IN THE INCOME TAX APPELLATE TRIBUNAL,
MUMBAI BENCH "B", MUMBAI

BEFORE SHRI B.R. BASKARAN, ACCOUNTANT MEMBER AND
SHRI SANJAY GARG, JUDICIAL MEMBER

ITA No.4131/M/2011
Assessment Year: 2003-04

M/s. New Empire Textile Processors Pvt. Ltd., 51/53, Telgalli, Ground Floor, Vithalwadi, Kalbadevi Road, Mumbai - 400 002 **PAN: AACN 7363A**	Vs.	Income Tax Officer 4(3)(1), Aayakar Bhavan, Mumbai – 400 020
(Appellant)		(Respondent)

Assessee by	: Shri N.M. Porwal, A.R.
Revenue by	: Shri Asghar Zain V.P., D.R.
Date of Hearing	: 15.01.2015
Date of Pronouncement	: 04.03.2015

O R D E R

Per Sanjay Garg, Judicial Member:

The present appeal has been preferred by the assessee against the order dated 01.03.2011 of the Commissioner of Income Tax (Appeals) [(hereinafter referred to as CIT(A)] relevant to assessment year 2003-04 agitating the levy of penalty u/s 271(1) (c) of the Income Tax Act in relation to disallowance of Rs.3,45,925/- on account of transport charges claimed to be paid by the assessee to M/s. Karan Transport.

2. The Ld. CIT(A) has confirmed the penalty in relation to above said disallowance observing that the said disallowance has been has been confirmed by the Tribunal vide order dated 30.03.10 passed in assessee's appeal bearing ITA No.7235/M/2007. The said disallowance was made because of the fact that the assessee had claimed to have paid the said amount on account of transportation charges to M/s. Karan Transport, whereas, the said amount was

found credited into the account of some other person namely Mr. Dharmendra P. Dubey. The assessee could not explain as to how the said amount got credited in the account of Mr. Dharmendra P. Dubey. Therefore, it was held that the assessee could not establish the genuineness of the expenditure and that the payment credited in the account of Mr. Dharmendra P. Dubey could not be considered as having been incurred for business purposes. The assessee thereafter moved a miscellaneous application No.370/M/2012 under section 254 of the Act pleading that a mistake had occurred in the order of the Tribunal dated 30.03.10. The assessee explained that the proprietor of M/s. Karan Transport namely Mr. Pratap Lalchand Agnani, to whom the payments by way of cheque were made, had further discounted some of the cheques to sub contractors as they could not wait for payment due to financial problems. The said Mr. Pratap Lalchand Agnani had also made a statement before the Assessing Officer (hereinafter referred to as the AO) in this respect. It had been further explained that the said sub contractors further discounted the cheques in favour of Mr. Dharmendra P. Dubey. It was further proved by way of a certificate from the bank that the cheques credited into the account of Mr. Dharmendra P. Dubey were in fact issued in the name of M/s. Karan Transport. It was therefore submitted that the order in the quantum appeal be rectified.

However, the Tribunal rejected the application of the assessee on the ground that there was no mistake apparent on the record. It was held that though the assessee had given some explanation in this respect, but the Tribunal had taken into consideration the other factors such as that the identity of Mr. Dharmendra P. Dubey was not established and that full details of transport charges had not been given.

3. Now in the present penalty appeal, the assessee has again stressed that there was no dispute that the services were taken from M/s. Karan Transport and that the payment/cheques in question was issued in the name of M/s.

Karan Transport. It has also been established in the statement of proprietor of M/s. Karan Transport i.e. Mr. Pratap Lalchand Agnani that he had discounted some of the cheques in favour of sub contractors. The assessee has also claimed that the sub contractors had further discounted the cheques in the name of Mr. Dharmendra P. Dubey. The assessee has also relied upon the certificate of the bank confirming that the cheques in question were issued by the assessee in the name of M/s. Karan Transport only. All these facts show that the assessee has given the explanation regarding the credit of the disputed amount in the name of Mr. Dharmendra P. Dubey. Though, in the quantum appeal, the assessee could not furnish proper evidences and the Tribunal had upheld the disallowance for want of sufficient evidence in this respect but the fact remains that it is not a case of furnishing of inaccurate particulars of income or concealment of income. The assessee has given an explanation as to how the amount in question was credited to the account of Mr. Dharmendra P. Dubey, which has not been disproved. The levy of penalty under such circumstances cannot be said to be justified. In view of the above, the penalty levied by lower authorities is hereby ordered to be set aside.

3. In the result, the appeal of the assessee is hereby allowed.

Order pronounced in the open court on 04.03.2015.

(B.R. Baskaran)	**(Sanjay Garg)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Mumbai, Dated: 04.03.2015.

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai

The CIT (A) Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.