



**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**"D" BENCH, MUMBAI**  
**BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER AND**  
**SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER**

ITA no.6402/Mum./2014  
(Assessment Year : 2005-06)

Asstt. Commissioner of Income Tax  
Central Circle-47, Aayakar Bhawan  
101, M.K. Road, Mumbai 400 020

..... Appellant

v/s

R.R. Hosiery Pvt. Ltd.  
Shree Laxmi Woolen Mills Compound  
Dr. E. Moses Road, Mahalaxmi  
Mumbai 400 011 PAN – AAACR2450G

..... Respondent

Revenue by : Shri B.S. Bist  
Assessee by : Shri Niru Poddar

Date of Hearing – 18.05.2016

Date of Order – 27.05.2016

**ORDER**

**PER SAKTIJIT DEY, J.M.**

Instant appeal of the Department is directed against the order dated 25<sup>th</sup> July 2014, passed by the learned Commissioner (Appeals)-38, Mumbai, deleting the penalty imposed under section 271(1)(c) of the Income Tax Act, 1961 (for short "*the Act*") for the assessment year 2005-06.

2. Brief facts are, the assessee, a company, is engaged in the business of manufacturing readymade garments and investing in

shares and derivatives. A search and seizure operation was conducted in the case of Finix Group and the assessee was also covered under the same search action. In pursuance to notice issued under section 153A of the Act, the assessee on 25<sup>th</sup> November 2008, filed its return of income declaring total income of ₹ 3,17,933. It will be pertinent to mention here, assessment in case of assessee for the impugned assessment year was originally completed under section 143(3) vide order dated 27<sup>th</sup> December 2007, making the following additions:-

- a) ₹ 1,28,72,917 on account of deemed dividend as per section 2(22)(e);
- b) ₹ 7,145 on account of disallowance under section 14A.
- c) ₹ 75,73,831 on account of non-repayable advances as per Limitation Act;
- d) ₹ 53,139 on account of section 43B; and
- e) ₹ 65,35,484 on account of derivative loss / dividend / capital gains treating the same as speculative in terms of section 73.

3. Against the additions made, the assessee preferred appeal before the learned Commissioner (Appeals) and thereafter before the Tribunal. In the course of assessment proceedings undertaken in pursuance to notice issued under section 153A, the Assessing Officer found that in response to the notice issued under section 153A, the assessee had filed the return of income declaring the same income as declared in the original return of income filed by it and not the income

assessed under section 143(3) of the Act. When the Assessing Officer called upon the assessee to explain the reason for not declaring the income determined in the original assessment, It was submitted by the assessee that since the additions made in the original assessment were contested before the Tribunal, the assessee cannot declare such income in the return of income. The Assessing Officer, however, was not convinced with the reply of the assessee and ultimately completed the assessment under section 143(3) r/w 153A of the Act, determining the total income at ₹ 2,67,40,878. While doing so, the Assessing Officer repeated most of the additions made in the original assessment, one of them being addition of ₹ 70,49,962 on account of derivative loss, which was treated as speculative by the Assessing Officer. On the basis of additions made on account of disallowance of derivative loss of ₹ 70,49,962, the Assessing Officer initiated proceedings for imposition of penalty under section 271(1)(c). In response to the show cause notice under section 271(1)(c) r/w 274 of the Act, though, the assessee objected to the initiation of penalty proceedings, but the Assessing Officer rejecting the explanation of the assessee proceeded to pass an order imposing penalty of ₹ 25,79,757, under section 271(1)(c). Being aggrieved of the penalty order, assessee preferred appeal before the learned Commissioner (Appeals).

4. In the course of hearing of appeal, the assessee brought to the notice of the learned Commissioner (Appeals) that penalty imposed on identical addition made in the original assessment order passed under section 143(3) of the Act, was deleted by the learned Commissioner (Appeals). The learned Commissioner (Appeals), having noted the fact that penalty imposed on the basis of similar addition made in the original assessment was deleted by the learned Commissioner (Appeals), followed the same and deleted the penalty imposed in the impugned order also. Being aggrieved, the Department is in appeal before us.

5. We have considered the submissions of the parties and perused the material available on record. Undisputedly, while completing the assessment in the case of assessee for the impugned assessment year, the Assessing Officer had made disallowance of derivative loss by treating the same as speculative in nature. On the basis of such disallowance, the Assessing Officer had initiated penalty proceedings under section 271(1)(c) and had ultimately passed an order imposing penalty. The assessee had challenged the imposition of penalty before the learned Commissioner (Appeals). The learned Commissioner (Appeals) in his order dated 28<sup>th</sup> June 2012, had deleted the penalty. In the assessment completed under section 143(3) r/w section 153A, the Assessing Officer repeated similar addition on account of derivative

loss, the only difference being the quantum was enhanced to ₹ 70,49,962, as against ₹ 65,35,484 in the original assessment. In the course of hearing, the learned Departmental Representative fairly submitted, in the meanwhile, the Tribunal has confirmed the deletion of penalty imposed against the addition made in the original assessment while dismissing the Department's appeal being ITA no.5706/Mum./2012 dated 7<sup>th</sup> March 2016. On a perusal of the aforesaid order of the co-ordinate bench, it is observed that while confirming the order of the learned Commissioner (Appeals) in deleting the penalty under section 271(1)(c) of the Act, the Tribunal has held that the Department could not prove that assessee's claim was not bonafide. The facts in the present case are materially same. Therefore, respectfully following the decision of the co-ordinate bench of the Tribunal as aforesaid, we confirm the order of the learned Commissioner (Appeals) by dismissing the ground raised.

6. In the result, Department's appeal is dismissed.

Order pronounced in the open Court on 27.05.2016

**Sd/-**  
**RAMIT KOCHAR**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**SAKTIJIT DEY**  
**JUDICIAL MEMBER**

**MUMBAI, DATED: 27.05.2016**

Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The CIT(A);*
- (4) *The CIT, Mumbai City concerned;*
- (5) *The DR, ITAT, Mumbai;*
- (6) *Guard file.*

*Pradeep J. Chowdhury*  
*Sr. Private Secretary*

True Copy  
By Order

(Dy./Asstt. Registrar)  
ITAT, Mumbai