

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES "A", JAIPUR

श्री रमेश सी शर्मा, लेखा सदस्य एवं श्री विजय पाल राव, न्यायिक सदस्य के समक्ष
BEFORE: SHRI RAMESH C SHARMA, AM & SHRI VIJAY PAL RAO, JM

आयकर अपील सं./ITA No. 1093/JP/2018
निर्धारण वर्ष / Assessment Year :2011-12

Bright Metals India P. Ltd., F-671, Road No. 9 F2, VKI Area, Jaipur.	बनाम Vs.	A.C.I.T., Circle-1, Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AAACB 9670 N		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri P.C. Parwal (CA)
राजस्व की ओर से / Revenue by : Shri A.S. Nehra (JCIT)

सुनवाई की तारीख / Date of Hearing : 03/04/2019
उदघोषणा की तारीख / Date of Pronouncement : 05/04/2019

आदेश / ORDER

PER: R.C. SHARMA, A.M.

This is an appeal filed by the assessee against the order of Id.CIT(A)-I, Jaipur dated 09/07/2018 for the A.Y. 2011-12 in the matter of imposition of penalty U/s 271(1)(c) of the Income Tax Act, 1961 (in short the Act).

2. In this appeal, the assessee is aggrieved by the action of the Id. CIT(A) for confirming the penalty of Rs. 6,97,945/- U/s 271(1)(c) of the Act.

3. Rival contentions have been heard the record perused. The facts in brief are that the assessee is engaged in the business of manufacturing and sale of Brass Ignots. The main raw material used by the assessee is copper. Because of day to day price variation, there is high risk of increase in cost of material and/or decrease in selling price. In order to avoid loss on account of price fluctuation of copper, assessee entered into hedging transactions. On such hedging transaction, it incurred loss of Rs.92,87,247/- which is separately debited in the P&L A/c under the head 'loss on commodity hedging'. Such loss is claimed as business loss in Schedule 12 of the P&L A/c. The AO treated the loss on hedging as speculative loss u/s 43(5) of IT Act and accordingly disallowed the loss of Rs.92,87,247/-. In appeal, the Ld. CIT(A) held that out of hedging loss of Rs.92,87,247/- claimed by the assessee, the speculative loss is to the tune of Rs.22,56,457/- and accordingly confirmed the disallowance to this extent. Against the order of Ld. CIT(A), revenue filed an appeal before Hon'ble ITAT which was dismissed by the ITAT vide order dated 07.06.2017.

4. With respect to the addition confirmed by the Id. CIT(A), the A.O. levied penalty U/s 271(1)(c) of the Act amount to Rs. 6,97,945/-. By the impugned order, the Id. CIT(A) confirmed the action of the A.O.

5. We have considered the rival contentions and carefully gone through the orders of the authorities below. From the record we found that the assessee has separately claimed the loss on commodity hedging at Rs.92,87,247/- in the P&L A/c. Thus, it cannot be inferred that there is any attempt by the assessee to furnish inaccurate particulars. The AO only took a view that such loss is a speculative loss which cannot be adjusted against the business income. This finding of AO is not held to be correct by Ld. CIT(A) in as much as after examining the details provided by the assessee, it was held that only an amount of Rs.22,56,457/- is in the nature of speculative loss. Hence, it cannot be held that assessee has furnished inaccurate particulars of income. Thus, it is clear that the A.O. has not declined the claim of loss but part of the loss claimed by the assessee was treated as speculative and allowed to be carryforward and set off in the subsequent years. It has been held in various cases that where assessee has furnished all the details & such details were not found to be false or bogus, only because the claim of assessee is not allowed would not mean that assessee has furnished inaccurate particulars of income. For this purpose, reliance is placed on the following cases:-

CIT Vs. Reliance Petroproducts Pvt. Ltd. 322 ITR 158 (SC)

A glance at the provisions of section 271(1)(c) of the Income-tax Act, 1961 suggests that in order to be covered by it, there has to be concealment of the particulars of the income of the assessee. Secondly, the assessee must have

furnished inaccurate particulars of his income. The meaning of the word "particulars" used in section 271(1)(c) would embrace the details of the claim made. Where no information given in the return is found to be incorrect or inaccurate, the assessee cannot be held guilty of furnishing inaccurate particulars. In order to expose the assessee to penalty, unless the case is strictly covered by the provision, the penalty provision cannot be invoked. By no stretch of imagination can making an incorrect claim tantamount to furnishing inaccurate particulars. There can be no dispute that everything would depend upon the return filed by the assessee, because that is the only document where the assessee can furnish the particulars of his income. When such particulars are found to be inaccurate, the liability would arise. To attract penalty, the details supplied in the return must not be accurate, not exact or correct, not according to the truth or erroneous. Where there is no finding that any details supplied by the assessee in its return are found to be incorrect or erroneous or false there is no question of inviting the penalty under section 271(1)(c). A mere making of a claim, which is not sustainable in law, by itself, will not amount to furnishing inaccurate particulars regarding the income of the assessee. Such a claim made in the return cannot amount to furnishing inaccurate particulars.

CIT Vs. Auric Investment & Securities Ltd. (2007) 310 ITR 121 (Del.) (HC)

AO found that the loss shown by the assessee was speculative in nature which could not be adjusted. Assessee had submitted the requisite details of the share transaction during the course of assessment proceedings as required by the AO. There is nothing on record to show that the assessee has concealed its income or furnished any inaccurate particulars of income in its return. Mere treatment of the business loss as speculation loss by the AO does not automatically justify inference of concealment of income. Therefore, penalty under sec. 271(1)(c) is not leviable. There being no infirmity in the reasoning given by the Tribunal. no question of law, much less a substantial question of law, arises.

CIT Vs. Bhartesh Jain (2010) 323 ITR 358 (Del.) (HC)

Business loss claimed by assessee treated as speculation loss does not amount to concealment so as to attract penalty under sec. 271(1)(c).

DCIT Vs. Shree Ram Electrocast (P) Ltd. (2017) 166 ITD 209 (Kol.) (Trib.)

Merely because losses were not allowed to be set off against normal business income and was treated as a speculative loss, it was only a change of sub-head of

loss and not furnishing of inaccurate particulars of income invoking penal provision u/s 271(1)(c).

Equest India (P) Ltd. Vs. ITO (2011) 136 TTJ 574/48 DTR 386 (Mum.) (Trib.)

Merely because the assessee has a different perception of the situation than the AO, even though, in the ultimate analysis, the stand of the AO is to be upheld, it cannot be said that the assessee has concealed any particulars. The admission or rejection of a claim is a subjective exercise and whether a claim is accepted or rejected has nothing to do with furnishing of inaccurate particulars of income. What is a correct claim and what is an incorrect claim is a matter of opinion. Raising a legal claim, even if it is ultimately found to be legally unacceptable, cannot amount to furnishing of inaccurate particulars of income. The development of law is a dynamic process which is affected by the innumerable factors, and it is always an ongoing exercise. In such circumstances, a bona fide legal claim by the assessee being visited with penal consequences only because it has not been accepted thus far by the tax authorities or judicial authorities is an absurdity. In any event, the connotations of expression 'particulars of income' do not extend to the issues of interpretation of law and as such making a claim, which is found to be unacceptable in law, cannot be treated as furnishing of inaccurate particulars of income."

6. In view of above facts and circumstances, we do not find merit in the penalty so imposed by the A.O. U/s 271(1)(c) of the Act, therefore, we direct to delete the same.

7. In the result, appeal of the assessee is allowed.

Order pronounced in the open court on 05th April, 2019.

Sd/-
(विजय पाल राव)
(VIJAY PAL RAO)
न्यायिक सदस्य / Judicial Member

Sd/-
(रमेश सी शर्मा)
(RAMESH C SHARMA)
लेखा सदस्य / Accountant Member

जयपुर / Jaipur
दिनांक / Dated:- 05th April, 2019

***Ranjan**

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:

1. अपीलार्थी / The Appellant- Bright Metals India P. ltd., Jaipur.
2. प्रत्यर्थी / The Respondent- The A.C.I.T., Circle-1, Jaipur.
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त(अपील) / The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No. 1093/JP/2018)

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar