

आयकर अपीलिय अधिकरण "E" न्यायपीठ मुंबई में।

**IN THE INCOME TAX APPELLATE TRIBUNAL "E" BENCH, MUMBAI  
BEFORE S/SHRI H.L. KARWA, HON'BLE PRESIDENT AND P.M. JAGTAP, AM**

आयकर अपील सं./I.T.A. No.2559/Mum/2013  
(निर्धारण वर्ष / Assessment Year : 2003-2004  
आयकर अपील सं./I.T.A. No.2560/Mum/2013  
(निर्धारण वर्ष / Assessment Year : 2004-2005

Salman Khan, 3, Galaxy Apts., B.J. Road, Band Stand, Bandra (W), Mumbai - 400 050.	<b>बनाम/</b> Vs.	ACIT 11(1), 4 <sup>th</sup> floor, 439, Aayakar Bhawan, M.K. Road, Mumbai.
स्थायी लेखा सं./PAN : AACPK8429P		
(अपीलार्थी / <b>Appellant</b> )	..	(प्रत्यर्थी / <b>Respondent</b> )

Appellant by	Shri Prakash J. Jotwani
Respondent by :	Shri Prakash L. Pathade

सुनवाई की तारीख / **Date of Hearing** : 17-07-2014  
घोषणा की तारीख / **Date of Pronouncement** : 30-7-2014

↓  
आदेश / ORDER

**PER BENCH.**

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These two appeals filed by the assesseees are directed against two separate orders of the ld. CIT(A)- 3, Mumbai dated 4-2-2013 whereby he confirmed the penalties of Rs. 3,68,550/- and Rs. 10,24,650/- imposed by the A.O. u/s 271(1)(c) of the Income Tax Act, 1961 for assessment years 2003-04 and 2004-05 respectively.

2. The relevant facts of the case giving rise to these appeals are as follows. The assessee in the present case is a leading film actor who derives income from profession of acting and advertisement assignments. The returns of income for both the years under consideration i.e assessment years 2003-04

& 2004-05 were filed by him on 28-11-2003 and 29-10-2004 declaring total income of Rs. 3,74,10,421/- and Rs. 4,32,19,821/- respectively. During the course of assessment proceedings, it was noticed by the A.O. that the assessee has claimed legal expenses of Rs. 12,90,000/- and Rs. 33,75,000/- in assessment years 2003-04 and 2004-05 respectively. He also found that the said expenses were incurred by the assessee for defending himself in various criminal proceedings pending in the court. According to the A.O., the said expenses incurred by the assessee to defend himself in criminal proceedings were personal expenses and the same therefore could not be allowed as business expenditure. Accordingly, he disallowed the legal expenses claimed by the assessee in both the years under consideration. On appeal, the Id. CIT(A) deleted the disallowance made by the A.O. on account of legal expenses for both the years under consideration observing that the said expenses were incurred by the assessee for the preservation and protection of his profession from any legal process or proceedings which might have resulted in reduction of his income. In support of this conclusion, the Id. CIT(A) relied on the decisions of Hon'ble Supreme Court in the case of CIT vs. Birla Cotton Spinning & Wvg. Mills, 82 ITR 166 and CIT vs. Dharajgiri Raja Narasingirji, 91 ITR 544. On further appeal, the Tribunal, however, reversed the decision of the Id. CIT(A) on this issue and confirmed the disallowance made by the A.O. on account of legal expenses for both the years under consideration holding that the legal expenses incurred by the assessee to defend himself in the criminal proceedings had nothing to do with his professional activities and the same therefore were rightly disallowed by the A.O. being expenditure of personal nature.

