

IN THE INCOME TAX APPELLATE TRIBUNAL
AMRITSAR BENCH, AMRITSAR

**BEFORE SH. N.K.CHOUDHRY, JUDICIAL MEMBER AND
SH. ANADEE NATH MISSHRA, ACCOUNTANT MEMBER**

ITA No.696/Asr/2017
Assessment Year: 2014-15

Kapsons Electrostampings,
G.T. Road, Suranussi,
Jalandhar City.

Dy. Commissioner of
Income Tax, Jalandhar City.
Vs.

[PAN:AACFK 7956K]

(Appellant)

(Respondent)

Appellant by : Sh. S.K. Vatta, (Ld. CA)
Respondent by: Sh. Charan Dass (Ld. Sr. DR)

Date of hearing: 16.03.2020
Date of pronouncement: 17.03.2020

ORDER

PER ANADEE NATH MISSHRA, AM:

The instant appeal has been preferred by the Assessee against the order dated 04.09.2017 passed by the learned. CIT(Appeals), Jalandhar u/s 250(6) of the Income Tax Act, 1961 (hereinafter called as 'the Act'). The assessee has raised the following grounds of appeal.

"1. Whether on the facts of the case and in law, in absence of any demand notice issued u/s 156 of the Act and also in view of the fact on record that the Return of Income for the cited Asstt. year 2014-15 was itself declared defective and non est u/s 139(9) of the Income Tax Act by CPC Cell and consequently there was no existing demand outstanding as per records, the worthy CIT(A), was justified while sustaining order imposing penalty u/s 221(1) of the Act, on the facts of the case and in view of the gist of the legal citation placed on record ?

2. That the worthy CIT(A) was wrong and unjustified to have summarily ignored the facts and arguments as to the financial constraint and assessee's inability to make payment as per submissions on record including even request and no objection by the assessee and assessee's associate entity for adjustment of

the payments against determined refund due after the appeal effect, of the said associate entity.

3. *That the worthy CIT(A) have also ignored the facts that the notice of recovery of the tax u/s 221(1) dated 12.07.2016 refer to the sum of Rs.22,14,320/- whereas the said notice itself was not referring to correct amount as the assessee had paid the sum of Rs.10.00 Lacs on 23.06.2016 and the whole amount stood paid by 21.07.2016, even prior to the said date of hearing of the notice u/s 221(1) and default, if any, was already made good.*

4. *That the worthy CIT (A) and Assessing Officer both have been wrong and unjustified in sustaining/imposing penalty u/s 221(1) of the Act, and the said imposition of the penalty u/s 221(1) cannot be an automatic consequence of default for non payment of tax as prayed and in view of the legal citations placed on record, which also have summarily been ignored.*

5. *That the assessee craves to add, modify, alter, delete any grounds of appeal during the course of penalty proceedings.*

I, N. K. SEHGAL, the appellant do hereby declare that what is stated above is true to the best of my information and belief.”

2. Vide impugned order dated 28.07.2016 u/s 221(1) r.w.s.140A(3) of Income Tax Act, 1961, the Assessing Officer imposed penalty of Rs.8,85,730/- u/s 221(1) of I.T. Act.

3. Aggrieved, the assessee filed appeal before the learned Commissioner of Income Tax (Appeals). Vide impugned appellate order dated 04.09.2017 the learned Commissioner of Income Tax (Appeals) [‘CIT(A)’ for short] dismissed the assessee’s appeal. The relevant portion of the aforesaid impugned appellate order dated 04.09.2017 of learned CIT(A) is reproduced as under:

“5. I have considered the facts of the case and written submissions of the appellant, The return of income for A.Y.2014-15 was filed by the appellant on 31.03.2015, which was return u/s 139(4) of the Act, declaring total income of Rs.85,11,630/- with the following particulars of tax liability.

<i>Total Income:</i>	<i>Rs.85,11,630/-</i>
<i>Net Tax payable:</i>	<i>Rs.26,30,094/-</i>
<i>Less TDS:</i>	<i>Rs.8,40,000/-</i>
<i>Balance payable:</i>	<i>Rs.17,90,094/-</i>
<i>Interest payable:</i>	<i>Rs.4,24,230/-</i>
<i>Total tax & interest payable:</i>	<i>Rs.22,14,320/-</i>

The sum of Rs.22,14,320/- was required to be paid u/s 140A before the filing of the return. However, the assessee failed to deposit the tax on the returned income as per 140A of the Act, It has, therefore, been rightly deemed to be an assessee in default u/s 140A(3) of the Act.

In response to the show cause notice issued by Ld.AO as to why a penalty u/s 221(1) be not imposed for the above default, the explanation of the assessee in its reply dated 22.07.2016 was that if had already paid the liability as under:

Paid on 23.06.2016	Rs.10,00,000/-
Paid on 20.07.2016	Rs.6,00,000/-
Paid on 21.07.2016	Rs.6,14,320/-

Upon the consideration of the matter, its held that the above sums deposits more than one year after the filing of the return of income did absolve the assessee of the default committed u/s 140A(3).

During appeal, the appellant contended that as the said return of income for A.Y.2014-15 was treated an invalid u/s 139(9) of the Act by the CPC vide communication dated 30.3.2016, it was a non-est return. Consequently, there was no order u/s 143(1) of the Act and also no valid demand notice u/s 156 of the Act for the relevant assessment year. It was argued that in the absence of a notice of demand u/s 156 of the Act, the penalty imposition u/s 221(1) was not sustainable. I have considered the above contention and find that it is not tenable. The impugned order u/s 221(1) is for levy of penalty u/s 221(1) of the Act and not for processing u/s 143(1) of the Act. Levy of penalty under section 221(1) is independent of processing under section 143(1) of the Act. The penalty has been rightly levied u/s 221(1) for default u/s 140A(3) of the Act.

Further plea of the assessee is that the penalty has been wrongly levied on the sum of Rs.22,14,320/- without giving credit for Rs.22,14,320/- paid after the filing of the return of income but before the passing of the impugned penalty order u/s 221(1) of the Act on 28.07.2016. The plea is also not tenable and cannot be accepted. The default is to be determined as on the date of filing of return of income and on the amount of self-asst tax u/s 140A not paid before filing the return of income. The penalty has been rightly computed on the sum of Rs.22,14,320/-. As explicitly provided in explanation 2 section 221(1), an assessee shall not cease to be liable to penalty under this section merely by reason of the fact that before the levy of such penalty he has paid the tax.

A still another plea taken during appeal is that the penalty has been unjustly levied without taking cognizance of the appellant's request to Ld. AO that the unpaid tax u/s 140A may be adjusted out of the refund due to a sister concern, Kapson Industries Ltd, in A.Y. 2013-14, which refund was more then the tax due u/s 140A and for which a no- objection was also filed from the sister concern. The plea does not held the appellant. All refunds issued by the department are A/c payee and go directly to the bank a/c furnished by an assessee in its return of income and there is no provision to adjust refund of one PAN against the

demand in the case of any other PAN. Refund adjustment is possible only against the demand outstanding in the case of the assessee itself. The only course open for the appellant was to withdraw the refund money from the bank a/c of the sister concern and deposit it against the liability payable in its own case. During the year, the appellant has received rental income Rs.84,00,000/- on which TDS was made @ 10% and also had other income. The argument of paucity of funds thus does not hold good. The assessee has not been able to prove that the default was for good and sufficient reason so as to fall within the proviso to section 221(1) of the Act. Hence, the penalty levied under section 221(1) is upheld.

During appeal, Ld. AR could not inform as to how the sums of Rs.22,14,320/- claimed to have been paid by the appellant and TDS have been accounted for to the credit of the assessee if there was no order of processing u/s 143(1). In case the original return u/s 139(4) has been treated as non-est and not processed u/s 143(1) and no subsequent regular assessment u/s 143(3) has been made, return of income for A.Y.14-15 may be called u/s 148 of the Act and the TDS/amount of Rs.22,14,320/- paid subsequently adjusted against the taxes and interest u/s 234 A,B,C etc. of the regular assessment of a valid return as per provisions of section 140(2) of the Act for A.Y.14-15.

Grounds of appeal 1 to 5 are dismissed.”

4. Aggrieved again, the present appeal has been filed by the assessee in Income Tax Appellate Tribunal in the course of appellate proceedings in ITAT. The assessee amended the grounds of appeal which are as under:

“1. That the Ld. CIT(Appeals) has erred both on facts and in law to have uphold the penalty as levied u/s 221(1) of the Act in view that the impugned Return of Income as filed u/s 139(1) of the Act itself was declared an invalid Return vide communication Ref. No. CPC-1/4/5/95/150962219 dated 30.03.2016 and there was no valid demand raised or outstanding pursuant to provisions u/s 156 of the Act, being non est return, which is mandatory condition and there was, as such, no valid demand outstanding for which the penalty u/s 221(1) has been imposed and upheld.

2. That the worthy CIT(A) have erred in law and on facts and unjustified for upholding, the penalty imposition u/s 221(1) read with section 140(A)(3) of the Act in view of the amended provisions of section 140(A)(3) w.e.f. 1.4.1989 as after the said amendment, the said default invite mandatory charging of interest, thus the legislature did not envisage that consequent of the said amendment, the default in payment of self assessment tax would be covered by the scope of the section 221. Reliance is placed on the Coordinate ITAT, Mumbai, Bench A, judgment in the case of Hedlee Knowledge Private Ltd. Vs Income tax Officer reported at (2018) 169 DTR 396.

3. That the worthy CIT (A) and Assessing Officer both have been wrong and unjustified in sustaining/imposing penalty u/s 221(1) of the Act, and the said imposition of the penalty u/s 221(1) cannot be an automatic consequence of default for non payment of tax as prayed and in view of the legal citations placed on record, which also have summarily been ignored.

4. That the assessee craves to add, modify, alter, delete any grounds of appeal during the course of penalty proceedings.

I, N. K. SEHGAL, the appellant do hereby declare that what is stated above is true to the best of my information and belief."

4.1 Further, in the course of appellate proceedings in ITAT, the following papers/documents were filed from the assessee's side.

- Written submission vide letter dated 10.07.2019
- Copy of the order u/s 139(9) of the Income Tax Act by CPC Cell
- Copy of the reply submissions for notice u/s 221(1) of the Act dated 18th July, 2016.
- Copy of the no objection to adjust the due refund of the Associate entity dated 18th July, 2016.
- Written submissions vide letter dated 10.07.2019.

5. At the time of hearing before us, the learned Authorized Representative of the assessee placed reliance on the aforesaid written submissions vide letters dated 22.11.2018 and 10.07.2019. For the sake of reference the relevant portions of the aforesaid written submissions are reproduced as under:

Letter dated 22.11.2018.

"1) Scope and Application of section 140(A)(3) of the Act, post Amendment of 1989 , the Intention of the Legislature, at the time of Insertion of the Amendment under section 140 (A) (3) makes it clear that the old provision of 140(A) (3) prescribing for levy of penalty for Non-payment of Self Assessment Tax was no longer found necessary because the said default would, after the said Amendment, invite Mandatory charging of Interest. Therefore, ostensibly The Legislature did not envisage that consequent of the said Amendment, the default in payment of self Assessment Tax would be covered by the scope of section 221(1), after the said Amendment.

As such by the said amendment in the provision of section 140(A)(3) w.e.f 1.4.1989, the assessee is to be treated as assessee in default, subject to the other provision of the Act, if the said demand would have been validly raised for the limited purpose to enable the A.O to make recovery of the amount of tax and the interest due thereon and not for Levy of penalty ,an aspect which has been done away in the new provisions.

2) In this connection and subject matter, the reliance is placed on the recent judgement of the ITAT MUMBAI BENCH -A of 19th JANUARY 2018 in the case of **HEDLEE KNOWLEDGE PVT LTD VS INCOME TAX OFFICER, REPORTED AT (2018) 169 DTR 396** (COPY ENCLOSED) wherein it has been held as under:

On the face of it, the argument of the revenue appears to be justified, so however, the same does not merit acceptance if one examines the issue in slight detail. Notably, the penalty envisaged u/s.140A(3) in the unamended provision was on the statute along with the penalty envisaged u/s .221. Once section 140A(3) has been amended w.e.f. 1st April, 1989, there is no amendment of 221 and it continues to remain the same. If the plea of the revenue is to be accepted, based on the amendment to s. 140A(3), it would mean that prior to 1st April, 1989 the same default invited penalty provision under two sections, namely, section 140A(3) as well as section 221(1) which would appear to be peculiar and unintended. Furthermore, the intention of the legislature at the time of insertion of the amended section 140A(3) makes it clear that the old provisions of section 140A(3) prescribing for levy of penalty for non-payment of self-assessment tax was no longer found necessary because the said default would henceforth invite mandatory charging of interest. Ostensibly, the legislature did not envisage that consequent to the amendment, the default in payment of self-assessment tax would hitherto to be covered by the scope of section 221(1). The emphasis of the revenue is to point out that the non-payment of self-assessment tax renders the assessee "in default" in the amended provision which further prescribes that "all the provisions of this Act shall apply accordingly" and therefore, the default is hitherto from 1st April, 1989 covered by section 221(1). the consequence of the aforesaid two expressions contained in section 140A(3) are also not of the type sought to be understood by the revenue, and rather the assessee is to be treated as an "assessee in default" for the limited purpose of enabling the AO to make recovery of the amount of tax and interest due and not for levy of penalty, an aspect which has been specifically done away in the new provision. Therefore considered in the aforesaid light, the fact that the amended section 140A(3) w.e.f 1st April, 1989 does not envisage any penalty for non-payment of self-assessment tax, the AO was not justified in levying the impugned penalty by making recourse to section. 221 in consonance with the amendment carried out in s. 140A(3) w.e.f 1st April, 1989, the AO erred in levying the impugned penalty,"

3) And Since the return of income for the relevant Asst year 2014-15 as filed by the assessee on 31st March 2015 vide acknowledgement No.554990203310315 was itself declared an invalid nonest Return by the communication ref no.CPC 1/4/5/95/1509631219 dated 30/3/2016 (copy at page 10, of the paper books submission of 16th may 2018) and since no demand was raised under section 156 of the Act, which is mandatory condition of provisions, there was no valid demand outstanding for which the penalty has been wrongly imposed disregarding the said provision and also amended provisions under section 140 (A)(3).w.e.f 01.04.1989”

Letter dated 10.07.2019.

“1. Pursuing the Ground No 1 of the amended Grounds of Appeal, it is submitted and prayed that since the Return of Income as filed by the assessee firm on 31st March, 2015 for the relevant Asstt. Year 2014-15 vide acknowledgement No.

554990283300315 was itself declared invalid non est Return by the communication reference no. CPC/1415/95/1509631219 dated 30.03.2016 (copy at page 10 of the paper book submissions of 16th May, 2018; no order or intimation u/s 143(1) of the Act was either passed or served being a non est invalid return nor any demand was raised or notice u/s 156 was ever issued/served for any tax demand in respect thereof, which is a mandatory condition precedent for any tax becoming due payable and as such there was no valid demand for which the penalty has been wrongly imposed u/s 221(1) of the Act read with section 140(A)(3), disregarding the said provisions and also amended provisions u/s 140(A)(3) w.e.f. 01.04.1989.

i) And whereas section **156** specifically provides:

"when any tax, interest, penalty, fine or any other sum is payable in consequence of any order passed under this Act, the Assessing Officer shall serve upon the assessee notice of demand in the prescribed form specifying the sum so payable. Provided that where any sum is determined to be payable by the assessee or the deductor or the collector under sub-section (1) of section 143 sub section (1) of section 200A or sub section (1) 206(B), the intimation under those sub section shall be deemed to be a notice of demand for the purpose of this section".

However, in view of the facts stated above no such order was passed u/s 143(1) or sub section (1) of section 200A of the Act and admittedly no such demand notice u/s 156 of the Act was issued/served on the assessee of any tax, penalty, fine or any other sum payable for the cited Asstt. Year 2014-15.

- ii) The aforesaid arguments & plea of the assessee that there was no order u/s 143(1) & not valid demand notice u/s 156 of the Act was not found sustainable in terms of opening para at page 7 of 9, of the orders of the worthy CIT (Appeals).
- iii) As regards provisions of section 156 of the Act vis a vis absence of valid demand, reliance is placed on the decision of the Hon'able Supreme Court in the case of **Sri Mohan Wahi vs Commissioner of Income Tax as reported in (2000) 248 ITR 922 (SC)** at Page 7 of 8 of the judgement, wherein the Hon'able Supreme Court have held ;

In the present case, the plea as to non-service of demand notice having been raised the High Court, in our opinion the High Court should not have adopted too technical a approach by refusing to deal with the plea because it was not raised in the manner in which the High Court thought it should have been raised. The plea went to the root of the matter.

The plea was raised before the departmental authorities right from the ITO to the Tribunal and was not given up before the High Court also. It would not have been difficult for the High Court to ask the Income-tax Department to produce the record of the proceedings and to show if the demand notice was at all served on the assessee. A little more sensitive approach is required to be adopted in the process of dispensing justice when it is found that valuable property of a person was sought to be sold away for recovery of such arrears as did not exist at all.

2. Pursuing the amended Ground No. 2 the assessee respectfully submits and pray that:

- i) Scope and Application of section 140(A)(3) of the Act, post Amendment of 1989, the Intention of the Legislature, at the time of Insertion of the Amendment under section 140 (A) (3) makes it clear that the old provision of 140(A) (3) prescribing for levy of penalty for Non-payment of Self Assessment Tax was no longer found necessary because the said default *would* after the said Amendment, invite Mandatory charging of Interest. Therefore, ostensibly The Legislature did not envisage that consequent of the said Amendment, the default in payment of self Assessment Tax would be covered by the scope of section 221(1), after the said Amendment.

As such by the said amendment in the provision of section 140(A)(3) w.e.f 1.4.1989, the assessee is to be treated as assessee in default, subject to the other provision of the Act, if the said demand would have been validly raised for the limited purpose to enable the A.O to make recovery of the amount of tax and the interest due thereon and not for Levy of penalty u/s 221(1) read with 140(A)(3) of the Act, an aspect which has been done away in the new provisions.

- ii) In this connection and subject matter ,the reliance is placed on the recent judgment of the ITAT MUMBAI BENCH -A of 19th JANUARY 2018 in the case of **HEDDLE KNOWLEDGE PVT LTD VS INCOME TAX OFFICER ,REPORTED AT (2018) 169 DTR 396** (COPY ENCLOSED) wherein it has been held in Para ' 6' as under:

"However, a contrary position is taken by the Revenue to the effect that for having defaulted in payment of self-assessment tax within the stipulated period, assessee qualifies to be "an assessee in default" as prescribed in the amended Sec. 140A(3) of the Act and, therefore, if one is to read the same with Sec. 221(1) of the Act, the action of the Assessing Officer in imposing penalty is quite justified. In sum and substance, it is sought to be emphasised on the strength of Sec. 221(1) of the Act that the penalty is leviable so long as the default is in the nature which renders the assessee as an "assessee in default" for payment of tax. Sec. 221(1) of the Act prescribes for penalty when assessee is in default in making the payment of tax. On the face of it, the argument of the Revenue appears to be justified, so however, the same does not merit acceptance if one examines the issue in slight detail. Notably, the penalty envisaged Sec. 140A (3) in the unamended provision was on the statute alongwith the penalty envisaged u/s 221 of the Act. Once Sec. 140A(3) of the Act has been amended w.e.f. 01.04.1989, as we have seen earlier, there is no amendment of Sec. 221 of the Act and it continues to remain the same. What we are trying to emphasise is if the plea of the Revenue is to be accepted, based on the amendment to Sec. 140A(3) of the Act, it would mean that prior to 01.04.1989 the same default invited penal provisions under two sections, namely, Sec. 140A(3) as well as Sec. 221(1) of the Act, which would appear to be peculiar and unintended. Furthermore, the intention of the legislature at the time of insertion of the amended Sec. 140A(3) makes it clear that the old provisions of Sec. 140A(3) prescribing for levy of penalty for non-payment of self-assessment tax was no longer found necessary because the said default would henceforth invite mandatory charging of interest. Ostensibly, the legislature did not envisage that consequent to the amendment, the default in payment of self assessment tax would hitherto be covered by the scope of Sec. 221(1) of the Act. The emphasis of the Revenue is to point out that the nonpayment of self-assessment tax renders the assessee "in default" in the amended provision which further prescribes that "all the provisions of this Act shall apply accordingly" and, therefore, the default is hitherto (from 01.04.1989) covered by Sec. 221(1) of the Act.

*In our view, the consequence of the aforesaid two expressions contained in Sec. 140A(3) are also not of the type sought to be understood by the Revenue, and rather the assessee is to be treated as an "assessee in default" for the limited purpose of enabling the Assessing Officer to make recovery of the amount of tax and interest due and not for levy of penalty, an aspect which has been specifically done away in the new provision. Therefore, considered in the aforesaid light, in our vi u, the fact that the amended Sec. 140A(3) w.e.f. 01.04.1989 does not envisage any penalty for non-payment of self-assessment tax, the Assessing Officer was not justified in levying the impugned penalty by making recourse to Sec. 221(1) of the * Act. Before parting, we may again emphasise that Sec. 221 of the Act remains unchanged, both during the pre and post amended Sec. 140A(3) of the Act and even in the pre-amended situation, penalty u/s 221 of the Act was not attracted for default in payment of self-assessment tax, which was expressly covered in pre 01.04.1989 prevailing Sec. 140A(3). Thus, without there being any requisite corresponding amendment to Sec. 221 of the Act in consonance with the amendments carried out in Sec. 140A(3) of the Act w.e.f. 01.04.1989, the Assessing Officer erred in levying the impugned penalty. Thus, on this aspect, we hereby set-aside the order of CIT(A) and direct the Assessing Officer to delete the penalty imposed u/s 140A(3) r.u.s. 221(1) of the Act."*

Now, therefore, in view of the aforesaid facts, and in law as per relevant provisions and legal citations as relied upon, the assessee respectfully request and pray for due grant of relief as prayed. "

6. At the time of hearing before us, the learned Authorized Representative of the assessee drew our particular attention to order of Co-ordinate Bench of ITAT, Mumbai in the case of *Heddle Knowledge Pvt. Ltd. vs. Income Tax Officer [2018] 169 DTR 396 (Mum)* and contended that the issue in dispute is squarely covered in favor of the assessee by this decision.

7. On the other side, the learned Departmental Representative relied upon the orders of the learned CIT(A) and the Assessing Officer dated 04.09.2017 & 28.07.2016. However, he did not dispute the contention of learned Authorized Representative of the assessee, that issue in dispute is squarely covered in favour of assessee by aforesaid order in the case of *Heddle Knowledge Pvt. Ltd. vs. ITO (supra)*.

8. We have heard both sides and perused the material available on record. We find that the issue in dispute in the present appeal before us is squarely covered by the aforesaid order of Co-ordinate Bench of ITAT, Mumbai in the case of *Heddle*

Knowledge Pvt. Ltd. vs. ITO (supra). The relevant portion of the order in the said case is reproduced as under:

“.....Notably, the penalty envisaged Sec. 140A (3) in the unamended provision was on the statute alongwith the penalty envisaged u/s 221 of the Act. Once Sec. 140A(3) of the Act has been amended w.e.f. 01.04.1989, as we have seen earlier, there is no amendment of Sec. 221 of the Act and it continues to remain the same. What we are trying to emphasise is if the plea of the Revenue is to be accepted, based on the amendment to Sec. 140A(3) of the Act, it would mean that prior to 01.04.1989 the same default invited penal provisions under two sections, namely, Sec. 140A(3) as well as Sec. 221(1) of the Act, which would appear to be peculiar and unintended. Furthermore, the intention of the legislature at the time of insertion of the amended Sec. 140A(3) makes it clear that the old provisions of Sec. 140A(3) prescribing for levy of penalty for non-payment of self-assessment tax was no longer found necessary because the said default would henceforth invite mandatory charging of interest. Ostensibly, the legislature did not envisage that consequent to the amendment, the default in payment of self assessment tax would hitherto be covered by the scope of Sec. 221(1) of the Act. The emphasis of the Revenue is to point out that the nonpayment of self-assessment tax renders the assessee "in default" in the amended provision which further prescribes that "all the provisions of this Act shall apply accordingly" and, therefore, the default is hitherto (from 01.04.1989) covered by Sec. 221(1) of the Act.

In our view, the consequence of the aforesaid two expressions contained in Sec. 140A(3) are also not of the type sought to be understood by the Revenue, and rather the assessee is to be treated as an "assessee in default" for the limited purpose of enabling the Assessing Officer to make recovery of the amount of tax and interest due and not for levy of penalty, an aspect which has been specifically done away in the new provision. Therefore, considered in the aforesaid light, in our view, the fact that the amended Sec. 140A(3) w.e.f. 01.04.1989 does not envisage any penalty for non-payment of self-assessment tax, the Assessing Officer was not justified in levying the impugned penalty by making recourse to Sec. 221(1) of the Act. Before parting, we may again emphasise that Sec. 221 of the Act remains unchanged, both during the pre and post amended Sec. 140A(3) of the Act and even in the pre-amended situation, penalty u/s 221 of the Act was not attracted for default in payment of self-assessment tax, which was expressly covered in pre 01.04.1989 prevailing Sec. 140A(3). Thus, without there being any requisite corresponding amendment to Sec. 221 of the Act in consonance with the amendments carried out in Sec. 140A(3) of the Act w.e.f. 01.04.1989, the Assessing Officer erred in levying the impugned penalty. Thus, on this aspect, we hereby set aside the order of CIT(A) and direct the Assessing Officer to delete the penalty imposed u/s 140A(3) r.w.s. 221(1) of the Act.”

9. At the time of hearing before us, neither side has brought any distinguishing facts or circumstances or legal provisions to our notice to persuade as to take a view different from the view taken by Co-ordinate Bench of ITAT Mumbai in the aforesaid case of *Heddle Knowledge Pvt. Ltd. vs. ITO (supra)*. There is no dispute

between the two sides that the issue as raised in the present appeal is squarely covered in favour of the assessee by aforesaid order in the case of *Heddle Knowledge Pvt. Ltd. vs. ITO (supra)* passed by Co-ordinate Bench of ITAT, Mumbai.

9.1 Respectfully following the decision of the ITAT, Mumbai Bench, in the aforesaid case of *Heddle Knowledge Pvt. Ltd. vs. ITO (supra)*, we also decide the issue in dispute in the present appeal in favour of the assessee and set aside the aforesaid orders dated 04.09.2017 & 28.07.2016 of learned CIT(A) and the Assessing Officer. The aforesaid penalty amounting to Rs.8,85,730/- is hereby cancelled.

10. In the result, the appeal filed by the assesses is allowed for statistical purposes.

Order pronounced in the open Court on 17/03/2020.

Sd/-
(N.K.CHOUDHRY)
JUDICIAL MEMBER

Sd/-
(ANADEE NATH MISSHRA)
ACCOUNTANT MEMBER

Dated: 17/03/2020.

/PK/ Ps.

Copy forwarded to:

1. The Appellant
2. The Respondent
3. The CIT
4. Then CIT(Appeals)
5. SR DR, I.T.A.T. Amritsar
6. Guard File

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By Order