

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

**BEFORE SHRI RAJESH KUMAR, ACCOUNTANT MEMBER AND
SHRI PAWAN KUMAR GADALE, JUDICIAL MEMBER**

**ITA No.108/M/2019
Assessment Year: 2006-07**

M/s. Ecofriendly Hotels India P. Ltd., 36/40, Mahalaxmi Bridge Arcade Mahalaxmi, Mumbai, Maharashtra - 400 034 PAN: AABCE2260L	Vs.	ITO-5(1)(4), Aayakar Bhavan, Churchgate, Mumbai - 400020
(Appellant)		(Respondent)

Present for:

Assessee by : Shri Haridas Bhat, A.R.
Revenue by : Shri Amit Pratap Singh, D.R.

Date of Hearing : 22.10.2020
Date of Pronouncement : 14.12.2020

ORDER

Per Rajesh Kumar, Accountant Member:

The present appeal has been preferred by the assessee against the order dated 30.10.2018 of the Commissioner of Income Tax (Appeals) [hereinafter referred to as the CIT(A)] relevant to assessment year 2006-07.

2. The ground No.1 is not pressed at the time of hearing and accordingly the same is dismissed as not pressed.

3. The issue raised in ground No.2 is against the confirmation of penalty of Rs.7,62,643/- by Ld. CIT(A) as levied by the AO on alleged bogus capital gain transactions of Rs.33,98,593/-.

4. The facts in brief are that the assessment in this case was framed under section 143(3) read with section 147 of the Act vide order dated 06.03.2014 assessing the total income of Rs.46,52,340/- thereby assessing Rs.33,98,593/- as income from undisclosed sources. Pertinent to state that the return of income was filed on 26.05.2006 declaring income of Rs.46,52,248/- and the said income was from short term capital gain. During the year the assessee has earned short term capital gain of Rs.47,00,530/- under section 111(a) which includes short term capital gain from share of Maruti Infra Ltd and Sundaram Multi Ltd to the tune of Rs.33,98,704/-. These shares were stated to be purchased from M/s. Alliance Intermediaries and Network Pvt. Ltd. which belongs to Mukesh Chokshi Group of companies who are engaged in the business of giving accommodation entries and as per the information available with the AO the assessee is beneficiary of bogus purchase of shares for which the bills issued were by M/s. Alliance Intermediaries and Network Pvt. Ltd. Accordingly, the AO called upon the assessee to prove the genuineness of the short term capital gain which was replied by the assessee during the course of assessment . But the AO was not convinced with the submissions of the assessee and finally, treated the said capital gain as income from undisclosed sources instead of short term capital gain and assessed accordingly. According to the AO the assessee has furnished inaccurate particulars of income qua the said capital gain. The AO also issued notice under section 271(1)(c) of the Act initiating the penalty proceedings against the assessee and finally levied penalty under section 271(1)(c) of

Rs.7,62,643/- being 100% of the tax sought to be evaded vide order dated 23.03.2016.

5. The Ld. CIT(A) dismissed the appeal of the assessee by holding that the transactions were not genuine and thus the assessee has filed inaccurate particulars of income.

6. After hearing both the parties and perusing the material on record, we observe that the assessee has shown the short term capital gain from the sale of shares as mentioned hereinabove whereas the AO has stated and treated the same as bogus short term capital gain and assessed as income from other sources. We find a merit in the contentions of the Ld. A.R. that this is just a change of heads of income as the assessee has returned the income under the head capital gains whereas the AO has assessed the income as income from other sources. In our view, no penalty is leviable in case of change of heads of income as the assessee has fully disclosed all the particulars in the return of income. The case of the assessee is supported by the decision of Hon'ble Bombay High Court namely CIT vs. Bennett Coleman & Co. Ltd. (2013) 259 CTR 383 (Bom.) wherein the Hon'ble Bombay High Court has upheld the order of Tribunal wherein the Tribunal has deleted the penalty under section 271(1)(c) of the Act on the ground that there is only change of heads of income which is not shown to be perverse and therefore no substantial question of law arises. The Revenue, on the other hand, relied on the decision of Hon'ble Supreme Court in the case of UOI vs. Dharmendra Textile 306 ITR 277 SC. After perusing the decision relied by the Revenue, we find that the same is not applicable to the present case as the facts are

different and distinguishable. Therefore, we are inclined to set aside the order of Ld. CIT(A) and direct the AO to delete the penalty.

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

Order pronounced in the open court on 14.12.2020.

Sd/-
(PAWAN KUMAR GADALE)
JUDICIAL MEMBER

Sd/-
(Rajesh Kumar)
ACCOUNTANT MEMBER

Mumbai, Dated: 14.12.2020.

* 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.