

IN THE INCOME-TAX APPELLATE TRIBUNAL "F" BENCH MUMBAI  
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER AND  
SHRI G. MANJUNATHA, ACCOUNTANT MEMBER  
ITA No. 6900/Mum/2017 (Assessment Year 2007-08)

Just Dial Ltd (Formerly known as Just Dial Pvt.Ltd.) M-501-B, Palm Court Complex, Above D-Mart Near Goregaon Sport Club, New Link Road, Malad (W)  Mumbai-400 064 <b>PAN: AAC8049G</b>	Vs.	DCIT-9(2) Now DCIT 12(3)(1) Room No.147B Aaykar Bhawan  Mumbai-400 020
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Appellant

Respondent

Appellant by : Shri Bhupendra Shah (AR)

Respondent by: Shri Rajeev Gubgotra (DR)

Date of Hearing: 04.04.2019

Date of Pronouncement: 04.04.2019

**PER PAWAN SINGH, JUDICIAL MEMBER;**

This appeal by assessee is directed against the order of ld. Commissioner of Income-tax (Appeals)-20, Mumbai [hereinafter referred as ld. CIT(A)] dated 10/08/2017 which in turn arises from assessment order passed u/s 271(1)(C) dated 29/03/2012.

The assessee has raised the following grounds of appeal:

- 1. In the facts and the circumstances of the case and in law, the Assessing Officer erred in levying penalty of Rs. 12,14,665/- under section 271(1)(c) of the Income Tax Act, 1961 ('the Act') without appreciating the facts of the case and the relevant case laws.*
- 2. In the facts and the circumstances of the case and in law, the Ld. CIT(A) erred in confirming the penalty of Rs. 12,14,665/- u/s 271(1)(c) of the Act without appreciating the facts of the case and the various case laws cited by the Appellant and also*

*overlooking the fact that there has been neither any concealment of income nor furnishing of inaccurate particulars of income.*

2. Brief facts of the case are that the assessee is a company and in the business of Telephonic and printed yellow page services. The assessee filed its return of income for AY 2006-07 on 30.10.2007 declaring total income at Rs. 9,57,38,971/-. The return was selected for scrutiny. The assessment was completed under section 143(3) on 23/12/2009. The AO while passing the assessment order noted that the assessee had debited a sum of Rs. 36,08,634/- to the profit and loss account, on account of loss on PMS sale of shares. The assessee has not added the same while computing the total income. The AO further noted that as per principle of accountancy the loss on account of PMC sales of share should be added to the income of assessee. Therefore, the AO added amount Rs. 36,08,634/- to the income of the assessee and initiated penalty u/s. 271(1)(c). No further appeal was filed by the assessee against such addition. The AO issued notices u/s 274 r.w.s. 271(1)(c) dated 23/12/2009 and subsequent second notice on 09/03/2012. The assessee filed its reply dated 21/03/2012. In the reply the assessee contended that due to oversight and mistake the profit and loss on account of loss on PMS sale of shares was not added back the short term capital loss in the statement of accounts. The explanation of assessee was not accepted by AO. The AO levied the penalty@100% of tax sought to be evaded. The AO worked out the

penalty of Rs. 12,14,665/- vide his order dated 29/03/2012. On appeal before CIT(A) the action of AO was confirmed in ex-parte order dated 23/01/2013. The assessee filed further appeal before Tribunal vide ITA No. 2660/Mum/2013. The Tribunal restored the appeal to the file of CIT(A) for providing opportunity of hearing to the assessee and to re-adjudicate the issue. The Ld. CIT(A) again confirm the action of AO. While confirming the order of penalty , the that Ld. CIT(A) also concluded that the contention of the assessee that the mistakes were bona fide and gone unnoticed is not acceptable, has the error gone unnoticed the assessee would have availed substantial benefit by way of lesser tax liability. Further aggrieved by the order of Ld. CIT(A), the assessee has filed present appeal before us.

3. We have heard the submissions of the Ld. AR of the assessee and Ld. DR for revenue and perused the material available on record. We have also deliberated the various case laws relied by lower authorities. The Ld. AR of the assessee submits that due to bona fide mistakes, the capital gain (loss) was not added to the computation of total income. The assessee during the assessment realized its mistake and offered the same for taxation. There was no malafide intention on the part of the assessee. The assessee filed no further appeal against the addition as the bona fide mistake was accepted and the income was offered for taxation. The assessee in reply to the show cause notice under section 274/ 271(1)(c) issued by AO, filed its reply dated 21/03/2012, copy of

which is filed by the assessee vide page no. 46 of paper book. The Ld. AR of the assessee invited our attention to para 1 of its reply wherein the assessee has explained that **“during the assessee has sold a building for Rs. 59,60,000/- and earned short term capital gain of Rs. 38,73,000/- and after deduction of written down value (WDV) of Rs. 20,86,700/-, the assessee incurred loss of Rs. 36,08,634/- against the Portfolio investments with Prudential ICICI. The Loss of Rs. 36,08,634/- in portfolio investment was debited in the profit and loss account while doing so inadvertently and through oversight, did not added back this Short Term Capital Loss in the statement of income”**. The Ld. AR submits that the assessee has given satisfactory explanation that the assessee has corrected its mistake during assessment itself. The explanation offered by the assessee was satisfactory as it was a human error. In support of the submission the Ld. AR of the assessee relied upon the decision of Hon’ble Apex Court in Pricewaterhouse Copers Pvt Ltd (PWC) Vs CIT 348 ITR 306 (SC), Bombay High Court Vs. Bennett Colemann & Co.Ltd. 259 CTR 383, CIT vs Somany Evergree Knits Ltd 352 ITR 592 (Bombay) and Punjab & Haryana High Court in CIT vs. Siddharth Enterprises 322 ITR 80.

4. On the other hand, the Ld. DR for the revenue supported the order of AO. The Ld. DR further submits that had the case was not been selected for scrutiny the income would have escaped assessment, when the AO detected the particular the assessee has taken an excuse of

bona fide mistake. The Ld. DR further submits that the facts in case law of PWC Vs CIT (supra) are not applicable on the facts of the present case. In the said case the assessee failed to detect the error. In CIT vs. Bennett Colemann & Co.Ltd, (supra), there were change of head of the income and in Somany Evergree Knits Ltd (supra) it was held that it was bona fide and inadvertent mistake of CA. Thus the case law relied by the Ld. AR of the assessee are not helpful for him.

5. We have considered the rival submission of the parties and have gone through the orders of authorities below. There is no dispute that the assessee suffered a loss on sales of share. Initially in the computation of income the assessee has not added the loss from PMS sale of share in the computation of income. The AO noted that this loss of Rs. 36,08,634/-should have been added to the income of the assessee and thereby added it to the total income.

6. We have noted that the AO has not recorded its finding whether this fact was confronted to the assessee or not. Or when this fact confronted with assessee, what was the explanation offered by the assessee. The contention of the Ld. AR of the assessee before us is that the assessee due to bona fide mistake not added back the loss in profit and loss account. As soon as the mistake was noticed was admitted and the income as offered to tax during the assessment. During the penalty proceedings, the assessee filed its reply vide reply dated 21/03/2012, copy of which is filed by vide page no. 46 of the paper book. The perusal

of reply reveals that loss in portfolio was debited in the profit and loss account while doing so inadvertently and due to oversight did not added back to the profit and loss account. We have further observed that the AO without discussing the contents of the explanation in reply of assessee concluded that the reply of assessee is found to be untenable. The AO further noted that had the case not been selected for scrutiny this income would have been escaped assessment. The assessee has not filed appeal against the additions. The Ld. CIT(A) confirm the action of AO on similar line.

7. We have noted that the contention of assessee throughout the assessment, penalty proceedings as well as before the first appellate authority was that due to inadvertent and oversight, the assessee did not added the short term capital loss in the statement of income. The assessee in reply to the notice u/s 274 r.w.s. 271(1)(c) specifically contended that it was a bona fide and inadvertent mistake.

8. We have further noted that the assessee has no option to appeal before first appellate authority as the mistake inadvertent being claimed bonafide. The assessee accepted the short term capital loss and offered the same for taxation.

9. The Hon'ble Apex Court in PWC vs CIT (Supra) held that the imposition of penalty would be unwarranted, where the assessee had committed inadvertent bona fide error and had not intended to either

conceal its income or furnish inaccurate particulars. Further the Hon'ble Bombay High Court in Bennett Colemann & Co. Ltd (supra) held that when there was an inadvertent mistake in the part of the assessee in including the interest received of 6% on the Government of India capital index bond as interest received on tax free bond no penalty is leviable.

10. Further in CIT vs Somany Evergreen Knits Ltd (supra) the Hon'ble Bombay High Court held that the bona fide and inadvertent mistake of CA while filing of return of income will not amount furnishing of inaccurate particulars of income. The Hon'ble Punjab and Haryana High Court in CIT Vs Sidhartha Enterprises (supra) held that penalty for concealment can be levied only when there is some element of deliberate default and not mere mistake; penalty would not levied for claim of capital loss against the profit of business by negligence or mistake.

10. Considering the above factual and legal discussions we are of the view that the assessee has given satisfactory explanation vide reply dated 21/03/2012 while replying the show cause notice u/s 271(1)(c), which in our view there was sufficient and reasonable explanation given by assessee as prescribed under section 273B of the Income Tax Act. Therefore, we are of the view that that no penalty was leviable on the assessee when the assessee admitted the inadvertent mistake and corrected the same immediately when it came to their notice and offered the income for taxation. The submissions of Ld. DR for the revenue that

the case law relied by the Ld. AR of the assessee are on different facts, is not acceptable to us. As the ratio of law discussed by Hon'ble Superior Court in PWC Vs CIT (supra), Bombay High Court Vs. Bennett Colemann & Co.Ltd. (supra), CIT vs Somany Evergreen Knits Ltd ( supra) and Punjab & Haryana High Court in CIT vs. Siddhartha Enterprises 322 ITR 80 are squarely applicable on the facts of the present case. No other contrary law is brought to our notice to take any other view.

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

Order pronounced in the open court on 04 /04/2019.

**Sd/-**

**G. MANJUNATHA**  
**ACCOUNTANT MEMBER**

Mumbai, Date: 04 .04.2019

Thirumalesh

**Copy of the Order forwarded to :**

1. Assessee
2. Respondent
3. The concerned CIT(A)
4. The concerned CIT
5. DR "F" Bench, ITAT, Mumbai
6. Guard File

**Sd/-**

**PAWAN SINGH**  
**JUDICIAL MEMBER**

**BY ORDER,**

**Dy./Asst.Registrar**  
**ITAT, Mumbai**