3. As a result of sustenance by the Tribunal of additions made to the total income of the assessee on account of disallowance of legal expenses in both the years under consideration, notices were issued by the A.O. requiring the assessee to show cause as to why penalty u/s 271(1)(c) of the Act should not

be imposed in respect of the said additions. In reply, it was explained by the assessee that the disallowance made on account of legal expenses was deleted by the Id. CIT(A) in both the years under consideration and the decision of the Id. CIT(A) on this issue was reversed by the Tribunal in the quantum proceedings purely on interpretation of law. It was contended that the confirmation by the Tribunal of the addition made on this issue not accepting the legal claim of the assessee thus did not represent concealment of particulars of his income by the assessee or furnishing of in-accurate particulars of such income to attract penalty u/s 271(1)(c) of the Act. The A.O. did not accept this explanation of the assessee and held that by claiming deduction on account of personal expenses in the garb of professional expenditure, there was concealment of particulars of his income by the assessee. He therefore imposed penalty of Rs. 3,68,550/- and Rs. 10,24,650/- u/s 271(1)(c) of the act for assessment years 2003-04 and 2004-05 respectively being 100% of the tax sought to be evaded by the assessee in respect of addition made to the total income of the assessee on account of disallowance of legal expenses. On appeal, the Id. CIT(A) confirmed the penalties imposed by the A.O. for both the years under consideration holding that the claim of the assessee for deduction on account of legal expenses, which represented personal expenses, was not permissible as per law as held by the Tribunal in the quantum proceedings and the assessee was unable to offer any satisfactory explanation to substantiate his claim for deduction on account of legal expenses. Aggrieved by the orders of the Id. CIT(A), the assessee has preferred these appeals before the Tribunal.

4. The Id. Counsel for the assessee submitted that the assessee had gone to Jodhpur for shooting Hindi movie "Ham Sath Sath Hain". He submitted that the assessee during his stay at Jodhpur was implicated in false criminal proceedings by leveling an allegation that he has shot a black buck, which is an endangered specie and religious in nature. He submitted that the assessee

was arrested by the local police and in order to get himself released, he had to engage some lawyers. He submitted that the criminal proceedings as a result of this case have continued thereafter and the assessee has been regularly incurring legal expenses to defend himself and obtain exemptions from the personal hearings from this case. He contended that if the assessee had not defended himself in the criminal proceedings and asked for personal exemptions, it would have resulted in his absence from all the movies/projects undertaken by him causing loss of revenue to him as well as to the producers of his films. He contended that it was thus necessary for him to incur the legal expenses during the years under consideration to preserve and protect his profession and the said expenses therefore were claimed by the assessee as deduction. He contended that the Id. CIT(A) in the quantum proceedings accepted the stand of the assessee while allowing the deduction on account of legal expenses and although the Tribunal has reversed the decision of the Id. CIT(A), it is sufficient to show that the claim of the assessee for deduction on account of legal expenses was a legal claim on which two views were clearly possible. He contended that this also shows that the claim made by the assessee for deduction on account of legal expenses was a bonafide claim and since all the particulars relevant to the said claim were duly furnished by the assessee, there was no case for imposition of penalty u/s 271(1)(c) of the Act. In support of this contention, he relied on the decision of Hon'ble Supreme Court in the case of Reliance Petroproducts Ltd., 322 ITR158. He also contended that the claim of the assessee for legal expenses was not found to be bogus or false and the same was disallowed finally by the Tribunal treating the legal expenses as in the nature of personal expenses as against the claim of the assessee that the same were in the nature of professional expenses which was accepted by the Id. CIT(A) in the quantum proceedings. He contended that the claim made by the assessee on account of legal expenses thus is a legal claim on which two views are possible and since there is no allegation made by the A.O. even in the penalty

order alleging any concealment of particulars of his income furnished by the assessee in respect of such legal claim, penalties imposed by the A.O. and confirmed by the Id. CIT(A) are liable to be cancelled.

5. The Id. D.R., on the other hand, strongly relied on the impugned orders of the Id. CIT(A) in support of the Revenue's case that penalties u/s 271(1)(c) of the Act for both the years are rightly imposed by the A.O. He submitted that the disallowance made by the A.O. on account of legal expenses has been finally confirmed by the Tribunal in the quantum proceedings holding that the said expenses claimed by the assessee representing his personal expenditure were not allowable in accordance with law. He contended that the claim made by the assessee on account of legal expenses thus was a wrong claim and by making such wrong claim, the assessee was guilty of furnishing of inaccurate particulars of his income clearly attracting penalty u/s 271(1)(c) of the Act.

6. We have considered the rival submissions and also perused the relevant material available on record. It is observed that the deduction claimed by the assessee on account of legal expenses was disallowed by the A.O. in both the years under consideration by treating the said expenses as of personal nature. A perusal of the orders passed by the A.O. in this regard clearly shows that the relevant aspects of the matter such as the nature of complaint filed against the assessee, the nature of legal proceedings initiated against the assessee, the nature of expenses incurred by the assessee etc. were not gone into by the A.O. and a very cryptic order was passed by him on this issue making the disallowance on account legal expenses treating the same as personal in nature without giving any sound or convincing reasons. On appeal, the Id. CIT(A) allowed the claim of the assessee for deduction on account of legal expenses observing that the same were incurred by the assessee for preservation and protection of his profession from any legal

process or proceedings which might have resulted in loss of income of the assessee as well as the producers of his films. Although the Tribunal has reversed the decision of the ld. CIT(A) on this issue, the fact that the claim of the assessee was accepted by the ld. CIT(A) on merit clearly shows that the said claim made by the assessee was based on a possible view of the matter. It also shows that the claim made by the assessee for deduction on account of legal expenses was a bonafide claim and as submitted by the ld. Counsel for the assessee at the time of hearing before us, the assessee has capitalized the similar legal expenses incurred in the subsequent years after having come to know about the disallowance made in the years under consideration which again goes to show the bonafide of the assessee. As further submitted by the ld. Counsel for the assessee, all the material particulars relevant to the claim made by the assessee were fully and truly furnished by the assessee and there is no allegation made by the A.O. in the penalty order that any inaccurate particulars were furnished by the assessee while making the claim on account of deduction of legal expenses. It is also not in dispute that the legal expenses claimed by the assessee were actually incurred by him and it is not the case of the Revenue at any stage that the expenses so claimed by the assessee were bogus.

7. In the case of Reliance Petroproducts Ltd., (supra), the Hon'ble Supreme Court held that in order to be covered by the provisions of section 271(1)(c), there has to be concealment of particulars of income by the assessee or furnishing of in-accurate particulars of his income. Explaining further, the Hon'ble Supreme Court observed that when no information given in the return is found to be in-correct or in-accurate, the assessee cannot be held guilty of furnishing in-accurate particulars of its income and unless the case is strictly covered by the provision, the penalty cannot be imposed. It is further held that where there is no finding that the particulars furnished by the assessee in its return are in-accurate or erroneous or false, there is no

question of imposing penalty u/s 271(1)(c) of the act merely because the claim of the assessee for deduction is disallowed in the quantum proceedings. Keeping in view the ratio of the decision of Hon'ble Supreme Court in the case of Reliance Petroproducts Ltd. (supra) and having regard to all the facts of the case as discussed above, we are of the view that the present case is not a fit case to impose penalty u/s 271(1)(c) of the Act and the ld. CIT(A) is not justified in confirming the penalties imposed by the A.O. for both the years under consideration. In that view of the matter, we cancel the penalties imposed by the A.O. and confirmed by the ld. CIT(A) for both years under consideration and allow these appeals of the assessee.

8. In the result, both the appeals of the assessee are allowed.

Order pronounced in the open court on 30<sup>th</sup> July, 2014.

आदेश की घोषणा खुले न्यायालय में दिनांक: 30-07-2014 को की गई ।

Sd/-  
(H.L. KARWA)  
PRESIDENT

sd/-  
(P.M. JAGTAP)  
लेखा सदस्य / ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated 30-07-2014.

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व.नि.स./ RK , Sr. PS

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)—3, Mumbai
4. आयकर आयुक्त / CIT –II Mumbai
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai E Bench
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Dy./Asstt. Registrar)  
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai