



ITA.No.3901/Mum/2016
Jumana Goolam Vahanvati
Assessment Year 2011-12

आयकर अपीलीय अधिकरण “एच” न्यायपीठ मुंबई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
“H” BENCH, MUMBAI

श्री महावीर सिंह, न्यायिक सदस्य एवं
श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।
BEFORE SHRI MAHAVIR SINGH, JM AND
SHRI MANOJ KUMAR AGGARWAL, AM

आयकर अपील सं./I.T.A. No. 3901/Mum/2016
(निर्धारण वर्ष / Assessment Year: 2011-12)

Assistant Commissioner of Income-Tax 17(2) R.No.134 Aaykar Bhavan M.K.Road Mumbai-400 020	बनाम/ Vs.	Jumana Goolam Vahanvati Buckley Court, 21 st and 22 nd Duplex No.6 Nathalal Parekh Marg, Colaba Mumbai-400 039
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. ABUPV-1085-D		
(पीलार्थी / Appellant)	:	(प्रत्यर्थी / Respondent)
Assessee by	:	Niyanta Mehta, Ld. AR
Revenue by	:	M.C.Omi Ningshen, Ld. DR

सुनवाई की तारीख / Date of Hearing	:	22/02/2018
घोषणा की तारीख / Date of Pronouncement	:	28 /02/2018

आदेश / ORDER

Per Manoj Kumar Aggarwal (Accountant Member)

1. The captioned appeal by revenue for Assessment Year [AY] 2011-12 contest the order of Ld. Commissioner of Income-Tax (Appeals)-28 [CIT(A)], Mumbai, *Appeal No.CIT(A)-28/IT-236/DCIT-12(2)/2014-15* dated 18/03/2016 *qua* deletion of penalty u/s 271(1)(C) for Rs.16,82,505/-. The quantum assessment for impugned AY was framed by *Ld. Additional Commissioner of Income Tax-Range 12(2) u/s 143(3)*



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on 26/03/2014 whereas impugned penalty u/s 271(1)(c) was levied by Ld. Assistant Commissioner of Income Tax-12(2) on 23/09/2014. In the quantum assessment, the income of the assessee was determined at Rs.3,21,05,790/- after certain adjustments as against returned income of Rs.3,20,85,564/- filed by the assessee on 29/12/2011.

2. Brief facts leading to imposition of penalty are that during assessment proceedings it was noted that the assessee earned *Short Term Capital Gain [STCG]* of Rs.1,06,25,985/- on sale of shares of various companies and offered the same to tax at concessional rate of tax @15% in terms of provisions of Section 111A. However, upon perusal, it was found that *STCG* of Rs.108.90 Lacs was earned on sale of shares of an entity namely *BSE Ltd.*, which were not listed shares and therefore, not eligible to be taxed at concessional rate u/s 111A. The assessee, while accepting the same, submitted that the said transaction was claimed u/s 111A due to inadvertent error under the impression that the shares were traded through recognized stock exchange and *Securities Transaction Tax [STT]* was paid on these transactions. Consequently penalty proceedings u/s 271(1)(c) were initiated in the quantum assessment order and the assessee has been saddled with impugned penalty of Rs.16,82,505/- on 23/09/2014.

3. Aggrieved, the assessee contested the same on various grounds with success before Ld. CIT(A) vide impugned order dated 18/03/2016 where Ld. CIT(A), after considering various submissions made by the assessee deleted the penalty by making following observation:-

5. **DECISION:** *I have carefully considered the facts of the case, grounds of appeal and written submissions made before me. There are two grounds of appeal both*



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related to levy of penalty and are therefore disposed together for the sake of convenience.

5.1 From the facts I find that the appellant claimed that the STCG arising from the sale of shares of BSE are to be charged at a lower rate of 15% u/s 111A on the grounds that the said transaction of sale has suffered STT. During scrutiny it was found that the shares of BSE are not listed on the stock exchange and therefore have not been sold through any recognized stock exchange but have been sold off market in physical form and that STT was never levied on the transaction. By virtue of these facts, the STCG fell out of the purview of sec 111A and became taxable at the normal rate applicable to STCG. The appellant accepted this position and paid the differential tax. **I also find that from the computation of income filed before me that the transaction of sale of BSE shares appears at sl no 1 in the table of STCG and is titled "Sale of Shares Quantity 70000". Other details of this particular transaction such as sale price, sale date, purchase price, purchase date etc have been clearly mentioned in the computation.** However, in the computation the name of the share is not mentioned. However, there are 26 other transactions of sale of listed shares wherein full disclosure has been made in the computation itself such as name of scrip, quantity, sale price, sale date, cost price, purchase date etc.

5.2 During penalty proceedings, the AO held this action of the appellant at declaring the STCG at a lower rate of 15% as an inaccurate particular of income and levied penalty on the differential tax sought to be evaded. The appellant on the other hand sought to explain this as an inadvertent error which was not accepted by the AO. The dispute therefore is whether the claim of the appellant in the computation of income that the STCG on sale of BSE shares was taxable @15% u/s 111A is an inadvertent error or inaccurate particulars of income. I find that the quantum of STCG on the sale of BSE shares has been accepted by the AO. It is only the tax rate which is in question. I find that the facts of this are almost identical to those in the case of Bennette Coleman & Co Ltd. The Hon'ble Bombay High Court has in its decision of Bennette Coleman & Co Ltd 33 taxmann.com 277 (Bom) held as under:- (head note)

Section 271(1)(c) of the Income-tax Act,1961 – Penalty – For concealment of income [Bona fide claim, disallowance of] – Assessment year 1999-2000 – Assessee claimed deduction of interest on tax free bonds – Assessing Officers asked assessee to give details of interest on tax free bonds – While preparing said details, assessee noticed that per cent Government of India Capital Index Bonds purchased during year had been categorized as tax free bonds and, therefore, interest earned on such bonds had escaped tax – Thereupon Assessing Officer levied penalty under section 271(1)(c) upon assessee – Tribunal after recorded a finding of fact that there was an inadvertent mistake on part of assessee in claiming interest received on Government of India Capital Index Bonds as interest received on tax free bonds, deleted penalty levied upon assessee – Whether since it was not contended by revenue that above finding of fact by Tribunal was perverse, order of Tribunal deserved to be upheld – Held, yes [Para 2] [In favor of assessee]

Section 271(1)(c) of the Income-tax Act,1961 – Penalty – For concealment of income [Bona fide claim, disallowance of] – Assessment year 1999-2000 – Assessee claimed premium received on redemption of debentures as income from Capital gains – Assessing Officer held that said premium was assessable to tax under head 'income from other sources'- Thereupon he also levied penalty under section 271(1)(c) on assessee – Tribunal deleted penalty on plea that there was only a change of head of income by Assessing Officer and it



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was not case of department that assessee had concealed any particulars of income or furnished inaccurate particulars of income by stating incorrect facts – Whether Tribunal was justified in cancelling penalty levied upon assessee – Held, yes [Para 3] [In favor of assessee]

Decision:

2. So far as question (i) is concerned, the respondent- assessee has claimed deduction of interest on tax free bonds of Rs.5,60,11644/-. During the course of the assessment proceedings, the assessee was asked to give details of interest on tax free bonds. While preparing the said details, it was noticed that 6% Government of India capital Index Bonds purchased during the year had inadvertently been categorized as tax free bonds and, therefore, interest of Rs.75,00,000/- earned on such bonds had also inadvertently escaped tax. The assessing officer levied penalty under Section 271(1)(c) of the Income Tax Act, 1961(the Act). The CIT(A) upheld the order of the Assessing Officer. On further appeal, the Tribunal in the impugned order records a finding of fact that by inadvertent mistake interest @6% on the Government of India Capital Index Bonds was shown as tax free bonds. The Tribunal concluded that there was no desire on the part of the respondent-assessee to hide or conceal the income so as to avoid payment of tax on interest from the bonds. In that view of the matter, the Tribunal deleted the penalty imposed upon the respondent-assessee under Section 271(1)(c) of the Act. In view of the fact that the decision of the Tribunal is based on finding of fact that there was an inadvertent mistake on the part of the assessee in including the interest received of 6% on the Government of India Capital Index Bonds as interest received on tax free bonds. It is not contended by the Revenue that above finding of fact by the Tribunal is perverse. In these circumstances, we see no reason to entertain the proposed question (i).

