

## Default in payment of self-assessment tax due to unexpected recession doesn't call for penalty

**Summary – The Chandigarh ITAT in a recent case of Orbit Resorts (P.) Ltd., (the Assessee) held that where assessee pleaded that it defaulted in making payment of self assessment tax due to various loans taken earlier when there was boom in industry, unless it was shown that said loans were taken with mala fide intent to avoid payment of just and due taxes to State, penalty order could not be passed under section 221(1)**

### Facts

- During relevant year, assessee-company failed to pay self assessment tax before the due date of filing of return. The assessee pleaded that reason for such default was financial crunch during relevant year. It was pleaded that various loans had been raised during the boom in the industry and on account of the unexpected recession in the business, the assessee had defaulted in its payments even towards the bank.
- The Assessing Officer having rejected assessee's explanation, passed a penalty order under section 221(1).
- The Commissioner (Appeals) confirmed the penalty order.
- On second appeal:

### Held

- The assessee seeks to invoke "good and sufficient reasons" provided by the legislature as a defense in the second proviso to section 221(1) so as to argue that penalty was not attracted.
- A perusal of the same shows that the Statute permits the assessee to plead in its defense 'good and sufficient reasons' to explain why the default has occurred. On a reading of the above it is eminently clear that the Statute has contemplated that the levy of penalty is not automatic and there is a discretion vested in the Assessing Officer for levy of penalty wherein the assessee is permitted to plead 'good and sufficient reasons' as a defense.
- In the facts of the present case the assessee is consistently pleading lack of funds on account of a sudden recession in the industry. In support of the said claim it has been pleaded that its income over the years has drastically reduced from a positive income of Rs.26 crores odd in 2010-11 assessment year to losses in 2012-13 assessment year. The substantial and drastic reduction in its income from Rs.26 crores in the immediately preceding assessment year to Rs.5.51 crores in the year under consideration is an argument consistently taken on record.
- On a reading of the orders of the tax authorities, it is found that this factual aspect has neither been examined nor considered by the tax authorities. It is opined that generalizing the issue that loss was a result of substantial loans *per se* could not be a reason to negate assessee's claim. Unless it could

be shown that the loans had been raised with mala-fide intent deliberately, carelessly and irresponsibly to avoid paying just and due taxes to the State.

- The stated purposes for taking the loan as per record is expansion of business at the time of a boom in the industry. The correctness of the claim needs to be examined. Merely because in hindsight the decision appears to be a wrong decision as instead of a boom the industry goes through a recession subsequently, such an event cannot be foreseen. Thus the subsequent consequences cannot be the determinative factors for dismissing the claim. It is the facts and factors available at the time of loan applications which can throw light on the *bona fide/ mala fide* of the assessee.
- Accordingly, in the aforesaid peculiar facts and circumstances, the issue is set aside back to the Assessing Officer with the direction to pass a speaking order in accordance with law after giving the assessee a reasonable opportunity of being heard. The assessee is also directed at the same time to place full and necessary facts and evidences in support of its claim in order to facilitate the Assessing Officer to pass a speaking order.
- In the result, the appeal of the assessee is allowed for statistical purposes.