

आयकर अपीलीय अधिकरण, मुंबई न्यायपीठ 'एच', मुंबई ।

IN THE INCOME TAX APPELLATE TRIBUNAL "H", BENCH MUMBAI

सर्वश्री आर.सी.शर्मा, लेखा सदस्य एवं श्री संजय गर्ग, न्यायिक सदस्य

BEFORE SHRI R.C.SHARMA, AM

&

SHRI SANJAY GARG, JM

आयकर अपील सं./ITA No.2292/Mum/2013

(निर्धारण वर्ष / Assessment Year :2009-10)

Heranba Industries Ltd., 101/102, Kanchanganga, Factory Lane, Near M K High School, Borivali (West), Mumbai-400 092	Vs.	DCIT-9(2), Mumbai
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAACH 3787 Q		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

निर्धारिती की ओर से /Assessee by : Shri Rashmikant C. Modi

राजस्व की ओर से /Revenue by : Shri Jeetendra Kumar

सुनवाई की तारीख / Date of Hearing : 11/02/2015

घोषणा की तारीख/Date of Pronouncement 08/04/2015

आदेश / O R D E R

PER R.C.SHARMA (A.M):

This is an appeal filed by the assessee against the order of CIT(A), dated 18-1-2013, for the assessment year 2009-10 in the matter of imposition of penalty u/s.271(1)(c) of the I.T.Act.

2. Rival contentions have been heard and record perused. Facts in brief are that assessee is engaged in manufacturing of pesticides, herbicides and formulations. During the year under consideration, assessee filed its return at total income of Rs.1.49 crores. During the course of scrutiny assessment proceedings, the AO found that the assessee received share application money of Rs.89.50 lakhs during the

year under consideration. The assessee was asked to furnish the details with supporting evidences. In response to the same, assessee vide letter dated 01.11.2011 submitted the following :-

“During the course of hearing you had asked us to provide necessary evidence in respect of share application money of Rs.89,50,000/- received during the year. In this connection, we wish to submit that we are not in a position to provide necessary supporting. We therefore, in order to buy peace, offer the share application money received during the year of Rs.89,50,000/- as income of the assessee for assessment year 2009-10.”

The AO being not satisfied by the above explanation, added Rs.89.50 lakhs in assessee's income u/s.69A and also levied penalty u/s.271(1)(c).

3. By the impugned order, the CIT(A) confirmed the action of the AO imposing penalty against which assessee is in further appeal before us.

4. We have considered rival contentions, carefully gone through the orders of the authorities below and also deliberated on the judicial pronouncements referred by the lower authorities in their respective orders as well as cited by Id. DR & AR during the course of hearing before us. From the record we found that at the very first instance share application money was surrendered by assessee with a request not to initiate any penalty proceedings. The AO passed order u/s.143(3) adding surrendered amount u/s.69A on the plea that assessee has surrendered amount only after issue of notice. It is not disputed by the department that sum which was added u/s.69A was one which was surrendered by the assessee itself. Neither there was any detection nor there was any information in the possession of the department except for the amount surrendered by the assessee and in these circumstances it cannot be

said that there was any concealment. In case of CIT vs. Suresh Chandra Mittal 251 ITR 9 (SC), Hon'ble Supreme Court observed that if the assessee has offered the additional income to buy peace of mind and to avoid litigation penalty u/s.271(1)(c) of the Act cannot be levied. In the instant case, there was no malafide intention on the part of the assessee and the AO had not brought any evidence on record to prove that there was concealment of income. At the time of surrender itself contention of not initiating any penalty proceedings was there. No additional matter was discovered to prove that there was concealment of income. The AO has included the amount of share capital in the total income of assessee merely on the basis of assessee's declaration/surrender. The AO did not point out or refer any evidence or material to show that the amount of share capital received by the assessee was bogus. It is also not the case of the revenue that material was found at the assessee's premises to indicate that share application money received was an arranged affair to accommodate assessee's unaccounted money. Thus there was no detection by the AO that share capital was not genuine. The surrender of share capital after issue of the notice u/s.143(2) could not lead to any inference that it was not voluntary. Admittedly the assessee has offered the amount of share capital for taxation voluntarily and it was not the case of revenue that the same was done after its detection by the department. It is quite clear from the record that this entire transaction was not detection of the AO that the share capital was not genuine and that the assessee had offered the amount without any specific query. Even

surrender of amount by the assessee after receipt of questionnaire could not be lead to any inference that it was not voluntary, in the absence of any material on record to suggest that it was bogus or untrue. The contention that in every case where surrender is made inference of concealment of income must be drawn under S.58 of Evidence Act, cannot be accepted in view of the decision of Punjan & Haryana High Court in the case of **Careers Education & Infotech (P) Ltd., (2011) 336 ITR 257 (P&H)**. Not an iota of evidence was narrated to support the addition made except the surrender made by the assessee itself. When no concealment was ever detected by the AO, no penalty was impossible. Recently, Hon'ble Punjab & Haryana High Court in the case of Siddharth Enterprises vide order dt. 14th July, 2009 held after considering the decision of Hon'ble Supreme Court in the case of Union of India & Ors. vs. Dharamendra Textile Processors & Ors. (2008) 306 ITR (SC) 277 that the judgment of Hon'ble Supreme Court in the case of Dharmendra Textiles (supra) cannot be read as laying down that in every case where particulars of income are inaccurate, penalty must follow. What has been laid down is that qualitative difference between criminal liability under s. 276C and penalty under s. 271(1)(c) had to be kept in mind and approach adopted to the trial of a criminal case need not be adopted while considering the levy of penalty. Even so, concept of penalty has not undergone change by virtue of the said judgment. It was categorically observed that penalty should be imposed only when there is some element of deliberate default and not a mere mistake. This being the

position, the furnishing of inaccurate particulars was simply a mistake and not a deliberate attempt to evade tax. Hon'ble Supreme Court in the case of CIT vs. Suresh Chandra Mittal 251 ITR 9 (SC) observed that where assessee has surrendered the income after persistence queries by the AO and where revised return has been regularized by the Revenue, explanation of the assessee that he has declared additional income to buy peach of mind and to come out of waxed litigation could be treated as bona fide, accordingly levy of penalty under s. 271(1)(c) was held to be not justified.

5. In view of the above, we do not find any merit for levy of penalty u/s.271(1)(c) of the Act.

6. **In the result, appeal of the assessee is allowed.**

Order pronounced in the open court on this 08/04/2015.

Sd/-

(संजय गर्ग)

(SANJAY GARG)

न्यायिक सदस्य / JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated 08/04/2015

प्र.कु.मि/pkm, नि.स/ PS

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

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

सत्यापित प्रति //True Copy//

Sd/-

(आर.सी.शर्मा)

(R.C.SHARMA)

लेखा सदस्य / ACCOUNTANT MEMBER

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार

(Asstt. Registrar)

आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai