

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

**BEFORE SHRI S. RIFAUR RAHMAN, AM &
SHRI RAVISH SOOD, JM**

आयकरअपीलसं./ I.T.A. No. 4869/Mum/2018
(निर्धारणवर्ष / Assessment Year: 2010-11)

WSA Shipping Bombay Pvt. Ltd. 701-705, T Square, Opp.Chandivali Petrol Pump, Saki Vihar Road, Saki Naka, Andheri(E), Mumbai-400 072	बनाम/ Vs.	ACIT-11(3)(1), 4 th floor, Aayakar Bhavan, M. K. Road, Mumbai-400 020
स्थायीलेखासं./जीआइआरसं./PAN No. AAACW2373B		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थीकीओरसे/ Appellant by	:	Shri Nitin A. Joshi, AR
प्रत्यर्थीकीओरसे/ Respondent by	:	Shri V. Vinod Kumar, DR

सुनवाईकीतारीख/ Date of Hearing	:	27.11.2019
घोषणाकीतारीख / Date of Pronouncement	:	08.01.2020

आदेश / ORDER

PER S. RIFAUR RAHMAN (ACCOUNTANT MEMBER):

The present appeal has been filed by the assessee against the order of Ld. Commissioner of Income Tax (Appeals)-18, Mumbai, dated 15.06.18 for AY 2010-11.

2. The brief facts of the case are that assessee is engaged in the business of shipping agency and its assessment u/s 143(3) was completed on 14.03.13 determining the total income of Rs. 1,52,56,610/- under the normal provision of Income Tax Act, as against the returned income of Rs. 1,40,50,865/-. The difference between the return income and assessed income is on account of addition /disallowance on account of mismatch of AIR (contractual receipts) of Rs. 10,49,323/- and adhoc 10% disallowance of Misc. Expenses amounting to Rs. 1,56,423/-. The assessee accepted the assessment made u/s 143(3) of the Act and does not challenged before any authority. AO initiated the penalty u/s 271(1)(c) of the Act in respect of the above disallowance. Assessee was given opportunity to put forth submission in the matter. Accordingly, show cause notice issued and served upon the assessee. In the penalty proceeding, assessee submitted that the interest in the AIR are 707 transaction aggregating to Rs. 19,00,63,573/- and assessee could reconcile 706 transactions amounting to Rs. 18,90,14,250/- with its financial statements. Assessee submitted that it has made all possible disclosures at the time of filing return of income and

mere disallowance cannot be a reason for levying of penalty. AO rejected the contentions of the assessee and levied penalty for Rs. 3,60,000/-.

3. Aggrieved by the above order of AO, assessee preferred appeal before Ld. CIT(A) and Ld. CIT(A) rejected the submission of the assessee and observed that the claim made by the assessee is not verifiable at this stage. Moreover, AR could not explain as to why this evidence was not submitted before the AO during the penalty proceedings and further he observed that penalty proceedings were completed on 23.03.16, whereas letter submitted by the AR on 11.04.14. He further observed that AO has given sufficient opportunity of being heard to the assessee at the time of penalty proceeding. Accordingly, additional evidence cannot be admitted as the provisions of Rule 46A of the Income Tax Rules are not applicable.

4. Now before us, the assessee has preferred appeal by raising the grounds of appeal as under:-

On the facts and circumstances of the case and in law the Commissioner of Income tax (Appeals) erred in upholding the concealment penalty of Rs.3,60,000 in respect of income of Rs. 10,49,323.

The Appellant craves leave to add, to alter, to amend, to modify, to substitute and/or to delete any one or more of the Grounds of Appeal at or before the hearing of this Appeal.

5. At the outset, Ld. AR appearing on behalf of the assessee submitted before us that this ground is squarely covered by the consolidate order of Coordinate Bench of Hon'ble ITAT in ITA No. 3828 & 3829/Mum/2018 for AY 2010-11 & 2011-12 in the case of Total Transport Systems Ltd. vrs. ACIT and for the sake of clarity, which is reproduced below:-

4. We have heard both the counsel and perused the records. We find that it is settled law that quantum proceedings and penalty proceedings are separate. Confirmation of addition in the quantum proceedings does not ipso facto means that penalty has to be confirmed. In this case we note that in one of the years assessee has submitted additional evidences which were rejected by learned CIT(A) on the ground that assessee

did not submit the same before the Assessing Officer. In another year the A.O. rejected the remanded evidences on the ground that he was not satisfied with the reconciliation even though he did not dispute that the contract receipt accounted for from the disputed party was more than that reflected in the 26AS statement. In these facts in our considered opinion the conduct of the assessee is not contumacious so as to warrant visit by the rigours of penalty u/s. 271(1)(c) of the Act. This view is supported by the decision of the larger bench of Hon'ble Supreme Court in the case of Hindustan Steel Vs. State of Orissa Vs. (83 ITR 26). In this case it was expounded that the authority may not levy the penalty if the conduct of the assessee is not found to be contumacious. In the present case we find that in one of the years assessee has duly submitted the reconciliation although at the appellate stage which were rejected by learned CIT(A) on the ground that he was not admitting the same as the same were not produced before the Assessing Officer. In another year Assessing Officer rejected the evidences of reconciliation even though he admitted that the contract receipts from the disputed party accounted for were more than that reflected in the statement 26AS.

6. On the other hand, Ld. DR fairly conceded that these ground is covered by the order of ITAT.

7. We have heard counsels for both the parties and we have also perused the material placed on record as well as the orders passed by revenue authorities. We find that the identical ground raised in the present appeal has already been decided by the Coordinate Bench of ITAT in ITA No. 3828 & 3829/Mum/2018 for AY 2010-11 & 2011-12 in the case of Total Transport Systems Ltd. vrs. ACIT on merits.

8. Therefore, respectfully following the decision of the coordinate bench of ITAT which is applicable *mutatis mutandis* in the present case, we are inclined to delete the penalty levied by AO. Accordingly, we **allow** the ground raised by the assessee.

9. In the net result, the appeal filed by the assessee stands **allowed**.

Order pronounced in the open court on 8th Jan 2020.

Sd/-

(Ravish Sood)

न्यायिकसदस्य / Judicial Member

मुंबई Mumbai; दिनांक Dated :

Sr.PS. Dhananjay

Sd/-

(S. Rifaur Rahman)

लेखासदस्य / Accountant Member

08.01.2020

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT- concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File
आदेशानुसार/ BY ORDER,

उप/सहायकपंजीकार (Dy./Asstt.Registrar)
आयकरअपीलीयअधिकरण, मुंबई/ ITAT, Mumbai