

आयकर अपीलीय अधिकरण ,इन्दौर न्यायपीठ ,इन्दौर
IN THE INCOME TAX APPELLATE TRIBUNAL,
INDORE BENCH, INDORE

श्री कुल भारत, न्यायिक सदस्य

तथा

श्री मनीष बोरड, लेखा सदस्य के समक्ष

BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER
AND
SHRI MANISH BORAD, ACCOUNTANT MEMBER

आ.अ.सं/.I.T.A. No. 135/Ind/2017		
निर्धारणवर्ष/ Assessment Year:2008-09		
Dy. CIT, 3(1), Indore.	vs.	M/s.Modern Laboratories Pvt.Ltd., Indore.
अपीलार्थी /Appellant		प्रत्यर्थी /Respondent

आ.अ.सं/.I.T.A. No. 04/Ind/2017		
निर्धारणवर्ष/ Assessment Year:2008-09		
M/s.Modern Laboratories Pvt. Ltd., Indore.	vs.	Dy. CIT, 3(1), Indore.
अपीलार्थी /Appellant		प्रत्यर्थी /Respondent
स्था.ले.सं./PAN: AACFM5920B		

अपीलार्थी की ओर से/Department by	:	Shri S.S.Deshpande, C. A.
प्रत्यर्थी की ओर से/Assessee by	:	Shri Ram Prakash Mourya, Sr. DR

सुनवाई की तारीख/Date of hearing	:	29.06.2018.
उद्घोषणा की तारीख/Date of pronouncement	:	.07.2018

आदेश / O R D E R

PER KUL BHARAT, J.M. :

These two cross appeals by the Revenue and the assessee are directed against the order of CIT(A)-I, Indore, dated 28.11.2016.

2. First, we will take up Revenue's Appeal in I.T.A.No. 135/Ind/2017, wherein the Revenue has raised the following grounds of appeal :-

- (i) Whether in the facts and circumstances of the case, the Ld. CIT(A) has erred in law by deleting the penalty imposed by the AO u/s 271(1)(c) of the Act amounting to Rs. 11,19,895/- for committing default within the meaning of the provision of Section 271(1)(c) of the Act.

(ii) Whether in the facts and circumstances of the case, the Ld. CIT(A) has erred in law by deleting the penalty imposed by the AO u/s 271(1)(c) of the Act amounting to Rs. 11,19,895/- whereas the Ld. CIT(A) has confirmed the addition of Rs. 31,91,080/- out of the addition made of Rs. 63,82,160/- as disallowance of commission expenses.

3. The only effective ground in the appeal of the Revenue is against deletion of penalty of Rs. 11,19,895/-.

4. Facts giving rise to the present appeal are that the assessment u/s 143(3) of the Income-tax Act, 1961, (hereinafter referred to as the 'Act') was framed by the AO and during the course of assessment proceedings, the AO made addition in respect of disallowance of Rs. 63,82,160/-, unexplained credit of Rs. 1,48,00,000/- and disallowance of interest on credits of Rs. 1,46,660/-. On

these additions, the AO initiated penalty proceedings and subsequently the AO imposed penalty u/s 271(1)(c) of the Act in respect of the additions sustained by the Ld. CIT(A) in appeal of Rs. 16 lakhs.

5. Against this, the assessee preferred an appeal before the Ld. CIT(A), who after considering the submissions partly allowed the appeal, thereby the Ld. CIT(A) deleted penalty of Rs. 11,19,895/- out of total penalty of Rs. 16,00,000/-. Aggrieved by this, both the Revenue and assessee have filed appeal before this Tribunal.

6. At the out-set, the Ld. Counsel for the assessee submitted that in quantum appeal, this Tribunal was pleased to delete the addition in respect of the penalty for which Revenue is in appeal. He has drawn our attention to the order passed by the Tribunal in assessee's own case in I.T.A.No. 277 & C.O.No.16/Ind/2014 dated 10.08.2017. In view of the fact that the addition has already been deleted

on which penalty was levied by the AO and the Revenue is in appeal against the deletion of such penalty. Grounds raised in Revenue's appeal are dismissed.

7. Now we take up assessee's appeal in I.T.A.No. 04/Ind/2017.

8. The assessee has raised following grounds of appeal :-

1. The Ld. CIT(A) has erred in maintaining the penalty of Rs. 4,80,105/- u/s 271(1)(c) on account of alleged unproved cash credits.
2. It was proved before the Ld. CIT(A) that the loans have been taken through banking channel and have been confirmed by the creditors and as such the transactions were genuine. Under no circumstances the penalty can be levied even though the additions are made by not accepting the explanation of the assessee.

9. Briefly stated the facts of the case are that the AO has levied the penalty on the concealed income of Rs. 47,21,765/- holding that the assessee had furnished inaccurate particulars in respect of the above amount. The amount of Rs. 47,21,765/- consists of Rs. 31,91,080/- being commission payment confirmed in appeal by CIT(A), Rs. 15,00,000/- being cash credit u/s 68 of the Act and Rs. 30,685/- interest on the above Rs. 15,00,000/- confirmed by CIT(A). The AO noticed that in the case of Palasia Leasing & Investment Pvt Ltd. from whom Rs. 15,00,000/- was received by the assessee, the AO recorded a finding that the company is not traceable at the address given by the assessee. Even during remand proceedings no details were produced regarding the present whereabouts of the company and assessee did not produce any documents to establish the creditworthiness of the company and bank statement was not produced. On the addition of cash credit

of Rs. 15,00,000/- and interest thereon at Rs. 30,685/-, the Ld. CIT(A) levied the penalty of Rs. 4,80,105/-, against which the assessee is in appeal before this Tribunal.

10. The Ld. Counsel for the assessee has reiterated the submission made before Ld. CIT(A). The Ld. Counsel for the assessee contended that regarding cash credit of Rs. 15,00,000/- and interest thereon, confirmations in respect of all the creditors alongwith balance-sheet, bank statement, ITR, Acknowledgement were filed and the additions were made merely on the ground that companies belonged to Lunkad Group and there were deposits in the bank accounts prior to issue of loan cheque to the assessee ignoring the facts that the deposits in bank account were by cheques and not cash and confirmations were filed by the depositors in response to notice u/s 133(6) of the Act. The Ld. Counsel for the assessee contended that there was, thus, no case for levy of penalty.

11. The Ld. Departmental Representative supported the orders of the lower authorities.

12. We have considered the facts, rival submissions and perused the material available on record. We find that the Ld. CIT(A) has sustained the penalty on the basis that the assessee failed to prove creditworthiness of the creditor. It is not in dispute that the penalty has been sustained on the addition made u/s 68 in respect of cash credits. Ld. Counsel for the assessee, Shri S.S.Deshpande vehemently argued that since the addition is made u/s 68 of the Act, penalty should not be sustained, as the assessee has discharged initial onus. The Ld. Counsel for the assessee in support of this has placed reliance on the judgement of the Hon'ble Madhya Pradesh High Court rendered in the case of CIT vs. Chirag Ingots Private limited, (2005) 275 ITR 310 (MP), judgement of Punjab & Haryana High Court rendered in the case of CIT vs. Agro Chemicals (India), (2007) 288

ITR 149 (P & H), decision of Hon'ble Delhi High Court rendered in the case of CIT vs. Oasis Hospitalities (P) Limited, (2011) 198 TAXMAN 247 (Delhi). The decision of the Coordinate Bench in the case of Vikram Bhatia vs. ITO, (2014) 47 taxmann.com 365 (Luck-Trib). We are unable to accept this contention of the assessee and the case laws as relied by the Ld. Counsel for the assessee are distinguishable under the facts of the present case. In the present case, it is categorically observed by the authorities below that the credit, which was obtained from the party in other case, the Honble High Court has examined the creditworthiness of the party and came to the conclusion that the party had no creditworthiness. We are of the view that where the conduct of the creditor is suspicious and has been found indulged in the entry providing business, such cases require thorough investigation and there is a heavy onus remains on the assessee to prove the identity of

creditor, genuineness of the transaction and creditworthiness of such creditor. In the present case, the Ld. CIT(A) in para 5.4 of his order has given following finding of fact :-

"5.4 As regards, the addition of cash credit of Rs. 15,00,000/- and the interest thereon however, the appellant has reiterated that all documents were submitted including bank accounts statement and confirmations were filed. However, it is to be noticed that in the case of Palasia Leasing & Investment Pvt. Ltd. from whom Rs. 15,00,000/- was received the AO has recorded a finding that the company was not traceable at the address given by the appellant. Even during remand proceedings no details were produced regarding the present whereabouts of the company and appellant did not produce any documents to establish the creditworthiness of the company, not even the bank statement was produced. The director of the company was also not produced. All these facts assumed significance in the light of the findings recorded in the case of CIT vs. Rathi Finlease Limited, (2008) 215 CTR MP 429 in which the court had approved that cash credits from Palasia Leasing & Investment Pvt. Ltd. were not explained as the said company was not found to be traceable. From the above facts, it is thus evident that the particulars submitted by the appellant in

respect of the cash credit for Palasia Leasing & Investment Pvt. Ltd. were inaccurate and false and the appellant failed to establish that the said company had actually given the loan and had the capacity to give such loan. In view of the findings recorded the onus was of the appellant which was not discharged. It thus leads to the conclusion that the amount was wrongly stated to be cash credit from Palasia Leasing & Investment Pvt. Ltd. and represented income of the appellant. Penalty u/s 271(1)(c) of the Act is therefore attracted and the AO was justified in levying penalty of the above amount. Considering the above the AO is directed to restrict the penalty on the addition of Rs. 15,30,685/- and levy minimum penalty on the above addition which works out to Rs. 4,80,105/- The appellant therefore gets relief of Rs. 11,19,895/-. These grounds of the appellant are therefore partly allowed."

13. The above finding is not rebutted by the assessee by placing any contrary material on record. Law is well settled that an error or omission in bona fide by an honest tax payer, would not attract penal action. However, where the foundation is based on suspicion and the creditor is found to be involved in malpractice of accommodation entry

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providing, in such cases, the leniency of law is not available. Thus, the appeal of the assessee is dismissed.

14. In the result, both the appeals of the Revenue and assessee are dismissed.

The order pronounced in the open court on
04.07.2018.

Sd/-
(मनीष बोरड)
लेखा सदस्य
(MANISH BORAD)
ACCOUNTANT MEMBER

Sd/-
(कुल भारत)
न्यायिक सदस्य
(KUL BHARAT)
JUDICIAL MEMBER

Indore; दिनांक Dated : 04/07/2018

CPU/SPS*

Copy to: Assessee/AO/Pr. CIT/ CIT (A)/ITAT (DR)/Guard file.

By order

Private Secretary/DDO, Indore