ITAT, Delhi Benches