

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "E" MUMBAI**

**BEFORE SHRI MAHAVIR SINGH (JUDICIAL MEMBER) AND
SHRI N.K. PRADHAN (ACCOUNTANT MEMBER)**

**ITA No. 6351/MUM/2012
Assessment Year: 2001-02**

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**ITA No. 6352/MUM/2012
Assessment Year: 2002-03**

&

**ITA No. 6353/MUM/2012
Assessment Year: 2003-04**

&

**ITA No. 6354/MUM/2012
Assessment Year: 2004-05**

M/s Taj Exim International Ltd.
C/o. Jayesh Sanghrajka & Co
Chartered Accountants Unit No.
405, Hind Rajasthan Centre, D.S.
Phalke Road, Dadar (E),
Mumbai-400014.

PAN No. AACFT6983H

Appellant

Dy. CIT-3(3) Aayakar
Vs. Bahvan Mumbai.

Respondent

Assessee by : Mr. Y.K. Gaiha, AR
Revenue by : Mr. D.G. Pansari, DR

Date of Hearing : 04/10/2018
Date of pronouncement: 15/10/2018

ORDER

PER N.K. PRADHAN, AM

The captioned appeals filed by the assessee are directed against the order of the Commissioner of Income Tax (Appeals)-7, Mumbai [in

short 'CIT(A)'] and arise out of penalty levied u/s 271(1)(c) of the Income Tax Act 1961 (the 'Act'). As common issues are involved, we are proceeding to dispose them off through a consolidated order for the sake of convenience.

There has been a delay of 46 days on the part of the assessee in filing the appeal before the Tribunal. The assessee has filed an affidavit signed by Jasbir Kaur Bakshi, Director of the assessee-company stating that her husband Mr. J.B.S. Bakshi who was the Managing Director expired and left his only 42 years son (who is mentally a disabled person). Also it is stated that the assessee-company is near to bankruptcy and bankers have lodged the matter against the company in Debt Recovery Tribunal.

Considering the above facts, we condone the delay of 46 days in filing appeals before the Tribunal.

2. We begin with the assessment year (AY) 2001-02. The ground of appeal filed by the assessee reads as under:

"On the facts and circumstances of the case and judicial proposition, Ld. CIT(Appeals) erred in confirming the levying of penalty u/s 271(1)(c) by the AO on income declared under different head of income and such levy is erroneous in facts and bad in law and liable to be quashed."

3. Briefly stated, the facts of the case are that the assessee filed its revised return of income on 28.03.2002 disclosing total loss of Rs.1,08,187/-. The Assessing Officer (AO) made the assessment u/s 143(1)(a) on 26.11.2002. Then he reopened the assessment and completed the assessment u/s 143(3) r.w.s. 147 on 28.08.2008

determining the total income at Rs.15,08,253/-. In the assessment order, the AO rejected the claim of loss of Rs.1,08,187/- made by the assessee by considering the compensation received (rental income) as income from house property as against the assessee's claim of such receipts as business income. In the said order, while considering the rental income as house property income, the AO rejected the assessee's claim of depreciation and other expenses and only expenditure allowable u/s 24(a) was allowed, which resulted in a total income of Rs.15,08,253/-. Thereafter, the AO levied a penalty of Rs.5,96,550/- u/s 271(1)(c) on the above income of Rs.15,08,253/-.

4. Aggrieved by the order of the AO, the assessee filed an appeal before the Ld. CIT(A). It is found that the Ld. CIT(A) agreed with the contention of the AO that the assessee failed to offer any explanation or evidence to prove that such explanation was bonafide and the facts relating to the same were available on record during the assessment proceedings. The Ld. CIT(A) relied on the decision in the case of *B.A. Balasubramanium & Bros. Co. v. CIT* (SC) mentioning that "differences between income assessed and income returned was more than 20%, the Explanation to section 271(1)(c) became applicable and the ITO was justified in imposing penalty because the assessee had not been able to discharge the onus which was on it under the said Explanation, notwithstanding the fact that income was assessed on estimation basis." On the basis of the above reasons, the Ld. CIT(A) confirmed the penalty levied by the AO u/s 271(1)(c) of the Act.

5. Before us, the Ld. counsel of the assessee submits that as per the return of income the appellant has considered the rental income as “business income”, whereas the AO considered it to be taxable under the head “income from house property”. In the process the AO disallowed all expenditure including depreciation to the tune of Rs.20,13,226/-. Thus the Ld. counsel submits that the assessee has neither concealed its income nor filed inaccurate particulars of such income. Therefore, it is pleaded that the penalty levied u/s 271(1)(c) be deleted.

On the other hand, the Ld. DR relies on the order passed by the Ld. CIT(A).

6. We have heard the rival submissions and perused the relevant materials on record. We find that the Ld. CIT(A) has not given the citation of the decision *B.A. Balasubramaniam & Bros. Co. v. CIT* (SC) relied by him. Besides what he has quoted indicates that the facts are different.

As narrated hereinbefore the assessee had shown rental receipts as ‘business income’, whereas the AO considered it to be taxable under the head ‘income from house property’. In the process the AO disallowed all expenditures including depreciation to the tune of Rs.20,13,226/-. In the case of *CIT v. Reliance Petroproducts (P) Ltd.* (2010) 189 Taxman 322 (SC), it has been held by the Hon’ble Supreme Court that merely because assessee had claimed expenditure, which claim was not accepted or was not acceptable to revenue, that by itself would not attract penalty u/s 271(1)(c) of the Act.

Also it has been held in *CIT v. Ajaib Singh & Co.* (2002) 253 ITR 630 (P&H), “that merely because certain expenses claimed by the assessee are disallowed by an authority, it cannot mean that the particulars furnished by the assessee are wrong. Disallowance of an expense *per se* cannot mean that the assessee has furnished incorrect particulars of its income. Concealment involves penal action. It has to be proved as a conscious Act. It is true that direct evidence may not be available in every case. Yet, it must be proved as a necessary corollary from the facts and circumstances established on the record.”

The ratio laid down in the above decisions is applicable in the instant case. Following it, we delete the penalty of Rs.5,96,550/- levied by the AO u/s 271(1)(c) of the Act. Facts being identical, our decision for the AY 2001-02 applies *mutatis mutandis* to AYs 2002-03, 2003-04 and 2004-05.

7. In the result, the appeals are allowed.

Order pronounced in the open Court 15/10/2018.

Sd/-
(MAHAVIR SINGH)
JUDICIAL MEMBER

Sd/-
(N.K. PRADHAN)
ACCOUNTANT MEMBER

Mumbai;
Dated: 15/10/2018
Rahul Sharma, Sr. P.S.

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A)-
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Sr. Private Secretary)
ITAT, Mumbai