3. So far as question (ii) is concerned, the respondent-assessee had claimed premium on redemption of debenture as income from capital gains. Whereas the assessing officer held that the redemption of debentures is revenue receipt assessable to tax under the head income from other sources. The CIT(A) confirmed the order of the assessing officer. The respondent-assessee did not file any further appeal on the quantum proceedings. Thereafter, the assessing officer levied penalty under Section 271(1)(c) of the Act on the respondent-assessee. The CIT(A) also confirmed the levy of penalty upon the respondent-assessee. On further appeal, the Tribunal held that there is no dispute with regard to the fact that the respondent-assessee had disclosed that the amount received as premium on redemption of debentures in its computation of income. Further, the Tribunal records that it is not the case of the department that the respondent- assessee had concealed any particulars of income or furnished inaccurate particulars of income by stating incorrect facts. The assessing officer considered the said premium received on redemption of debentures to be taxable under the head income from other sources while the respondent-assessee considered the same to be taxable under the head capital gains. In view of the fact that there is only a change of head of income and in the absence of any facts that the claim of the assessee was not bona fide, the Tribunal deleted the penalty imposed under Section 271(1)(c) of the Act. The revenue has not been able to point out that the finding of the Tribunal is perverse. In these circumstances, we see no reason to entertain the proposed question (ii).

5.3 From the above, it could be seen that in the present case also, the appellant classified STCG on sale of BSE shares as taxable @ 15% u/s 111A. During scrutiny it was noticed that the STCG has to be taxed at normal rates which was accepted by the appellant. The 1st question referred to in the case of Bennett cited supra would



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*therefore squarely apply to the facts of the present case. Even otherwise, the STCG had been offered to tax @15% by the appellant in her ROI. This was then reclassified to suffer tax at normal rates **without disturbing the quantum**. Question 2 of Bennett would therefore also apply to the facts of the present case as the dispute is about the quantum of tax and not of income. In the circumstances, I do not think this is a case of inaccurate particulars of income or concealment of income. The quantum of STCG declared from sale of BSE shares has not been disturbed & particulars of the transaction have been shown in the computation itself. On facts, I am of the opinion that the case of the appellant is squarely covered by the decision of the Hon'ble Bombay High Court cited supra. I therefore hold that there is no case to levy penalty u/s 271(1)(c) in the matter. I accordingly cancel the penalty levied by the AO.*

*6. In the result, **the appeal is allowed.***

Aggrieved, the revenue is in further appeal before us whereas the assessee has filed petition under Rule-27 of the Income Tax (Appellate Tribunal) Rules, 1963 contending that the legal ground raised by the assessee has not been dealt with by Ld. first appellate authority.

4. The Ld. Departmental Representative [DR] submitted that the assessee deliberately offered the *STCG* at concessional rates despite fully knowing that the same were with respect to unlisted shares on which STT was never paid and therefore, the penalty was justified. Per *Contra*, Ld. Authorised Representative for Assessee [AR], *Niyanta Mehta*, justified the stand of Ld. CIT(A) and drew our attention to assessee's petition under Rule 27 to contend that the penalty proceedings even otherwise stood vitiated on legal grounds since the Ld. AO failed to specify the particular charge for which the penalty was being initiated / levied.

5. We have carefully heard the rival contentions and perused relevant material on record. After considering the factual matrix, we find that there is no difference in the assessed income and returned income under the head *STCG*. The assessee claimed the said gain at concessional rate under bona fide belief that the said gain accrued from



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sale of listed shares on which *STT* was paid by the assessee. The assessee earned similar gains on number of scrips as noted by Ld. CIT(A) and there was every possibility that the stated fact skipped the assessee's attention and the assessee, after being pointed out, accepted the same and paid due taxes thereupon. Therefore, the factual matrix does not justify imposition of impugned penalty and therefore, the reliance of Ld. CIT(A) on the cited judgment of Hon'ble Bombay High Court was quite appropriate. Therefore, finding the order of Ld. first appellate authority quite reasoned one, we confirm the same and dismiss revenue's appeal which makes assessee's petition under Rule 27 *infructuous*.

6. Resultantly, the revenue's appeal stands dismissed.

Order pronounced in the open court on 28th February, 2018

Sd/-

(Mahavir Singh)

न्यायिक सदस्य / **Judicial Member**

Sd/-

(Manoj Kumar Aggarwal)

लेखा सदस्य / **Accountant Member**

मुंबई Mumbai; दिनांक Dated : 28. 02.2018

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