

**HIGH COURT OF JUDICATURE FOR RAJASTHAN BENCH AT
JAIPUR**

D.B. Income Tax Appeal No. 8 / 2018

Pr. Commissioner of Income Tax, Jaipur-II, Jaipur.

----Appellant

Versus

M/s Agribiotech Industries Limited, SP-825, Road No.14, V.K.I.
Area, Jaipur

----Respondent

For Appellant(s) : Mr. R.B. Mathur with Mr. Prateek Kedawat

For Respondent(s) :

HON'BLE MR. JUSTICE K.S.JHAVERI

HON'BLE MR. JUSTICE VIJAY KUMAR VYAS

Judgment

20/02/2018

1. By way of this appeal, the appellant has challenged the judgment and order of the Tribunal whereby the Tribunal has dismissed the appeal of the Department confirming the order of CIT (A).

2. Counsel for the appellant has framed the following substantial questions of law:

(i) Whether in the facts and circumstances of the case and in law the ITAT was justified in upholding the deletion of disallowance made u/s. 37(1) of the Act amounting to Rs.31632000/- on account of penal excise duty debited in P & L Account.

(ii) Whether in the facts and circumstances of the case and in law the ITAT was justified in holding that alleged excise demand notice are not penal in nature without appreciating the fact that the same are for penalty demand levied by the Excise Department raised on account of fake export permit.

3. Mr. Mathur has contended that the assessee was penalised pursuant to his illegal activities and this will not amount to business expenses. He has relied on Section 37 and explanation thereto of the Income Tax Act which has been introduced in 1998 and reads as under:

37. (1) Any expenditure (not being expenditure of the nature described in sections 30 to 36 and not being in the nature of capital expenditure or personal expenses of the assessee), laid out or expended wholly and exclusively for the purposes of the business or profession shall be allowed in computing the income chargeable under the head "Profits and gains of business or profession".

Explanation 1.—For the removal of doubts, it is hereby declared that any expenditure incurred by an assessee for any purpose which is an offence or which is prohibited by law shall not be deemed to have been incurred for the purpose of business or profession and no deduction or allowance shall be made in respect of such expenditure.

4. He contended that this will fall within the explanation and therefore, not business expenses. He has also taken us through the observations made by the CIT (A) which is quoted as under:

5.3 I have gone through the assessment order, statement of facts, grounds of appeal and written submission carefully. It is seen that the assessee is engaged in the business of manufacturing of ENA(Extra Neutral Alcohol) and Rectified Spirit. The assessee made a payment of Rs.3,16,32,000/- to State Excise Authority in response to मांग वसूली नोटिस issued by the District Excise Officer, Sikar. The contents of one of the मांग वसूली नोटिस are reproduced hereunder for ready reference:

"दिनांक 22.11.2010 को आपके आवेदन पर निम्नहस्ताक्षरकर्ता के कार्यकाल द्वारा मैसर्स प्रीमियर डिस्टिलरीज प्रा. लि., पुंडुचेरी, को ईएनए निर्यात करने के लिए आया परमिट क्रमांक 1470 एवं 1471 दिनांक 3.11.2010 के अन्तर्गत निर्यात परमिट क्रमशः एसकेआर 016491 एवं क्रमांक 016492 दिनांक 22.11.2010 जारी किये गये थे। इन परमितों के अन्तर्गत 20000-20000 बल्क लीटर ईएनए आपके अजीतगढ स्थित संस्थान से मैसर्स प्रीमियर डिस्टिलरीज प्रा.लि., पुंडुचेरी, भेजने के लिए निर्गमित किया है।

डिप्टी कमीशनर (आबकारी), पुंडुचेरी में अतगत कराया है कि उक्त आयात परमिट कूटरचित है तथा उनके कार्यालय द्वारा जारी नहीं किये गये है। उपरोक्त स्थिति में निर्यात परमितों के अन्तर्गत 40000 लीटर ईएनए गल्नव्य मैसर्स प्रीमियर डिस्टिलरीज प्रा.लि. पुंडुचेरी पर नहीं पहुंचा है। आपने अपने बन्धपत्र में निम्न अंकन किया हुआ है:—

"03. I undertake behalf of Agribiotech Industries Ltd., that the import permits, its contents and in printing are genuine.

04. I undertake behalf of Agribiotech Industries Ltd., make goods any losses accrued to Government of its agency due to above been false and fictitious the Agribiotech Industries Ltd. shall also be liable for prosecution if same is not genuine.

05. I undertake behalf of Agribiotech Industries Ltd., that Excise verification issued by Excise Authority of importing State shall be submitted within 90 days of Exporting Extra Neutral Alcohol from our distillery, failing we shall be liable for excise Duty extra leviable at Rajasthan at that time."

इस प्रकार आपने बन्धपत्र (शपथ पत्र) की शर्तों का उल्लंघन किया है क्योंकि निर्यात परमितों के अन्तर्गत 40000 लीटर ईएनए गल्नव्य मैसर्स प्रीमियर डिस्टिलरीज प्रा.लि. पुंडुचेरी, पर नहीं पहुंचा है। अतः राजस्थान आबकारी नियम, 1956 के अन्तर्गत बन्धपत्र की शर्त के उल्लंघन के लिए बन्धपत्र के अन्तर्गत देय शास्ति (panalty) की राशि 1,14,24,000 /— (अक्षरे रुपये एक करोड चौदह लाख चौबीस हजार) तत्काल आज दिनांक 22.12.10 को राजकोष में जमा कराकर चालान प्रस्तुत करें।

यह नोटिस आज दिनांक 22.12.2010 को मेरे हस्ताक्षर एवं कार्यालय मुद्र में जारी किया गया है।"

The AO disallowed the payment made in response to the मांग वसूली नोटिस on the ground that the amount paid by the amount paid by the appellant to the Excise Authority was in nature of penalty, hence, according to AO, the same was not allowable as deduction under section 37(1). I have gone through the content of the मांग वसूली नोटिस carefully. The amount demanded by the District Excise Authority, Sikar was mentioned as 'penalty'. The demand has been raised by the District Excise Officer, Sikar for violating the conditions of the affidavit filed by the appellant before the Excise Authority at the time of export of ENA outside the State of Rajasthan. In the मांग वसूली नोटिस there is no mention of any section of the Rajasthan Excise Act, 1950, or the Rule of Rajasthan Excise Rule-1956, for the violation of which, the penalty has been demanded from the appellant. Any section of the Rajasthan Excise Act, 1950 or the Rule of Rajasthan Excise Rule 1956, under which the penalty has been levied or demanded by the District Excise Officer, Sikar is

also not mentioned in the मांग वसूली नोटिस . As the demand has been raised for violation of the conditions of the affidavit filed by the appellant before the Excise Authorities, therefore, it would be pertinent to reproduce the contents of the affidavit filed by the appellant. The language of the affidavits filed by the appellant is as under:

"Atul Sharma S/o Sh. S.S. Sharma age 40 years and resident Campus 54, Dhuleshwar Garden C-Scheme Jaipur Authorized Signatory of Agriobiotech Industries Limited having its registered office at SP-825, Road no.14, V.K.I. Area Jaipur take an oath as under:

01. I am Authorized Signatory of Agriobiotech Industries Ltd. SP156, RIICO Ind. Area Ajitgarh, Distt-Sikar (Rajasthan)

02. I have been authorized by Management of Agriobiotech Ind Ltd. to obtain Export permits from District Excise office, Sikar against import permit no. 04/015885 to 13/015885 dated 27.12.10 in favour of M/s United Spirits Ltd. Unit Palwal (Haryana).

03. I Undertake behalf of Agriobiotech Ind. Ltd. That the import permits its contents and in printing are genuine.

04. I undertake behalf of Agriobiotech Ind. Ltd. make goods any losses accrued in government of its agency due to above been false and fictitious the Agriobiotech Ind. Ltd. shall also be liable for all prosecution if same is not genuine.

05. I undertake behalf of Agriobiotech ind. Ltd. excise verification issued by excise authority of importing state shall be submitted within 90 days of exporting Extra neutral Alcohol from out distillery. Failing we shall be liable for excise duty extra leviable at Rajasthan at that time."

