

IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "A", PUNE – VIRTUAL COURT

BEFORE SHRI R.S. SYAL, VICE PRESIDENT AND
SHRI S.S. VISWANETHRA RAVI, JUDICIAL MEMBER

ITA No. 1684/PUN/2017

निर्धारण वर्ष / Assessment Year : 2007-08

ACIT, Circle-12, Pune	Vs.	Zawar Sales Limited, 25, Asha Heritage, S.No.12/1B, Hadapsar, Pune 411028 PAN : AAACZ0593N
Appellant		Respondent

Assessee by None
Revenue by Shri S.P. Walimbe

Date of hearing 11-08-2020
Date of pronouncement 11-08-2020

आदेश / ORDER

PER R.S.SYAL, VP :

This appeal by the Revenue arises out of the order dated 30-09-2016 passed by the CIT(A)-14, Mumbai deleting the penalty amounting to Rs.1,66,43,021/- imposed by the Assessing Officer (AO) u/s.271(1)(c) of the Income-tax Act, 1961 (hereinafter also called 'the Act') in relation to the assessment year 2007-08.

2. Briefly stated, the facts of the case are that the assessee sold certain land and declared long term capital gain on sale thereof. The AO opined that such income should have been offered as

“Business income” instead of long term capital gain. Accordingly, penalty was imposed, which came to be deleted in the first appeal.

3. We have heard the ld. DR through virtual court and gone through the relevant material on record. It is seen that the assessee treated land as fixed asset since earlier years and did not convert it into stock in trade. The long term capital gain was offered on sale of such land and tax was accordingly paid. The AO treated the gain arising from the transfer of such land as “Business income” instead of long term capital gain as offered. It is a case of difference of opinion between the assessee and the AO on the facts already disclosed by the assessee. Merely because the AO treated the amount of income already offered differently from the one portrayed by the assessee, cannot in our considered opinion be a cause for imposing penalty u/s.271(1)(c) of the Act. The Hon’ble Supreme Court in *CIT Vs. Reliance Petro products* 322 ITR 158 (SC) has held that no penalty should be imposed when the assessee adopts a *bona fide* view and has declared all the necessary particulars concerning the income in dispute. Since the view of the ld. CIT(A) is in accordance with the *ratio* laid down in the *Reliance Petroproducts (supra)*, we endorse the same.

4. The second issue on which penalty has been imposed is disallowance of Foreign tour and travelling expenses amounting to Rs.4,45,482/-. The AO made disallowance because relatives of the directors also joined in the foreign tours. This was followed by the penalty. The CIT(A) deleted the penalty against which the Revenue has come up in appeal before the Tribunal.

5. We have heard the ld. DR and gone through the relevant material on record. It is seen from the impugned order that the assessee incurred foreign tour expenses for conducting meetings with cement dealers of India Cement Ltd. and Visaka Industries Ltd., for which it was acting as C&F agent. These expenses included some amount spent on minor sons and daughters of the directors. The ld. CIT(A) has rightly relied on *ACIT Vs. TRB Exports P. Ltd. 40 SOT 22 (ITAT) Chandigarh* at para 5.4 of the impugned order, in which the Tribunal deleted the penalty under similar circumstances. No contrary precedent has been brought on record by the ld. DR. We, therefore, uphold the deletion of penalty.

6. In the result, the appeal is dismissed.

Order pronounced in the Open Court on 11th August, 2020.

Sd/-
(S.S. VISWANETHRA RAVI)
JUDICIAL MEMBER

Sd/-
(R.S.SYAL)
VICE PRESIDENT

पुणे Pune; दिनांक Dated : 11th August, 2020
सतीश

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order is forwarded to:

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent;
3. The CIT(A)-14, Mumbai
4. The CIT-8, Mumbai
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, पुणे
“ए” / DR ‘A’, ITAT, Pune
6. गार्ड फाईल / Guard file

आदेशानुसार/ BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune

		Date	
1.	Draft dictated on	11-08-2020	Sr.PS
2.	Draft placed before author	11-08-2020	Sr.PS
3.	Draft proposed & placed before the second member		JM
4.	Draft discussed/approved by Second Member.		JM
5.	Approved Draft comes to the Sr.PS/PS		Sr.PS
6.	Kept for pronouncement on		Sr.PS
7.	Date of uploading order		Sr.PS
8.	File sent to the Bench Clerk		Sr.PS
9.	Date on which file goes to the Head Clerk		
10.	Date on which file goes to the A.R.		
11.	Date of dispatch of Order.		

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