



ITA.No.2048/Mum/2016
Krishna C.Tandon (HUF)
Assessment Year-2009-10

आयकर अपीलीय अधिकरण "बी" न्यायपीठ मुंबई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
"B" BENCH, MUMBAI

श्री डी.टी. गरसिया, न्यायिक सदस्य एवं
श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।
BEFORE SHRI D.T. GARASIA, JM AND
SHRI MANOJ KUMAR AGGARWAL, AM

आयकर अपील सं./I.T.A. No.2048/Mum/2016
(निर्धारण वर्ष / Assessment Year: 2009-10)

Assistant Commissioner Of Income Tax 33(2) Room NO.608, C-12 6 th Floor, Pratyakshkar Bhavan Bandra Kurla Complex Mumbai-400 051	बनाम/ Vs.	Krishna C. Tandon (HUF) 1702,Wing-1,Whispering Palms Akurli Road Lokhandwala Township Kandivali(East) Mumbai-400 101
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. AAGHK-2747-E		
(□ पीलार्थी / Appellant)	:	(प्रत्यर्थी / Respondent)

Assessee by	:	None
Revenue by	:	Suman Kumar, Ld. DR

सुनवाई की तारीख / Date of Hearing	:	24/10/2017
घोषणा की तारीख / Date of Pronouncement	:	01/11/2017

आदेश / ORDER

Per Manoj Kumar Aggarwal (Accountant Member)

1. The captioned appeal by revenue for Assessment Year [AY] 2009-10 assails the order of the *Ld. Commissioner of Income-Tax (Appeals)-45 [CIT(A)], Mumbai, Appeal No. CIT(A)-45/AC 25(3)/ITA 309/2014-15*



dated 25/01/2016. The quantum assessment for impugned AY was framed by *Ld. Assistant Commissioner of Income Tax-25(3), Mumbai [AO]* on 29/11/2011 u/s 143(3) whereas penalty was levied u/s 271(1)(c) vide order dated 28/03/2014. None has appeared for assessee despite notice. Left with no option, we proceed to dispose-off the appeal on the basis of material available on record and after hearing *Ld. Departmental Representative [DR]*.

2. The revenue is aggrieved by deletion of penalty u/s 271(1)(c) by *Ld. CIT(A)* and has raised the following Grounds of Appeal:-

1. *On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in deleting the penalty u/s.271(1)(c) amounting Rs.60,59,108/- being 100% of tax liability.*
2. *On the facts and in circumstances of the case and in law, the Ld. CIT(A) erred in holding that no penalty is leviable where there is change in head of income without appreciating the fact that the real intention of the assessee was to evade taxes by furnishing inaccurate particulars.*
3. *On the facts and in circumstances of the case and in law, the Ld. CIT(A) erred in not appreciating the fact that the appeal of the assessee has been dismissed by the Ld. CIT(A) himself for the same assessment year on the said issue of treatment of share trading income as business income by the A.O.*
4. *The appellant prays that the order of the Ld.CIT(A) on the above ground be set aside and that of the Assessing Officer be restored.*

3.1 Facts leading to the same are that the assessee being *resident HUF* earning *Share Trading Income & Income from other sources* was assessed for impugned AY u/s 143(3) on 29/11/2011. The assessee reflected *Short Term Capital Loss & Long Term Capital Loss* on Shares for Rs.261.31 Lacs & Rs.18.28 Lacs under the head *Capital Gains*. However, the said activity, in the opinion of *Ld. AO*, was assessable under the head *Business Income*. The stand of *Ld. AO*, upon appeal, was confirmed by *Ld. first appellate authority* in *Appeal No.CIT(A)-35/ACIT 25(3)/ITA184/11-12* order dated 29/04/2013.



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3.2 Consequently, penalty proceedings were initiated during quantum assessment for *furnishing of inaccurate particulars*. The assessee contested the same on the premises that full particulars were furnished in the return of income and there was no concealment of income and mere change of head of income do not justify imposition of penalty. However, not convinced, Ld. AO invoking *Explanation-1 to Section 271(1)(c)*, levied penalty of Rs.60,59,108/- vide order dated 28/03/2014.

4. Aggrieved, the assessee contested the same with success before Ld. CIT(A) vide impugned order dated 25/01/2016 where the Ld. CIT(A) relying on the judgment of Bombay High Court rendered in *Bennett Coleman & Co. Ltd. [ITA No. 2117/2012]* & several other judgments concluded that penalty was not leviable for mere change of head of income. Aggrieved, the revenue is in further appeal before us. The Ld. DR has placed reliance on the stand of Ld. AO and contended that penalty was justified since the assessee was obliged to offer the income / loss under the correct head of income.

5. Heard and perused relevant material on record. We find that penalty has been imposed for merely change of head of income whereas there is no change in the loss figures offered by the assessee in the return of income. The assessee offered the loss under the head *capital gains* which, in the opinion of Ld. AO, was assessable under the head *business income*. However, the basic condition viz. furnishing of inaccurate particulars / concealment of particulars of income so as to attract the provisions of Section 271(1)(c) have remained unfulfilled in the present case. Therefore, penalty was not justified and the stand of



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Ld. CIT(A) was quite fair & logical and hence, the same do not require any interference on our part.

6. Resultantly, revenue's appeal stands dismissed.

Order pronounced in the open court on 01st November, 2017.

Sd/-

(D.T. Garasia)

न्यायिक सदस्य / **Judicial Member**

Sd/-

(Manoj Kumar Aggarwal)

लेखा सदस्य / **Accountant Member**

मुंबई Mumbai; दिनांक Dated : 01.11.2017

Sr.PS:- Thirumalesh

आदेश की प्रतिलिपि □ ग्रेषित/Copy of the Order forwarded to :

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

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)

आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai