



ITA Nos.2375-77/Mum/2017
Jaya Marketing
Assessment Years-2003-04 to 2005-06

आयकर अपीलिय अधिकरण “जे” न्यायपीठ मुंबई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
“J” BENCH, MUMBAI

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

आयकर अपीलसं./I.T.A. No.2375 to 2377/Mum/2017
(निर्धारणवर्ष / Assessment Years: 2003-04, 2004-05 & 2005-06)

| | | |
|---|----------------------|---|
| Jaya Marketing 402, Dev Corpora Cadbury Junction Eastern Express Highway Thane (W) – 400 602 | बनाम/ Vs. | Assistant Commissioner of Income Tax Range 17(2) 1 st Floor, Aaykar Bhawan M.K.Road, Churchgate Mumbai-400 021 |
| स्थायीलेखासं./जीआइआरसं./PAN/GIR No. AADFJ-5774-D | | |
| (अपीलार्थी/ Appellant) | : | (प्रत्यर्थी / Respondent) |

| | | |
|--------------------|---|----------------------|
| Assessee by | : | Nitesh Joshi, Ld. AR |
| Revenue by | : | A.Mohan, Ld. Sr. DR |

| | | |
|--|---|------------|
| सुनवाई की तारीख/ Date of Hearing | : | 21/08/2018 |
| घोषणा की तारीख / Date of Pronouncement | : | 07/09/2018 |

आदेश / ORDER

Per Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid appeals by assessee for Assessment Years [AY] 2003-04 to 2005-06 contest the imposition of penalty u/s 271(1)(c) as levied by Ld. Assessing Officer [AO] and confirmed by Ld. first appellate authority. Since identical issues are involved, we dispose-off the same by way of this common order for the sake of convenience & brevity.

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2. In AY 2003-04, the assessee being *resident firm* has been assessed u/s 143(3) *read with Section 147* on 31/12/2009 after quantum additions of Rs.746.35 Lacs on account of low *Gross Profit* declared by the assessee. Consequently, penalty proceedings u/s 271(1)(C) were initiated in the quantum assessment order for furnishing inaccurate particulars of income and concealment of income. The assessee has been saddled with impugned penalty of Rs.274.28 Lacs against the same vide penalty order dated 21/10/2011 which, upon confirmation by Ld. first appellate authority on 07/12/2016, is under appeal before us. The amount of penalty imposed for AY 2004-05, against similar addition, stands at Rs.307.60 Lacs which has also been confirmed by Ld. first appellate authority vide appellate order dated 07/12/2016.

3. The Ld. Authorized Representative for Assessee [AR], *Shri Nitesh Joshi*, at the outset, drew our attention to the fact that the assessee contested the quantum additions with success before this Tribunal vide ITA Nos.5131, 6474-75/Mum/2011 order dated 24/08/2017 wherein the quantum additions have been deleted for AYs 2003-04 & 2004-05 and therefore, the impugned penalty do not survive. The copy of the cited order has been placed before us. The Ld. DR could not controvert the aforesaid fact but submitted that the same has not yet attained finality.

4. Upon careful consideration of cited order, we find that the quantum additions for both the years have been deleted by the Tribunal in the following manner:-

51. *In the A.Y. 2003-04 and 2004-05 AO had after reopening the assessment and rejected the books of accounts and made trading addition based on the assessment framed for A.Y.2005-06. Following the reasoning given hereinabove, we do not find any justification for rejection of books of accounts and addition so*



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made by applying the G.P. rate so arrived at in A.Y.2005-06. Accordingly additions made in both the years are deleted.

In view of the admitted position, the impugned penalty does not survive and therefore, by deleting the same, we allow both the appeals.

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5. In this AY, the assessee has been saddled with penalty of Rs.206.56 Lacs vide order dated 27/01/2015 against assessed income of Rs.792.83 Lacs as against returned income of Rs.124.35 Lacs filed by the assessee. The Ld. AR, drawing our attention to the computation chart as placed before us, submitted that the only surviving addition pursuant to the cited order of the Tribunal is estimated *ad hoc additions* against certain expense. The perusal of the said chart shows that against total expenditure of Rs.36,46,403/- as claimed by the assessee during impugned AY under various heads, Ld. AO estimated addition of Rs.16,99,445/- against the same, which was the subject matter of appeal before this Tribunal. The fate of the same, as per the order, was as follows:-

| No. | Head | Amount (Rs.) |
|------------|--|---------------------|
| 1. | Additions deleted by the Tribunal | 1,28,805/- |
| 2. | Additions partly confirmed by the Tribunal | 10,79,771/- |
| 3. | Sent back to Ld. AO for re-verification | 4,90,869/- |
| | Total | 16,99,445/- |

The additions against Rs.10,79,771- has been confirmed partly to the extent of Rs.5,98,209/-, which in terms of cited order is the sole surviving addition which could be subject matter of penalty against the assessee. However, we find that these additions are *ad hoc* additions for want of



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proper documentation and supporting vouchers which could not be produced by the assessee to the satisfaction of the Ld. AO. However, the aforesaid estimated addition, *per se*, in our opinion, do not warrant imposition of penalty since the same did not amount to furnishing of inaccurate particulars of income or concealment of income. Therefore, by deleting the same, we allow assessee's appeal. It has already been noted that the additions of Rs.4,90,869/- has been sent back to Ld.AO, against which penalty proceedings have separately been initiated therein and therefore, the assessee is free to agitate the same to that extent at an appropriate level.

Conclusion

6. All the appeals stands allowed in terms of our above order.

Order pronounced in the open court on 07th September, 2018

Sd/-

(Joginder Singh)

न्यायिक सदस्य / **Judicial Member**

मुंबई Mumbai; दिनांक Dated : 07.09.2018

Sr.PS:-Thirumalesh

Sd/-

(Manoj Kumar Aggarwal)

लेखा सदस्य / **Accountant Member**

आदेशकीप्रतिलिपिअप्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT- concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

आदेशानुसार/ BY ORDER,

उप/सहायकपंजीकार (Dy./Asstt.Registrar)
आयकरअपीलीयअधिकरण, मुंबई / ITAT, Mumbai