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### Addition towards cash credit set aside based on evidences submitted during subsequent penalty proceedings

The Hon'ble Supreme Court set aside addition towards cash credit considering evidences submitted in subsequent penalty proceedings

#### Facts of the case:

- Basir Ahmed Sisodia (taxpayer)<sup>1</sup> is an individual engaged in the business of trading in marbles.

#### Audit proceedings

- The taxpayer's income-tax return for the Financial Year (FY) 1997-98 corresponding to the Assessment Year (AY) 1998-99 was selected for audit. The Assessing Officer (AO) during the course of audit proceedings noted credits of INR 226,000 in the balance sheet and books of accounts of the taxpayer. These credits were in the names of 15 persons and as per the taxpayer, the credits were for purchase of marbles from unregistered dealers.
- As per the AO, the taxpayer was not able to prove genuineness of the creditors (despite sufficient time and opportunity given to the taxpayer) and hence, the AO in his order dated 30 November 2000 made an addition of INR 226,000 as unexplained cash credits under Section 68 of the Income Tax Act, 1961 (ITA). The AO also initiated penalty proceedings under Section 271(1)(c) of ITA.
- On appeal by the taxpayer, the addition towards cash credits was confirmed by the Commissioner of Income tax–Appeals (CIT-A), the Income Tax Appellate Tribunal (ITAT) and the High Court.
- Aggrieved by the High Court's order dated 21 August 2008 on the quantum matter, the taxpayer filed an appeal before the Hon'ble Supreme Court (SC).

#### Penalty proceedings

- In parallel, post the ITAT order, the AO imposed penalty in relation to the cash credits under Section 271(1)(c) of the Act vide order dated 17 November 2006. Aggrieved against the AO's penalty order, the taxpayer filed an appeal before the CIT-A.
- The CIT-A considered the additional evidences by way of:
  - Affidavits from 13 creditors;
  - Sales tax order of the taxpayer for FY 1997-98 corresponding to AY 1998-99 showing purchases from unregistered dealers of INR 228,900;
  - Cash vouchers duly signed on the revenue stamp for receipt of payment by the unregistered dealers; and
  - Copy of Ration Card / Voter Identity Card to show identity of the unregistered dealer.
- Further, during remand proceedings (on direction from the CIT-A), the AO recorded statement of 12 unregistered dealers out of 13 and all of them admitted to having sold marble to the

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<sup>1</sup> 116 Taxmann.com 375 (SC)

taxpayer during FY 1997-98 corresponding to AY 1998-99, and having received money after two or three years.

- Based on the explanation given by the taxpayer, affidavits filed, statements of unregistered dealers in the course of remand proceedings and nothing objectionable being found by the AO (in respect of the identity of the unregistered dealers and claim of sales made), the CIT-A accepted the purchases made by the taxpayer. Thus, the CIT-A vide order dated 13 January 2011 cancelled the penalty levied on the taxpayer in relation to cash credits.
- Based on the order of the CIT-A, the penalty amount was refunded along with interest to the taxpayer.
- Separately, as result of the CIT-A's penalty order, criminal proceedings initiated by the Court of Additional Chief City Magistrate (Economic Offence) against the taxpayer were also terminated.

### **Decision of the Hon'ble SC:**

- The Hon'ble SC based on the findings and orders of the AO as well as appellate authority (on quantum matter) noted that, the taxpayer despite being given sufficient opportunity could not prove genuineness of the transactions. Thus, the transactions were held to be bogus transactions (standing to the names of non-existent creditors of the taxpayer).
- However, the SC noted that the CIT-A vide order dated 13 January 2011 had cancelled the penalty under section 271(1)(c) of the Act. The CIT-A had accepted the explanation offered by the taxpayer and had held that the taxpayer had neither concealed particulars of income nor furnished inaccurate particulars by proving genuineness and identity of the unregistered dealers.
- The SC held that the penalty proceedings were an outcome of the audit order in question and hence, relevant for the case under consideration by the SC.
- Considering the fact that taxpayer's explanation was accepted during the penalty proceedings and the CIT-A held there was no concealment of income or furnishing of inaccurate particulars of income by the taxpayer, the SC ruled that the addition of INR 226,000 of unexplained cash credit was not justified and could not be maintained.

### **Observations:**

- This ruling lays down the key principle that documents / information if accepted during penalty proceedings may also be relied upon for the purposes of quantum proceedings.



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