

IN THE INCOME TAX APPELLATE TRIBUNAL
"F" Bench, Mumbai
Before S/Shri B.R. Baskaran (AM) & Sandeep Gosain (JM)

I.T.A. No. 2537/Mum/2017 (Assessment Year 2010-11)

ACIT-17(2) Room No. 123A Aayakar Bhavan 1 st Floor M.K. Road Mumbai-400 020. (Appellant)	Vs.	M/s. Jai Hind Oil Mills Co. 387-89, Narshi Natha Street Katha Bazar Mumbai-400 009. (Respondent)
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C.O No. 251/Mum/2018 (Assessment Year 2010-11)

M/s. Jai Hind Oil Mills Co. 387-89, Narshi Natha Street Katha Bazar Mumbai-400 009. (Appellant)	Vs.	ACIT-17(2) Room No. 123A Aayakar Bhavan 1 st Floor M.K. Road Mumbai-400 020. (Respondent)
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PAN : AACFJ5169K

Assessee by	Shri Reepal G. Tralshawalla
Department by	Shri Rajiv Gubgotra
Date of Hearing	4.2.2019
Date of Pronouncement	4.2.2019

ORDER

Per B.R. Baskaran (AM) :-

The appeal filed by the revenue and the cross objection filed by the assessee are directed against the order dated 25-01-2017 passed by Ld CIT(A)-46, Mumbai and they relate to the assessment year 2010-11. The revenue is aggrieved by the decision of Ld CIT(A) in deleting the penalty levied u/s 271(1)(c) of the Act. The assessee has raised certain legal issues in its cross objection.

2. The facts that led to the levy of penalty are discussed in brief. The assessee is operating warehouses and derives income from letting out them. The warehouses operated by the assessee could store both solid as well as liquid goods. The assessee was declaring the warehouse charges as its business income upto AY 2008-09. From AY 2009-10 onwards, the assessee declared warehouse charges relating to liquid goods and a portion of charges relating to solid goods collected as “maintenance charges” under the head Income from business. It declared a portion of charges relating to solid goods collected as “warehousing charges” as income from house property. Accordingly, during the year under consideration also, the AO declared the charges relating to solid goods collected as “warehousing charges” as income under the head Income from house property, thus claiming standard deduction of 30% towards repairs on the above said portion of income. The AO did not accept the same and accordingly assessed the said receipts also as income from business and the same has resulted in addition to the total income.

3. The AO also noticed that the assessee had revalued the assets in the earlier years. Even though, it did not claim depreciation on the amount enhanced by the revaluation, yet it was noticed that the assessee has deducted the value of assets sold by it from the “revaluation amount”, instead of reducing the same from the value of block of assets. Before the AO, the assessee accepted the mistake committed by it and accordingly the assessing officer reduced the amount of depreciation claimed by the assessee by Rs.13.58 lakhs, which resulted in an addition of equal amount. Further, the assessee had claimed depreciation on certain assets @ 15% in the earlier years and the AO had allowed depreciation @ 10% only. On one of the asset, the assessing officer did not allow depreciation for want of evidences. The corresponding adjustment was made by the AO during the year and the same resulted in an addition of Rs.18,195/-.

4. The assessee did not challenge the above said additions. Thereafter, the AO levied penalty of Rs.27,34,938/- u/s 271(1)(c) of the Act on the above said additions for furnishing of inaccurate particulars of income. The Ld CIT(A) deleted the same and hence the revenue has filed this appeal.

5. We heard the parties and perused the record. The first addition has arisen on account of change of head of income. The assessee declared a portion of warehouse charges under the head Income from House Property, while the AO has assessed the same as Income from business. It was submitted before the Ld CIT(A) that the assessee has declared the warehouse charges as income under the head Income from business by taking support from the decision rendered by Pune Bench of Tribunal in the case of Nutan Warehousing Co. (P) Ltd vs. ITO (106 TTJ 137). The Ld CIT(A), accordingly noticed that the decision of the assessee to change the head of income is supported by the above said decision of Pune bench of Tribunal. Accordingly the Ld CIT(A) noticed that there exists two possible views in this matter. Accordingly by taking support from the decision rendered by Hon'ble Delhi High Court in the case of Devsons P Ltd vs. CIT (329 ITR 483), the Ld CIT(A) held that the penalty cannot be levied under these circumstances.

6. The Ld CIT(A) also noticed that the Tribunal has deleted the penalty levied on account of addition made due to change in head of income in the case of M/s Superb Royal Travels and Tours P Ltd in ITA No.4147/Mum/2012. He also noticed that the Hon'ble Bombay High Court has deleted the penalty levied in respect of addition made on account of change in head of income in the case of CIT vs. M/s Bennett Coleman & Co. Ltd (ITA (Lod) No.2117 of 2012 dated 26-02-2013).

7. The Ld CIT(A) also noticed that the assessee has furnished all the details relating to warehousing income in its return of income and accordingly took the support of the decision rendered by Hon'ble Supreme Court in the case of CIT vs. Reliance Petroproducts P Ltd (322 ITR 158)(SC) to hold that penalty

u/s 271(1)(c) cannot be levied under these kind of facts. Accordingly he held that the penalty is liable to be deleted on account of above said reasons also.

8. Thus we notice that the Ld CIT(A) has given three different reasoning to delete the penalty levied on the addition made on account of warehouse income.

9. We have earlier noticed that the impugned addition has resulted on account of change in the head of income. Even though, the assessee had been declaring the warehousing income as its business income, it changed its stand and declared the same as income from house property by taking support from the decision rendered by the Pune bench of Tribunal in the case of Nutan Warehousing Co. P Ltd (supra). Hence the Ld CIT(A) has expressed the view that there exists two possible views in this matter. Hence he has taken support of the decision rendered by Hon'ble Delhi High Court in the case of Devsons P Ltd (supra), which was also followed by the Hon'ble Delhi High Court in the case of Karan Raghav Exports P Ltd (ITA No.1152/2011) to hold that penalty is not leviable when there are two possible views. We also notice that the SMC bench of Tribunal has deleted penalty levied on identical reasoning in the assessee's own case for AY 2011-12 by following the decision rendered by Hon'ble jurisdictional Bombay High Court in the case of Bennet Coleman & Co. Ltd (supra). Hence we do not find any infirmity in the decision rendered by Ld CIT(A) on this issue.

10. The next issue relates to the penalty levied on the disallowance of depreciation. The Ld CIT(A) noticed that the re-working of depreciation has been made in this year on account of adjustments made in the earlier years in the value of block of assets, i.e., the addition has arisen in view of cascading effect of adjustments made in AY 2006-07. The Ld CIT(A) further noticed that the Tribunal has deleted penalty on identical addition made by the AO in AY 2011-12 in the assessee's own case in ITA No.2569/Mum/2016 dated

23.12.2016. Accordingly the Ld CIT(A) has deleted the penalty levied on the disallowance of depreciation.

11. We heard the parties on this issue. We notice that the disallowance of depreciation has been made on account of adjustments made to the value of block of assets in the earlier years. The SMC bench of Tribunal has deleted the penalty on identical disallowance made in the assessee's own case in AY 2011-12. The disallowance was required to be made on account of adjustments made to the value of block of assets in the earlier years, which was having cascading effect on the amount of depreciation claimed by the assessee. Since the Ld CIT(A) has followed the decision rendered by the Tribunal, we do not find any reason to interfere with the order passed by him on this issue.

12. The assessee has filed Cross objection raising certain legal issues. Since we have confirmed the order of Ld CIT(A) in deleting the penalty, we do not find it necessary to adjudicate the legal issues urged in the Cross objection filed by the assessee. Accordingly we decline to take up the same.

13. In the result, the appeal of the revenue and the cross objection of the assessee are dismissed.

Order has been pronounced in the Court on 4.2.2019.

Sd/-
(SANDEEP GOSAIN)
JUDICIAL MEMBER

Sd/-
(B.R.BASKARAN)
ACCOUNTANT MEMBER

Mumbai; Dated : 4/2/2019

Copy of the Order forwarded to :

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

M/s. Jai Hind Oil Mills Co.

6. Guard File.

//True Copy//

BY ORDER,

(Senior Private Secretary)
ITAT, Mumbai

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