If the contents of the मांग वसूली नोटिस and the affidavit of the appellant are read together, it is clear that the amount demanded from the appellant by the District Excise Officer, Sikar is on the basis of para 5 of the affidavit of the appellant, as the appellant had failed to submit within the period of 90 days of export of ENA from its distillery, the excise verification issued by the Excise Authority of the importing State. I am of the considered view that the issue to be decided is the nature of the payment demanded by the District Excise Officer, Sikar by issue of मांग वसूली नोटिस for violation of the conditions of the

affidavit filed by the appellant. The Supreme Court in the case of Prakash Cotton Mills Pvt. Ltd. Vs. CIT, Central, Bombay, 1993 AIR 2174 has held that whenever any statutory impost paid by the assessee by way of damages or penalty or interest is claimed as an allowable expenditure under section 37(1) of the I.T. Act, 1961, the AO is required to examine the scheme of the provisions of the relevant statute providing for payment of such impost, notwithstanding the nomenclature of the impost as given by the statute to find whether it is compensatory or penal in nature. The authority has to allow deduction under section 37(1) of the I.T. Act, 1961 wherever such examination reveals the concerned impost to be purely compensatory in nature. The Hon'ble Apex Court in the case of CIT vs. Ahmadabad Cotton Manufacturing Company Ltd. 205 ITR 163, has laid down following guide lines for ascertaining the nature of the expenditure claimed by the appellant.

"What needs to be done by an assessing authority under the Income-tax Act, 1961, in examining the claim of an assessee that the payment made by such assessee was a deductible expenditure under section 37 of the Income-tax Act although called a penalty is to see whether the law or scheme under which the amount was paid required such payment to be made as penalty or as something akin to penalty, that is imposed by way of punishment for breach or infraction of the law or the statutory scheme. If the amount so paid is found to be not a penalty or something akin to penalty due to the act that the amount paid by the assessee was in exercise of the option conferred upon him under the very law or scheme concerned, then one has to regard such payment as business expenditure of the assessee, allowable under section 37.

In view of the above referred two decisions of the Supreme Court, relied upon by the appellant also, the nature of the sum demanded by the District Excise Officer, Sikar has to be decided.

5.4 I am of the considered view that-

I. The Penalty by any statutory authority can be levied only for violation of the provisions of the law of the land. In the appeal under consideration the relevant law is the Rajasthan Excise Act, 1950 and Rajasthan Excise Rule, 1956.

ii. Penalty can be levied only under the specific section of the Act or the Rules. In the appeal under consideration the relevant Act is Rajasthan Excise Act, 1950 and the Rajasthan Excise Rules, 1956.

The appellant has filed the copy of the Rajasthan Excise Act, 1950. Under section 54 of the Act, penalty for unlawful import, export, transport, possession, etc has been provided. The AO has also quoted the provisions of section 54 in the assessment order. The provisions of section 54 of the Rajasthan Excise Act, 1950 are reproduced hereunder:

"5.4. Penalty for unlawful import, export, transport, manufacture, possession etc. - Whoever in contravention of this Act or of any rule or order made or of any licence, permit or pass granted, thereunder-

(a) imports, exports, transports, manufactures, collects, sells or possesses any excisable article; or

(b) cultivates any hemp plant (*Cannabis sativa*); or

(c) Constructs or works any distillery, pot-still or brewery; or

(d) uses, keeps or has in his possession any materials, stills, utensil, implements or apparatus whatsoever for the purpose of manufacturing any excisable article other than tari; or

(e) removes any excisable article from any distillery, pot-still brewery or warehouse established or licensed under this Act; or

(f) bottles any liquor for the purposes of sale; or

(g) taps or draws tari from any tari producing tree;

shall be punishable with imprisonment for a term which may extend to three years and with fine which may extend to twenty thousand rupees;

Provided that if a person is so found in possession of a workable still for the manufacture of any excisable article or is found to be guilty of selling or possessing for sale any excisable article in contravention of the provisions of this Act or of any rule or order made or of any licence, permit or pass granted thereunder, he shall be punished with the minimum sentence of imprisonment for six months and fine of two hundred rupees;

Provided further that if the quantity of liquor found at the time or in the course of detection of the offence exceeds fifty bulk litres, the person guilty for such offence shall be punished with the minimum sentence of imprisonment for one year and fine of ten thousand rupees."

A plane reading of the section 54 of the Rajasthan Excise Act, 1950 makes it clear that maximum penalty (fine) that can be levied for unlawful import and export is only Rs.20,000/-. There is no other section in the Rajasthan Excise Act, 1950 under which the penalty or fine can be levied for unlawful import and export. The section 18 of the Rajasthan Excise Act, 1950 provides that no excisable article shall be removed from any distillery, brewery pot-still, warehouse or other place of storage established or licensed under this Act unless the duty (if any) payable therefore under this Act has been paid or a bond has been executed for the payment thereof.

A reading of section 18 and section 54 of the Rajasthan Excise Act, 1950 makes it clear that the maximum penalty leviable for removing the excisable articles without paying duty (if any) payable therefore, under the Rajasthan Excise Act, 1950 or without executing the bond for the payment thereof, is only Rs.20,000/-. Thus, it is clear that the amount demanded by the State Excise Officer, Sikar by issue of मांग वसूली नोटिस is not penalty under section 54 or any other section of the Rajasthan Excise Act, 1950, because the amount demanded by the State Excise Officer, Sikar by issue of मांग वसूली नोटिस is huge and far excess than the maximum amount of penalty prescribed under section 54 of the Rajasthan Excise Act, 1950.

Alongwith the मांग वसूली नोटिस no order levying the penalty has been issued by the State Excise Officer, Sikar. Only it has been mentioned in the मांग वसूली नोटिस that the penalty has been levied as the appellant has violated the conditions of the affidavit filed by the appellant. The appellant in its written submission filed during the course of proceedings, has given at page No.8, the working of the amount demanded by the State Excise Officer, Sikar by issue of मांग वसूली नोटिस . The same is reproduced at page No.7 & 8 of this order. It can be seen from the working given by the appellant that the amount demanded by the State Excise Officer, Sikar by issue of मांग वसूली नोटिस is only Excise Duty. No interest or any penalty is

included in the amount demanded by the State Excise Officer, Sikar. In support of the rate of excise duty mentioned by the appellant in the working given by the appellant, the appellant has filed the copy of notification dated 01.04.2005 (F.4(17)FD/Excise/2004) issued by the Deputy Secretary to the Government of Rajasthan Finance Department Excise Division and notification dated 01.04.2012 (F.4(1)FD/Ex/2012 part 1) issued by the Deputy Secretary to the Government of Rajasthan Finance Department Excise Division. In both the notification the rate of excise duty is the same which has been applied by the appellant for working out the amount of excise duty demanded by the State Excise Officer, Sikar as penalty by issue of मांग वसूली नोटिस.

In view of the facts discussed above, after going through the contents of the मांग वसूली नोटिस contents of the affidavit filed by the appellant, Rajasthan Excise Act, 1950, Rajasthan Excise Rules, 1956 and the notifications dated 01.04.2005 and 01.04.2012 issued by the Deputy Secretary of the Government of Rajasthan Finance Department Excise Division, I am of the considered view that the amount demanded by the State Excise Officer, Sikar was not panel in nature. The amount was demanded by the State Excise Officer, Sikar for violation of the conditions of the affidavit filed by the appellant, in which it had undertaken to pay the excise duty extra, leivable if the appellant failed to submit within 90 days of exporting ENA from its distillery the excise verification issued by the Excise Authority of the importing State. The amount paid by the appellant in response to the मांग वसूली नोटिस was excise duty paid by it during the ordinary course of the business carried on by it, wholly and exclusively for the purpose of the business of manufacturing ENA and Rectified Spirit, which is allowable as deduction under section 37(1) of the I.T. Act, 1961. Hence, the disallowance of Rs.3,16,32,000/- made by the AO stands deleted. Accordingly, this ground of appeal is allowed."

5. He therefore, contended that the view taken by the CIT (A) is contrary to finding arrived at by the AO and requires to be reversed.

6. In support of his contention, he relied upon the following decisions:

(i) In Dr. T.A. Quereshi vs. CIT, Bhopal, (2006) 287 ITR 547 (SC), it has been held as under:-

8. No doubt, the assessee had contended that he was only earning income from his medical profession and was not doing any illegal activity of manufacturing and selling of heroin. However, the finding of fact of the Tribunal in its order dated 31.3.1993 is that the assessee was engaged in manufacture and selling of heroin. Thus the Income Tax authorities themselves have recorded a finding that the assessee was engaged in manufacture and selling of heroin. No doubt the order of the Tribunal dated 31.3.1993 was subsequently recalled by the Tribunal, but since with ultimate order dated 14.10.1998 the Tribunal has held that the heroin seized was the assessee's stock in trade it is implicit that the Tribunal reiterated to view that the assessee was doing the business of manufacture and sale of heroin.

Once the Income Tax authorities records such a finding of fact, it follows that any loss from such a business is a business loss.

10. The High Court, however, in paragraph 10 of its judgment observed:

The assessee in this case was engaged in profession of doctor. He had nothing to do with the contraband article - Heroin for carrying on his profession. It is an admitted fact that possession of Heroin is an offence under NDPS Act. In this view, the rigour of explanation to Section 37 was fully satisfied and hence the question claiming any deduction for the value of seized article did not arise nor was an assessee entitled to claim any such deduction who was bound in indulging in such heinous and illegal business unconnected with his pious professional activity. Indeed, it was disgrace for a doctor community where one doctor was found indulging in doing such kind of activities against the humanity.

In our opinion, the High Court has adopted an emotional and moral approach rather than a legal approach. We fully agree with the High Court that the assessee was committing a highly immoral act in illegally manufacturing and selling heroin. However, cases are to be decided by Court on legal principles and not on one's own moral views. Law is different from morality, as the positivist jurists Bentham and Austin pointed out.

As already observed above, the facts of the case are squarely covered by the decision of this Court in **CIT v. Piara Singh** (supra)

11. The explanation to Section 37 has really nothing to do with the present case as it is not a case of a business expenditure, but of business loss. Business losses are allowable on ordinary commercial principles in computing profits. Once it is found that the heroin seized formed part of the stock in trade of the assessee, it follows that the seizure and confiscation of such stock in trade has to be allowed as a business loss. Loss of stock in trade has to be considered as a trading loss vide **Commissioner of Income-Tax v. S.N.A.S.A. Annamalai Chettiar** [1972]86ITR607(SC) .

(ii) In **Maddi Venkataraman & Co. (P) Ltd. vs. CIT** (1998) 229 ITR 534 (SC), it has been held as under:-

10. The English Courts have consistently held that penalty or fine or money paid to compound an offence under another statute cannot be allowed as a deduction under the Income Tax Act for the application of these principles, consideration of moral obliquity was quite immaterial.

18. The Indian Courts have also consistently held that payments tainted with illegality cannot be treated as money spent wholly and exclusively for the purpose of business. A long line of decisions was noted in the judgment under appeal. It is not necessary to refer to all of them. We shall refer to three cases decided by this Court.

20. The point that the expenditure incurred for the purpose of unlawful activity must be allowed to find out the commercial profits of

the Company was specifically argued and rejected in the case of *The Commissioners of Inland Revenue v. E.C. Warnes (supra)*. If a penalty is imposed for contravention of any statutory provision, it cannot be said that the commercial loss had fallen on the assessee as a trader. Illegal activity cannot be treated as a trading activity at all. As Lord Sterndale held that it was not enough that the disbursement was made in the course of or arose out of or was connected with the trade or was made out of the profits of the trade. Only if it could be shown that it was spent for the purpose of the trade that the deduction can be permitted unless the entire trade was unlawful.

24. In the instant case the assessee had indulged in transactions in violation of the provisions of Foreign Exchange (Regulation) Act. The assessee's plea is that unless it entered into such a transaction, it would have been unable to dispose of the unsold stock of inferior quality of tobacco. In other words, the assessee would have incurred a loss. Spur of loss cannot be a justification for contravention of law. The assessee was engaged in tobacco business, the assessee was expected to carry on the business in accordance with law. If the assessee contravenes the provisions of FERA to cut down its losses or to make larger profits while carrying on the business, it was only to be expected that proceedings will be taken against the assessee for violation of the Act. The expenditure incurred for evading the provisions of the Act and also the penalty levied for such evasion cannot be allowed as deduction. As was laid down by Lord Sterndale in the case of *Alexander Von Glehn (supra)* that it was not enough that the disbursement was made in the course of trade. It must be for the purpose of the trade. The purpose must be a lawful purpose.

25. Moreover, it will be against public policy to allow the benefit of deduction under one statute, of any expenditure incurred in violation of the provisions of another statute or any penalty imposed under another statute. In the instant case, if the deductions claimed are allowed the penal provisions of FERA will become meaningless. It has also to be borne in mind that evasion of law cannot be a trade pursuit. The expenditure in this case cannot, in any way, be allowed as wholly

and exclusively laid out for the purpose of assessee's business.

(iii) In *Assam Roller Flour Mills vs. CIT* (1997) 227 ITR 43 (Raj.),

it has been held as under:-

5. Referred questions Nos. 1 and 3 have, it may be noted, arisen out of the Tribunal's findings recorded in paragraph 15 of its order. The Tribunal has disallowed the assessee's claim for deduction of the penalty amount on the ground that the penalty was imposed for infraction of the provisions of the Customs Act, 1962. The contention of Mr. Bhojwani, learned senior counsel for the assessee, is that in recording its finding the Tribunal overlooked the vital fact that the Government of India, in exercise of its revisional jurisdiction in the matter, had finally held that there was no infraction of law in importing its goods by the assessee. According to Mr. Bhojwani, this subsequent event was relevant to the issue and the Tribunal should have taken due note of it.

8. Coming to questions Nos. 1 and 3 referred to us the position comes to this. In the year of account the liability to pay personal penalty of Rs. 4lakhs had accrued or arisen against the assessee with the passing of the order by the Collector of Customs, Bombay. Such liability, in view of the principle laid down in *Kedarnath Jute Mfg. Co. Ltd, v. CIT* [MANU/SC/0438/1971](#) : [1971]82ITR363(SC) would have been an allowable deduction in the year of account but in view of the principle laid down in *Haji Aziz's case* [MANU/SC/0120/1960](#) : 1983ECR1942D(SC) it was not so allowable as the liability related to a penalty imposed for infringement of the provisions of the Customs Act, 1962. That was the position in the year under account.

9. However, taking into account the subsequent events which mainly consisted of a fire breaking out in the assessee's business premises in June, 1982, closure of the assessee's business and later on a company taking over the remains of the assessee's business, and the order of the Government of India knocking off the penalty in question in

1982 and on taking the effect of such order of the Government of India to the year of account with the help of the doctrine of "relating back", the position comes to this that in the year of account the liability in question stood wiped out and did no more survive for allow ability or deductibility as a business expenditure. Thus from either of the two angles, as rightly held by the Tribunal, the amounts of penalty and interest paid for raising funds to pay such penalty did not partake of the character of allowable business expenditure.

10. In view of the above discussion, questions Nos. 1 and 3 are required to be answered in the affirmative, i.e., for the Revenue and against the assessee.

7. We have heard the learned counsel for the appellant.

8. In view of the observations made by the CIT (A) as reproduced above and the same has been confirmed by the Tribunal as under:

6. We have heard the rival contentions of both the parties, perused the material available on the record and also gone through the orders of the authorities below. The assessee company is engaged in manufacturing and sale of ENA and rectified liquor. The party who wish to make purchases from the assessee gets Excise Permit (Import Permit) from excise department of their State. In order to deliver the goods the assessee needs to obtain Export Permit from the Excise Department of Rajasthan. In order to receive the Export Permit, the import permits received from the Assistant Excise Officer of that State is necessary for permission. As per the procedure laid down in the Rajasthan State Excise law, the Assistant Excise Officer processes the permits and forwarded the same to District Excise officer for his permission. The District Excise Officer forwards the same to Additional Commissioner, Excise, to obtain permission to export the goods. After following the procedure, the Excise Commissioner issued the permission for export and returned the same to the District Excise Officer, who further returned the same to the

Assistant Excise Officer posted at the assessee's company factory. Thus, after getting the necessary permissions from the Excise Departments, the consignment is dispatched under the supervision of Assistant Excise Officer. On the receipt of the goods by the buyer State, the Excise Department of the buyer State issues a receipt to the Excise Department of the assessee i.e. Rajasthan. The assessee also executes a bond with the Excise Department to make good the losses incurred to the department on account of loss of duty in case the goods delivery receipts are not received by the excise department of the assessee's state from the excise department of the buyer's state. The assessee executed a contractual bond to make good the losses to the government, thus the assessee indemnify the excise duty to the government exchequer. The duty paid is exactly the same as per the rates notified by the government, therefore, the said payment in discharging the contractual obligation to indemnify the excise department for the payment of the excise duty to the government exchequer, cannot be held in penal nature. Therefore, whatever nomenclature given by the Excise Department for the demand notice cannot be held as penalty. In view of these facts and circumstances, we find no merit in the appeal of the revenue. This view is supported by the decision of the Hon'ble Supreme Court in the case of CIT Vs. Hyderabad Allwyn Metal Works Limited (supra), Prakash Cotton Mills Pvt. Ltd. Vs. CIT (supra) and the Hon'ble Gujarat High Court in the case of CIT, Gujarat Vs. Tarun Commercial Mills Co. Ltd. (supra). In view of the above facts and circumstances and the case laws, we uphold the order of the Id. CIT(A).

9. The finding of both the authorities are concurrent in nature. Apart from penal expenses which has been done for the business activity, while considering the matter, CIT (A) has gone into the observations made by the competent authority and has come to the conclusion that it was not penal in nature.

12. The appeal is devoid of merits and stands dismissed.

(K.S.JHAVERI)J.

Bmg/21.



सत्यमेव जयते