

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

Before Shri P K Bansal, Vice President &
Shri Pawan Singh, Judicial Member

ITA No.5858/Mum/2013
Assessment Year : 2005 – 06

Assistant CIT, Circle 6(1) Mumbai	Vs.	Balkrishna Industries Ltd 418, Creative Indl. Estate, Sitaram Mill Compound, 72 N M Joshi Marg, Mumbai 400 011 PAN AAACB3333J
(Appellant)		(Respondent)

Appellant By : Shri Suman Kumar
Respondent By : Shri Rajesh P Shah

Date of Hearing : 12.09.2017	Date of Pronouncement : 12.09.2017
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ORDER

Per P K Bansal, Vice-President:

This appeal has been filed by the Revenue against the order of the CIT(A) – 14, Mumbai, dated 18.07.2013, for A.Y.2005-06, whereby the CIT(A) has deleted the penalty levied on the assessee u/s. 271(1)(c) of the I.T.Act.

2. After hearing the rival submissions and going through the orders of the tax authorities below, we noted that in this case, the Assessing Officer levied penalty on the assessee amounting to ₹ 50,12,798/- for furnishing of inaccurate particulars of income as the assessee has claimed deduction in

respect of depreciation on transformers and boilers. On appeal the CIT(A) confirmed the disallowance but deleted the penalty levied on the assessee u/s. 271(1)(c) by relying on the decision of Hon'ble Bombay High Court in the case of Somany Evergreen Knits Ltd. in ITA No.1332 of 2011 dated 21.03.2013. The learned CIT(A) has observed as under:

"10. Facts of the case, order of the AO and submission of the Ld. AR and various judicial pronouncements have been considered carefully. It is not in dispute that the addition made is legal in nature. Therefore the addition made does not tantamount to concealment of income or furnishing of inaccurate particulars of income. The Assessing Officer has not brought out anything on record to say that assessee's explanation lacks bonafides. Therefore, this is a case, in my considered opinion, where penalty for concealment u/s. 271(1)(c) of the Act cannot be levied. Hence, penalty levied of ₹ 1,50,38,394 is hereby directed to be deleted."

3. Before us the learned DR vehemently contended that the assessee has claimed depreciation as it had purchased the transformer on 31.01.2005, in support of which it filed the invoice of the supplier but failed to produce the delivery challan. Even during the assessment proceedings the assessee did not produce the delivery challans though the Assessing Officer had called for production of the same. This implies that the transformer was not at all delivered in the premises of the assessee before 31.03.2015 and as such the assessee has filed inaccurate particulars by claiming depreciation on such transformer, which attracts penalty u/s. 271(1)(c) of the I.T.Act.

4. The learned AR, on the other hand, submitted copy of the paper-book filed before the Tribunal in ITA No.3163/Mum/2010 relating to the quantum

proceedings and drew our attention to pages 28 – page 31 thereof. He contended that the assessee has not only filed the copy of invoice but also the copy of the delivery challan, which we also perused. We also noted that this Tribunal while dealing the quantum appeal, vide its order dated 13.06.2013, has observed as under:

"7. We have perused the records and considered matter carefully. The dispute raised is regarding allowability of depreciation in case of transformer and boilers. In case of transformer the assessee claimed installation and use on 30.3.2005. However, the transformer had been taken on loan on 26.8.2005 i.e. in the next. Therefore, in our opinion disallowance of depreciation in this year is justified. However, AO will allow depreciation in the next year on the actual cost of transformer without deducting any depreciation claimed by the assessee in this year in the books. Similar in the case of the transformer which came to be installed and put to use on 31.3.2005. The disallowance of depreciation in this year is confirmed but in the next year AO will compute the depreciation on the basis of actual cost of boiler and not on the basis of WDV of asset shown by assessee in the books. As regard the other boiler, CIT(A) has already allowed depreciation at the rate of 50% which in our view on the facts of the case is justified. The disallowance of depreciation in this year is therefore upheld.

8. In the result appeal of assessee is partly allowed for statistical purposes."

From this finding of the Tribunal, it is apparent that the Tribunal has duly accepted that the assessee got the transformer and boilers during the impugned assessment year. However, the transformer had been taken on load only on 26.08.2005 i.e. in the next assessment year. Therefore, the Tribunal confirmed the disallowance of depreciation during the impugned assessment year and directed the Assessing Officer to allow depreciation to

the assessee in succeeding assessment year on the actual cost of the transformer without deducting any depreciation claimed by the assessee in the impugned assessment year. This finding of the Tribunal itself proves that it is not a case where it can be said that the assessee has filed inaccurate particulars of its income but it is a case where the assessee has made a claim on the basis of the evidence filed by it and the claim has not been accepted. Non-acceptance of the claim, in our opinion, cannot be regarded to be a case where the assessee has filed inaccurate particulars for penalty to be levied. Hon'ble Supreme Court in the case of CIT vs. Reliance Petroproducts Pvt. Ltd. 322 ITR 158 (SC) has clearly laid down that a mere making of a claim, which is not sustainable in law, by itself, will not amount to furnishing inaccurate particulars regarding the income of the assessee. Such a claim made in the return cannot amount to furnishing inaccurate particulars. In our opinion, the case of the assessee is duly covered by the said decision of the Hon'ble Supreme Court, therefore, no interference is called for in the order of the CIT(A) deleting the penalty levied by the Assessing Officer.

5. In the result, the appeal filed by the Revenue is dismissed.

Order pronounced in the open court on 12th day of September, 2017.

Sd/-

(Pawan Singh)

JUDICIAL MEMBER

Mumbai; Dated: 14th September, 2017

Sd/-

(P K Bansal)

VICE-PRESIDENT

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Copy of the Order forwarded to :

1. The Appellant.
2. The Respondent.
3. The CIT(A), Mumbai
4. The CIT
5. DR, 'B' Bench, ITAT, Mumbai

BY ORDER,

#True Copy #

Assistant Registrar
Income Tax Appellate Tribunal, Mumbai