

आयकर अपीलिय अधिकरण, अहमदाबाद न्यायपीठ, अहमदाबाद ।
**IN THE INCOME TAX APPELLATE TRIBUNAL
"B" BENCH, AHMEDABAD**

**BEFORE SHRI RAJPAL YADAV,
HON'BLE JUDICIAL MEMBER
AND
SHRI WASEEM AHMED
HON'BLE ACCOUNTANT MEMBER**

**ITA.No.1682/Ahd/2018
निर्धारण वर्ष/Asstt.Year : 2013-14**

M/s.Omni Lens P.Ltd., 5, "Samruddhi" Opp: Sakar-III Nr.Sattar Taluka Society Navjivan, Ahmedabad 380015 PAN : AAACO 1725 F	Vs	DCIT, Cir.3(1)(2) Ahmedabad.
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अपीलार्थी/ (Appellant)	प्रत्यर्थी/ (Respondent)
Assessee by :	M/s.Mehta Sheth & Associates
Revenue by :	Shri Vidhut Trivedi, Sr.DR

सुनवाई की तारीख/Date of Hearing : 18/11/2019
घोषणा की तारीख /Date of Pronouncement: 19/11/2019

आदेश/O R D E R
PER RAJPAL YADAV, JUDICIAL MEMBER

Assessee is in appeal before the Tribunal against order of the ld.CIT(A)-9, Ahmedabad dated 10.5.2018.

2. Sole grievance of the assessee is that the ld.CIT(A) has erred in confirming penalty of Rs.1,87,730/- which was imposed by the AO under section 271(1)(c) of the Income Tax Act, 1961.

3. Brief facts of the case are that the assessee has filed its return of income on 30.9.2013 declaring total income at Rs.12,56,35,840/-. The case of the assessee was selected for scrutiny assessment and assessment was made under section 143(3) on 6.11.2015. The ld.AO has made three additions to the income of the assessee, which are as under:

- a) Disallowance of Rs51,000/- on account of award received from AIMA
- b) Addition of Rs.11,319/- made on account of capital gain
- c) Disallowance of Rs.4,90,000/- under section 35D

4. The ld.AO has initiated penalty proceedings under section 271(1)(c) and issued notice under section 274 inviting explanation of the assessee as to why penalty be not imposed upon the assessee. After hearing the assessee, he imposed penalty of Rs.1,87,730/-. Appeal to the CIT(A) did not bring any relief to the assessee.

5. The AO has worked out concealed income of Rs.5,52,319/- which was considered for visiting the assessee with penalty under section 271(1)(c) of the Act. So far as penalty imposed on the disallowances of Rs.51,000/- and Rs.11,319/- is concerned, the ld.counsel for the assessee did not press the prayer for deletion of penalty on account of smallness of disallowance made by the AO. He contended that the assessee-company has filed return of income for more than Rs.12.54 crores. If small addition was made, and if penalty is also computed on that amount, it will not affect materialy to the assessee. Even for this small amount, department will not lodge prosecution. Considering this prayer of the assessee, penalty *qua* Rs.51,000/- and Rs.11,319/- is confirmed.

6. Major amount on which penalty has been imposed is disallowance of Rs.4,90,000/- which was made with aid of section 35D of the Act. The ld.counsel for the assessee at the very outset submitted that the assessee has disclosed complete details, and on the strength of Hon'ble Rajasthan High Court in the case of CIT Vs. Multi-Metals Ltd., 188 ITR 151 (Raj), which has been approved by the Hon'ble Supreme Court also, this is an allowable claim. The assessee has neither concealed nor furnished inaccurate particulars of income. The disallowance has been made on the basis of difference of opinion between the assessee vis-à-vis the AO on this issue. He took us through the decision of Hon'ble Rajasthan High Court in the case of Multi Metals Ltd. (supra) and placed on page no.11 of the paper book.

7. On the other hand, the ld.DR submitted that decision of Hon'ble Supreme Court is already available in the case of Brooke Bonds India Vs. CIT, 225 ITR 798, which has laid down that expenditure for increase in authorized share capital is to be treated as capital expenditure, hence there was no debate on the issue, and the assessee has erroneously claimed the deduction. He also submitted that the decision of Hon'ble jurisdictional High Court in the case of M/s.Vareli Textile Ltd., 284 ITR 238 (Guj) was also against the assessee.

8. We have duly considered rival submissions and gone through the record carefully. Section 271(1)(c) of the Income Tax Act, 1961 has direct bearing on the controversy. Therefore, it is pertinent to take note of the section.

"271. Failure to furnish returns, comply with notices, concealment of income, etc.

(1) The Assessing Officer or the Commissioner (Appeals) or the CIT in the course of any proceedings under this Act, is satisfied that any person

of income comes into play. This deeming fiction, by way of Explanation I to section 271(1)(c) postulates two situations; (a) first whether in respect of any facts material to the computation of the total income under the provisions of the Act, the assessee fails to offer an explanation or the explanation offered by the assessee is found to be false by the Assessing Officer or Learned CIT(Appeal); and, (b) where in respect of any fact, material to the computation of total income under the provisions of the Act, the assessee is not able to substantiate the explanation and the assessee fails, to prove that such explanation is bona fide and that the assessee had disclosed all the facts relating to the same and material to the computation of the total income. Under first situation, the deeming fiction would come to play if the assessee failed to give any explanation with respect to any fact material to the computation of total income or by action of the Assessing Officer or the Learned CIT(Appeals) by giving a categorical finding to the effect that explanation given by the assessee is false. In the second situation, the deeming fiction would come to play by the failure of the assessee to substantiate his explanation in respect of any fact material to the computation of total income and in addition to this the assessee is not able to prove that such explanation was given bona fide and all the facts relating to the same and material to the computation of the total income have been disclosed by the assessee. These two situations provided in Explanation 1 appended to section 271(1)(c) makes it clear that that when this deeming fiction comes into play in the above two situations then the related addition or disallowance in computing the total income of the assessee for the purpose of section 271(1)(c) would be deemed to be representing the income in respect of which inaccurate particulars have been furnished.

10. In the light of the above, let us consider the facts of the present case. Question formed by Hon'ble Rajasthan High Court in the case of CIT Vs. Multi Metals (supra) are as under:

“1. Whether, on the facts and in the circumstances of the case, the Tribunal was right in holding that the fees paid to the Registrar of Companies for raising the authorized capital of the assessee-company was allowable as revenue expenditure ?

11. This question has been decided in favour of the assessee. No doubt decision of the Hon'ble Supreme Court in the case of Brooke Bond India is also available, but, can it be considered that the assessee has intentionally claimed this amount ? In order to evaluate this aspect, we have to bear in mind that the assessee has declared an income of Rs.12.54 crores. There could not be any *mala-fide* intention at the end of the assessee to make an erroneous claim of Rs.4,90,000/- only when it has filed return of income at such a huge figure. It hardly makes any difference in taxability for such an organization. It must be under some human error on the basis of Hon'ble Rajasthan High Court's decision. It has disclosed all the facts and did not challenge the addition after the decision of the Id.CIT(A). Considering the above aspects, we allow this appeal partly and delete penalty required to be calculated on the addition of Rs.4,90,000/- . In other words, the AO will exclude penalty computed on the disallowance of Rs.4,90,000/- made under section 35D and confirm rest of the penalty *qua* additions of Rs.51,000/- and Rs.11,319/-

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

Order pronounced in the Court on 19th November, 2019 at Ahmedabad.

Sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER

Sd/-
(RAJPAL YADAV)
JUDICIAL MEMBER

Ahmedabad; Dated 19/11/2019