

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES "A", MUMBAI**

**BEFORE SHRI MAHAVIR SINGH (JUDICIAL MEMBER)
AND
SHRI ASHWANI TANEJA (ACCOUNTANT MEMBER)**

I.T.A. No. 6420 & 6421/Mum/2014
(Assessment Years: 2002-03 & 2003-04)

ACIT, Cent.Cir.47, Mumbai	vs	Amla R Ruia 19, Ruia House, Bhausahab Marg, Malbar Hill, Mumbai-6
		PAN : ABVPR7369D
(Appellant)		(Respondent)

I.T.A. No. 6415 to 6417/Mum/2014
(Assessment Years: 2002-03, 2003-04 & 2005-06)

ACIT, Cent.Cir.47, Mumbai	Vs	Ashok R Ruia R.R. Pvt Ltd, 464, Senapati Bapat Marg, Lower Parel Mumbai 13
		PAN : AAJPR8257M
(Appellant)		(Respondent)

Revenue by	Shri M.V. Rajguru
Assessee by	Ms. Shalka Shah

Date of hearing : 08-12-2016
Date of order : 23 -12-2016

ORDER

Per Bench

These appeals have been filed by the revenue pertaining to related assesseees involving identical issues, therefore these were heard together.

2. First we shall take up appeal filed by the Revenue in the case of Shri Ashok R Ruia in ITA No.6415/Mum/2014 for A.Y. 2002-03 filed against the common order of Commissioner of Income-tax (Appeals)-38, Mumbai [hereinafter called CIT(A)] dated 25-07-2014 passed against penalty order u/s 271(1)(c) on the following grounds:-

"1. "On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in deleting the penalty levied by the AO. The Hon'ble Bombay High Court held that the losses incurred on derivative transaction to be treated as speculative losses in terms of Section 43(5) of the Income Tax Act."

2. "On the facts and in the circumstances of the case and in law, the Ld.CIT(A) erred in deleting the penalty levied by the AO as by claiming a loss, which is not otherwise allowable to be set off against regular business income, the assessee has submitted inaccurate particulars of income for purpose of tax evasion."

3. The brief background of this case as was put before us by Ld. Counsel of the assessee is that in penalty was levied in these cases u/s 271(1)(c) by treating the loss incurred on derivative as speculation loss in terms of section 43(5) of the Act. Ld. CIT(A) deleted the penalty by relying upon the orders in the case of M/s Ashok Apparels Pvt Ltd and Mrs. Amla Ashok Ruia. The Revenue had carried these matters before the Tribunal wherein the Tribunal deleted the penalty on merits under identical facts and circumstances of the case. Under these circumstances, the penalty deserves to be deleted in this case also. Therefore, order of the Ld.CIT(A) should be upheld on this issue.

4. Per contra, the Ld. DR did not make out any distinction on facts or on law.

5. We have gone through the orders passed by the lower authorities

as well as the order passed by the Tribunal in the case of ACIT vs M/s Ashok Apparels Pvt Ltd in ITA Nos 5701 & 5702/Mum/2012 and ACIT vs Amla Ashok Ruia (ITA No.5707/Mum/2012) order dated 23-07-2015. It is noted that the facts involved in the case before us and the cases decided by the Tribunal are identical. The Tribunal examined the issue in detail before deleting the penalty by observing as under:-

“The brief facts of the case are that the assessee claimed loss on derivative transactions as business loss. However, the AO treated the same as speculative loss by applying the provisions of section 43(5) of the Act and also initiated the penalty proceedings. The assessee preferred appeal before the Ld. CIT(A) who vide order dated 05.09.07 confirmed the disallowance made by the AO. The assessee carried the matter to the Tribunal, The Tribunal vide order dated 29.04.11 decided the issue in favour of the assessee. In pursuance of the order of the Tribunal in favour of the assessee, the AO dropped the penalty proceedings. However, in the meanwhile, the Revenue carried the matter of disallowance in quantum proceedings to the Hon'ble Bombay High Court. The Hon'ble Bombay High Court vide order dated 18.04.11 reversed the order of the Tribunal and decided the issue in favour of the Revenue. The penalty proceedings thus were reinitiated against the assessee. The AO in the penalty proceedings observed that since the issue has been decided in favour of the Revenue by the Hon'ble Bombay High Court, hence it was a case of levy of penalty under section 271(1)(c) of the Act. He, therefore, levied the impugned penalty against the assessee on the ground that the assessee has made a wrong claim of business loss which was in fact a speculative loss of the assessee. However, in the meanwhile, the assessee carried the matter relating to quantum disallowance to the Hon'ble Supreme Court by way of SLP. The Hon'ble Supreme Court vide order dated 08.05.12 has granted the leave to appeal and thus the appeal is pending before the Hon'ble Supreme Court relating to quantum disallowance. The assessee filed appeal against the order of levy of penalty under section 271 (1)(c) before the Ld. CIT(A).”

4. *The Ld. CIT(A). vide impugned order and after discussing in detail the chronology of events and the proposition of law involved, held that on the material available on record and on the same set of facts, the various authorities have interpreted the application of provisions of section 43(5) of the Act differently, therefore it is indicated that it was a case of bonafide claim and the issue of interpretation of law was involved at the time of filing of the return of income by the assessee. He also took notice of the relevant amendment carried out vide Finance Act, 2005 by insertion of the proviso (d) to section 43(5) as per which the transactions of trading in derivatives are not to be treated as speculative transactions w.e.f, A. Y. 2006-07. He, therefore, considering the overall facts and circumstances of the case, held that it was not a case of furnishing of inaccurate particulars of income or concealment of income: That it was a case of bonafide claim and debatable issue and the matter is still pending before the Hon'ble Supreme Court. He, therefore, deleted the penalty so levied by the AO. Aggrieved by the order of the Ld. CIT(A), the Revenue has come in appeal before us.*

5. *Admittedly, it is not a case where the assessee had made intentionally a wrong claim. The assessee, to his interpretation of the provisions, has made a bonafide claim. Even the claim of the assessee has been upheld by the Tribunal also. The matter involved in this issue is relating to the interpretation of the relevant provisions. It cannot be said to be a case of furnishing of inaccurate particulars of income or concealment of income. It is only a case as to under what head, the income of the assessee is to be assessed. The issue is a debatable issue which is pending adjudication before the Hon'ble Supreme Court. Hence, the Ld. CIT(A) has rightly held that the penalty under section 271(1)(c) of the Act is not warranted in this case. We do not find any infirmity in the order of the Ld. CIT(A) in this respect. There is no merit in the appeals of the Revenue and the same are accordingly dismissed."*

6. It is noted that the Ld. CIT(A) has followed his own order in the case of M/s Ashok Apparels, in which the assessee is a director, and in the case

of Mrs. Amla Ruia, wife of the assessee. The Tribunal has held with the help of detailed reasoning that penalty is not liable to be levied in the given facts and circumstances. Thus, following the order of the Tribunal, it is held that penalty has rightly been deleted by Ld. CIT(A), and therefore no interference is called for in his order; thus, Revenue appeals are dismissed.

7. Now we shall take up remaining appeals filed by the Revenue in the case of Ashok R Ruia in ITA No.6416/2014 for A.Y. 2003-04; ITA No. 6417/Mum/2014 for A.Y. 2005-06 and Mrs. Amala A Ruia in ITA No 6420/Mum/2014 for A.Y. 2004-05; and ITA No. 6421/Mum/2014 for A.Y. 2005-06. In these appeals, the identical issue raised by the Revenue is as under:-

"1. "On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in deleting the penalty levied by the AO. The Hon'ble Bombay High Court held that the losses incurred on derivative transaction to be treated as speculative losses in terms of Section 43(5) of the 1. Tax Act. "

2. "On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in deleting the penalty levied by the AO as by claiming a loss, which is not otherwise allowable to be set off against regular business income, the assessee has submitted inaccurate particulars of income for purpose of tax evasion."

8. During the course of hearing it was stated by the Ld. Counsel at the outset that the disallowance made by the AO is deleted by the Tribunal in the quantum vide its order dated 26-07-2013, therefore, levy of penalty is not justified and, therefore, order of Ld.CIT(A) deleting the penalty should be upheld.

9. Per contra, the Ld. DR did not dispute the submissions made by the assessee.

10. We have gone through the order passed by the Tribunal dated 26-07-2013 in the case of Shri Ashok R Ruia and Smt. Amla Ruia and noted that the disallowance made by the AO has been deleted by the Tribunal. Therefore, penalty should also not survive. Under these circumstances, we uphold the order of the Ld. CIT(A) in deleting the penalty. No interference is called for in his order. The grounds raised by the Revenue as well as the appeals filed by the Revenue are dismissed.

11. As a result, all the appeals filed by the Revenue are dismissed.

Order was pronounced in the open court at the conclusion of the hearing.

Sd/- (MAHAVIR SINGH) JUDICIAL MEMBER	Sd/- (ASHWANI TANEJA) ACCOUNTANT MEMBER
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Mumbai, Dt: 23rd December, 2016

Pk/-

Copy to:

1. The appellant
2. The respondent
3. The CIT(A)
4. The CIT
5. The Ld. Departmental Representative for the Revenue, G-Bench

(True copy)

By order

ASSTT.REGISTRAR, ITAT, MUMBAI BENCHES