

आयकर अपीलीय अधिकरण, मुंबई न्यायपीठ, 'ए', मुंबई।

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES "A", MUMBAI**

Before Shri Saktijit Dey, Judicial Member and

Shri G. MANJUNATHA, Accountant Member,

**ITA No.5026Mum/2018
Assessment Year: 2013-14**

Shri Ameet Vipin Desai, B-62/1237, Veera Desai Road, Azad Nagar Andheri (West), Mumbai-400053	बनाम/ Vs.	ITO-24(1)(1), Room No.605, 6 th Floor, Piramal Chambers, Lower Parel, Mumbai-400012
(निर्धारिती / Assessee)		(राजस्व / Revenue)
P.A. No. AABPD4927G		

निर्धारिती की ओर से / Assessee by	Shri Bharat Kumar
राजस्व की ओर से / Revenue by	Smt. Jothi Laksmi Nayak

सुनवाई की तारीख / Date of Hearing :	19/06/2019
आदेश की तारीख / Date of Order:	28/06/2019

आदेश / O R D E R

Per G. Manjunatha, Accountant Member

This appeal filed by the assessee is directed against order of the Ld CIT(A)-36, Mumbai, dated 01/06/2018 and it pertains to AY-2013-14. The assessee has raised following grounds of appeal:-

“1. On the facts and in the circumstances of the case and in law, the Ld. CIT (A) erred in confirming in penalty u/s 271(l)(c) of Rs. 1,41,620.

2. On the facts and in the circumstances of the case and in law, the Ld. CIT (A) erred in confirming stand of A.O. where Ld. A.O. did not strike off relevant limb of Penalty in Penalty Notice issued on 29/12/2015.

3. On the facts and in the circumstances of the case and in law, the Ld. CIT (A) erred in confirming stand of A.O. where assessee committed technical mistake due to oversight system error and claimed double benefit of Speculation Loss where this speculation loss is not set off in subsequent Years.

4. On the facts and in the circumstances of the case and in law, the Ld. CIT (A) erred in confirming stand of A.O where there is bonafide human error and there is no intention to evade tax and even after the assessment there is only demand raised of Rs. 2470 which shows the correct intention of Assessee.”

2. The brief facts of the case are that the assessee is an individual, engaged in the business of trading in commodity futures and commodity derivatives filed his return of income for Assessment Year 2013-14 on 30/09/2013, declaring total income at Rs.10,65,330/-. The case was selected for scrutiny and the assessment was completed u/s 143(3) of the Income Tax Act (hereinafter 'the Act') on 29/12/2015 determining total income at Rs.10,68,460/- after making additions towards speculation loss of Rs.4,58,315/-. Thereafter, the AO Initiated penalty proceedings under section 271(1)(c) of the Act, for furnishing of inaccurate particulars of income and called upon the assessee to explain as to why penalty shall not be levied for excessive claim of speculation loss of Rs.4,58,315/-. In response, the assessee submitted that it has neither furnished inaccurate particulars of income nor concealed particulars of income, because, by inadvertent mistake, it has debited speculation loss in the profit and loss account, even though, the same has been separately computed under the head capital gains. Further, resultant loss has been carried forward to subsequent years, because speculation loss cannot be adjusted against any other income. The assessee further

contended that the said claim is on account of wrong computation made by the consultant who prepared the income tax return, therefore the same cannot be considered as furnishing inaccurate particulars of income which attracts penalty under section 271(1)(c) of the Act. The AO, after considering relevant submissions of the assessee and also relied upon the decision of Honourable Supreme Court in the case of Union of India vs Dharmendra Textile Processors (306 ITR 277)(SC) held that the assessee has failed to offer any explanation for claiming speculation loss under the head income from business, even though, the said loss has been carried forward to subsequent years, therefore, he opined that the assessee has furnished inaccurate particulars of income within the meaning of section 271(1)(c) of the Act and accordingly levied penalty of Rs.1,41,620/-, which is 100% tax sought to be evaded.

3. Aggrieved by the penalty order, the assessee preferred appeal before the Ld. CIT(A). Before the Ld. CIT(A), the assessee reiterated his submissions made before the AO to argue that speculation loss has been debited into profit and loss account by inadvertent mistakes of accountant who prepared income tax return, but such loss has not been claimed as deduction against any other income for the year under consideration, therefore, same cannot be considered as furnishing of inaccurate particulars of income.

4. The Ld CIT(A), after considering relevant submissions of the assessee and also relied upon various judicial precedence including the decision of Hon'ble Delhi High Court in the case of CIT vs Zoom Communication (P) Ltd. reported in 327 ITR 510(Delhi)

held that the assessee has deliberately claimed speculation loss in the profit loss account without any basis and explanation furnished by him for making such claim is not bona-fide, therefore, explanation (1) to section 271(1)(c) of the Act would be attracted and hence there is no reason to interfere with the findings of the AO in levying penalty u/s 271(1)(c) of the Act.

5. Aggrieved by the order of the Ld CIT(A), the assessee is in appeal before us.

6. The Ld. AR for the assessee submitted that the Ld CIT(A) was erred in confirming penalty levied u/s 271(1)(c) of the Act, in respect of speculation loss of Rs.4,58,314 without appreciating the fact that the said mistake was bona fide error of accountant who prepared Income tax return as per which loss has been debited into the head profits and loss account and also shown in the capital loss, but the assessee did not take benefit of such loss and there is no revenue loss, therefore, the same cannot be considered as furnishing of inaccurate particulars of income which attracts penalty under section 271(1)(c) of the Act. In this regard, he relied upon the decision of the Hon'ble Supreme Court in the case of Price Waterhouse Coopers Pvt Ltd in Civil Appeal no.6924 of 2012.

7. The Id. DR on the other hand, strongly supported order of the Ld. CIT(A) and submitted that it is a clear case of deliberate attempt to conceal particulars of income by furnishing inaccurate particulars of income in respect of speculation loss which is evident from the fact that the assessee has debited such loss into profit and loss account and also claimed under the head short-term capital loss. Had the case was not selected for

scrutiny, the same would go unnoticed. Therefore, there is no merit in the arguments of the assessee that assessee is not taking benefit of such double claim of speculation loss and hence, the AO was right in levying penalty u/s 271(1)(c) of the Act.

8. We have heard both parties, perused the material available on record and gone through the orders of authorities below. It is an admitted fact that the assessee has claimed speculation loss twice in its financial statement. The assessee has debited speculation loss into profit & loss account and carried forward business loss to subsequent years. He has also claimed such loss under the head short-term capital loss and carried forward the same to subsequent years. Although, there is double claim in respect of speculation loss, but it is evident from the financial statement filed for the relevant year including statement of total income, the said loss has not been set off against any other income for the year. When the loss has not been set off against any other income which results into reduction of income for the year under consideration and also the fact that the assessee has explained said mistakes and attributed it to the accountant who prepared the income tax return, there is no reason for the AO to doubt explanation offered by the assessee that the claim was made on bona fides mistake committed by an accountant which we all prone to do. We further noted that when the assessee has explained the reasons for making a double claim in respect of a speculation loss and also made it very clear that such loss has not been set off against any income, then the AO was erred in coming to the conclusion that the assessee has furnished inaccurate particulars of income within the meaning of section 271(1)(c) of the

Act. This legal proposition is supported by the decision of the honourable Supreme Court in the case of Price Waterhouse Coopers Pvt Ltd in Civil Appeal no.6924 of 2012, where the court held that when there is bona fide mistake in the claim which is on account of human error which we all prone to do in normal circumstances, the same cannot be considered as furnishing of incorrect particulars of income which warrants levy a penalty under section 271(1)(c) of the Act. Therefore, we are of the considered view that the Id AO as well as Id. CIT(A) were erred in sustaining penalty levied u/s 271(1)(c) of the Act in respect of speculation loss, hence, we direct the AO to delete penalty levied u/s 271(1)(c) of the Act.

9. In the result, appeal filed by the assessee is allowed.

Order pronounced in the open Court on 28/06/2019.

Sd/-

(Saktijit Dey)

न्यायिक सदस्य / JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated : 28/06/2019

Shekhar, P.S./नि.स.

Sd/-

(G. Manjunatha)

लेखा सदस्य / ACCOUNTANT MEMBER

आदेश की प्रतिलिपि अद्येषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant (Respective assessee)
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT, Mumbai.
4. आयकर आयुक्त / CIT(A)- , Mumbai,
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)

आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai