

**inspecting Assistant Vs. Prem Heavy Engg. Works (P.) Ltd.**

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**Court :** Income Tax Appellate Tribunal ITAT Delhi

**Decided On :** Jun-30-1987

**Reported in :** (1987)23ITD183(Delhi)

**Judge :** S Grover, S Chander

**Appellant :** inspecting Assistant

**Respondent :** Prem Heavy Engg. Works (P.) Ltd.

**Judgement :**

1. These appeals by the revenue are directed against the consolidated order of the GIT (A), Meerut, dated 21-3-1985. This order of the 1d.

CIT (A) relates to the penalties levied upon the assessee Under Section 271(1)(a) and Section 273(2)(c) of the Income-tax Act, 1961 for the asst. year 1979-80. These appeals have been heard today as the representatives of both the sides were present but we are unable to determine the issues before us finally and are constrained to set aside the orders of the 1d. CIT (A) with the directions to him to dispose of the appeals de novo in accordance with law for the following reasons.

2. Insofar as penalty Under Section 271(1)(a) of the Act is concerned, the impugned order of the IAC (A) records the facts ut infra. The return of income for the year under appeal was due on or before 31-7-1979 Under Section 139(1) of the Act. However, no return was filed by that date. The assessing officer records that the assessee asked for extension of time and time was allowed up to

September 30, 1979.

Thereafter, since no return was filed the assessing officer issued a notice Under Section 139(2) on 16-10-1979 and served it upon the assessee on 17-10-1979 calling for a return. In response to this notice, which required submission of the return within 30 days, the return was not filed. A return was, however, filed on 8-1-1981. The assessment was completed on 31-3-1983 and a notice was issued to the assessee to show cause why penalty need not be levied for delay in furnishing the return. It is recorded in the impugned penalty order dated 7-2-1985 that on 7-2-85, the 1d. counsel for the assessee, Shri Devi Dutt attended and filed written submissions. According to the assessing officer in these written submissions, "the assessee has not touched the aspect of the belated return". The assessing officer presumed that there was no reasonable cause for delay in submission of the return and held that the assessee had committed a default within the meaning of sec. 271(1)(a) of the Act. There are other important aspects relating to imposition of this penalty which the assessing officer did not record and to which we will advert to later, in this order.

3. Now, when we come to the order imposing penalty Under Section 273(2)(c), we find that this order is also dated 7-2-1985. In this order, the assessing officer has recorded the facts, which again to our mind are not complete and are not coherently recorded. To put them in relevant context, they, however, can be seen in this manner. The assessee filed the first estimate of advance tax on 12-9-1978 and paid advance tax of Rs. 21 lakhs in equal instalments of Rs. 10,50,000 each on 12-9-78 and 13-12-1978. The assessee filed revised estimate on 16-3-1979 estimating total income at Rs. 75 lakhs and considering the tax already paid, the balance was paid in two instalments of Rs. 13 lakhs and Rs. 13,25,000 respectively on 16-3-79 and 29-3-79. Thus, the total advance tax paid by the assessee was Rs. 47,50,000.

4. The assessment was completed on 31-3-83 on a total income of Rs. 95,40,700 and the assessing officer issued a notice to show cause why penalty need not be levied, "for failure to submit the estimate on or before 15-3-79 as per requirement of Section 209A(4)" of the Act. In the meantime, on 10-1-84 the assessment was

revised Under Section 251 and the total income was determined at Rs. 71,20,120 of which tax payable came to Rs. 44,85,675. However the assessing officer proceeded to levy penalty because, according to him, the estimate filed by the assessee on 16-3-79 and the tax paid in pursuance thereof could not be taken into consideration because that was invalid estimate.

5. Now, coming to the quantum of penalties levied, in so far as, the default Under Section 271(1)(a) was concerned, the delay was taken from 1-10-79 to 8-1-81 equivalent to 13 complete months. Thereafter, the assessing officer does not indicate how and in what manner he computed the penalty but has shown the quantum thereof at Rs. 7,15,680. This is the penalty imposed for this default. For the default Under Section 273(2)(c) the penalty imposed is shown at Rs. 1,27,000. These penalties were challenged in appeal before the CIT (A).

6. The CIT (A) has disposed of both the appeals by the impugned consolidated order. In the concluding portion of his order in the penultimate para he has held that, "I hold that the tax paid after the stipulated dates has to be considered advance tax and if this is accepted, there is no dispute regarding the fact that the penalties are not exigible. He, therefore, holding that the tax was paid within the stipulated dates cancelled the penalties levied by the IAC (A).

7. Before us, we find that the revenue has projected a common ground mentioning both the penalties in each of the appeals filed against the cancellation of the penalty levied Under Section 271(1)(a) and Section 273(2)(c) of the Act. The 1d. D.R. was handicapped in the absence of record. The 1d. counsel for the assessee made a choice of not putting on our record any paper by way of paper book. Therefore, the position, that emerged was we have to send the matters back to the CIT (A) for fresh disposal. It is very important to note that the IAC (A) when he levied penalty Under Section 271(1)(a) amounting to Rs. 7,15,680 did not indicate the quantum of tax that he had taken into consideration as due from the assessee and on the basis of which the sum of Rs. 7,15,680 as penalty imposable was arrived at. This was very important for consideration by the 1d. CIT (A) as before him it was clear that estimate of advance tax made on 16-3-79 was because 15-3-79 was a holiday. If the estimate filed on 16-3-1979 was to be taken as estimate

filed in accordance with law then the payment of Rs. 13 lakhs on 16-3-79 as the first instalment according to the estimate would be tax paid in accordance with law, legal arguments in respect of other instalment of Rs. 13.25 lakhs whether it was in or out of time notwithstanding. This aspect of the matter should have been analysed by the 1d. CIT (A) because of the substantial amount of penalties and the impossibility that this issue may travel further before the Court and in that context decision on merits will be very important before come to the legal aspects of imposition of penalties. However, the 1d. CIT (A) has not done this dichotomy of the payments made in pursuance of the advance tax estimate filed on 16-3-79.

8. Though the IAC (A) indicated in his impugned penalty order Under Section 271(1)(a) the computation of penalty of Rs. 7,15,680 yet it was necessary at the first appellate stage to find out brought to record the same in the penalty order, the computation made and the validity thereof. This has also not been looked into primarily because the 1d.

CIT (A) proceeded to dispose of the appeals merely taking one of the aspects of the issues into consideration and that too only a legal one.

9. Even when we come to the penalty Under Section 273(2)(c) legal arguments besides, the fact that revised estimate of advance tax was filed on 16-3-79 and one instalment of Rs. 13 lakhs of advance tax was also paid on that date that payment will have to be taken as within time because of holiday on 15-3-79. On that there could not be any argument of the type that would necessarily follow with regard to the sum of Rs. 13.25 lakhs paid on 29-3-79. This dichotomy is essential because the penalty imposed is Rs. 1,27,000.

10. The 1d. CIT (A) should have also recorded whether at any stage, the assessee for the purpose of penalty Under Section 271(1)(a) tendered any explanation on there being reasonable cause for delay in furnishing the return. In the impugned penalty order, the IAC (A) has obliquely referred to the fact that there was no reasonable cause for the assessee to return late but this is only an inference drawn and there is no clear cut finding whether the assessee expressed clearly anything about there being reasonable cause for furnishing the return or not.

11. In view of that is stated above, we set aside the impugned order of the CIT (A) with the directions to dispose of the appeals afresh in accordance with law, inter alia, taking into considerations the observations made and the directions issued above.

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