

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

**BEFORE SHRI RAJESH KUMAR, ACCOUNTANT MEMBER AND
SHRI RAVISH SOOD, JUDICIAL MEMBER**

**ITA No.6799/M/2018
Assessment Year: 2013-14**

Shri Tikhuchand D. Jogani, 301, Gundecha Chambers, N.M. Road, Fort, Mumbai - 400 023 PAN: AAAPJ8019Q	Vs.	ACIT 17-(3), Room No.135-A, Aayakar Bhavan, M.K. Road, Mumbai - 400020
(Appellant)		(Respondent)

Present for:

Assessee by : Shri Ashok J. Patil, A.R.
Revenue by : Shri Amit Pratap Singh, D.R.

Date of Hearing : 13.11.2019
Date of Pronouncement : 14.01.2020

ORDER

Per Rajesh Kumar, Accountant Member:

The present appeal has been preferred by the assessee against the order dated 11.09.2018 of the Commissioner of Income Tax (Appeals) [hereinafter referred to as the CIT(A)] relevant to assessment year 2013-14.

2. The grounds taken by the assessee are as under:

"(1) The learned Commissioner of Income Tax (Appeal) erred in levying penalty u/s.271(1) (c) of Rs.91,271/- on Long Term capital Loss on Quoted Shares of Rs.4,43,061/- disclosed by the appellant. The learned Commissioner of Income tax(Appeal) erred in rejecting appellants claim that there is no concealment of income & inaccurate particulars were submitted and erred in forming the opinion that the assessee has concealed income or furnished inaccurate particulars of such income, contrary tax evidence and material on records.

(2) Your appellant prays to consider the facts and drop the penalty u/s.271(1)(C)."

3. The only issue raised by the assessee is against the confirmation of penalty at Rs.91,271/- as levied by the AO under section 271(1)(c) of the Act in respect of long term capital loss on quoted shares.

4. The facts in brief are that the assessment was framed in this case under section 143(3) of the Act on 28.03.2016. In the said assessment order the penalty proceedings were initiated under section 271(1)(c) of the Act for filing inaccurate particulars of income and concealment of income thereby initiating the penalty under both the limbs and accordingly notice under section 274 read with section 271 dated 28.03.2016 was issued. The assessee had incurred long term capital loss on sale of quoted shares amounting to Rs.4,43,061/- and carried forward the same to the next year. The AO during the course of assessment proceedings rejected the claim of the assessee of carry forward of loss and computed the total assessable income accordingly. Thereafter, the AO imposed penalty equal to 100% of the tax sought to be evaded which worked out to Rs.91,271/- vide order dated 30.09.2016 passed under section 274 read with section 271(1)(c) of the Act.

5. Aggrieved by the said order of the AO, the assessee preferred an appeal before the Ld. CIT(A) who also dismissed the appeal of the assessee by holding that the assessee has not offered any explanation and therefore clause (a) of explanation 1

to section 271(1)(c) of the Act is applicable and thus upheld the penalty levied by the AO.

6. After hearing both the parties and perusing the material on record, we observe that in this case the assessee has incurred long term capital loss on sale of quoted shares of Rs.4,43,061/- and claimed the loss as carried forward to the next year. AO in the assessment proceedings rejected the claim of the assessee on the ground that since the income of long term capital gain is exempt under section 10(38) of the Act and likewise any long term capital loss on sale of quoted shares is also not allowable to be carried forward for future set off in the subsequent years. In this case, we observe that assessee has fully disclosed all the facts qua the claim of said long term capital loss in the return of income. There is merit in the contentions of the assessee that no penalty is imposable where the assessee has disclosed the full facts qua the claim in the return of income. The assessee's case is squarely covered by the decision of Hon'ble Supreme Court in the case of CIT v. Reliance Petroproducts (P.) Ltd. [2010] 322 ITR 158 (SC) wherein the Hon'ble Supreme Court has held that no penalty is imposed where the assessee has fully disclosed the facts qua the said claim even if the said claim is not allowable under the Act. Besides, we find that in this case the penalty is not legally sustainable on the ground that in the notice issued dated 28.03.2016 under section 274 read with section 271(1)(c) of the Act has been issued in mechanical manner without application of mind by the AO. The AO has not stated the one of the two limbs on which the penalty was proposed to be levied meaning thereby that there is no application of mind on the part

of the AO. The notice has been issued in a standard format thereby depriving the assessee to respond to the charge on which the penalty was proposed to be levied. Similarly, in the assessment order, the AO has stated that penalty is being initiated for furnishing inaccurate particulars of income and for concealment of income and similarly the penalty has been imposed in the penalty order passed under section 271(1)(c) of the Act dated 30.09.2016. This clearly shows that the AO was in a confused state of mind and was not knowing as to on which of the two limbs the penalty was to be imposed. In such circumstances, the penalty as imposed by the AO can not be sustained as the initiation of the penalty is not valid under law. The case of the assessee is squarely covered by the following decisions:

- a) CIT Vs SSA's Emerald Meadows(SC) (2016) 73 Taxmann.com 241 Karnataka – SLP dismissed as reported in (2016) 73 Taxmann.com 248 (SC)
- b) CIT vs. Manjunath Cotton and Ginning Factory (2013) 359 ITR 565 (Kar.)
- c) CIT vs. Shri Samson Perinchery (2017) 392 ITR 4 (Bom.)
- d) CIT vs. Mrs. Piedade Perinchery ITXA No.1310 of 2014 order dated 10.01.2017 (Bom. – HC)

7. The Hon'ble Bombay High Court in the Case CIT Vs Shri Samson Perinchery & CIT vs. Mrs. Piedade Perinchery (supra) has held that penalty can not be levied where the AO has issued notice in a machanical manner without striking off the redundant limb or without mentioning the limb on which the penalty was proposed to be levied. In view of the above discussion and in the light of the ratio laid down by the Hon'ble

Bombay High Court, we are inclined to set aside the order of Ld. CIT(A) and direct the AO to delete the penalty.

8. Since the issue has been decided on legal issue in favour of the assessee, the merit need not be adjudicated.

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

Order pronounced in the open court on 14.01.2020.

Sd/-
(Ravish Sood)
JUDICIAL MEMBER

Sd/-
(Rajesh Kumar)
ACCOUNTANT MEMBER

Mumbai, Dated:14.01.2020.

* Kishore, Sr. P.S.

Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The CIT (A) Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.