

आयकर अपीलीय अधिकरण "ए" न्यायपीठ पुणे में ।
IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH, PUNE

BEFORE SHRI S.S. VISWANETHRA RAVI, JUDICIAL MEMBER
AND
SHRI G.D. PADMAHSHALI, ACCOUNTANT MEMBER

आयकर अपील सं. / ITA No.226/PUN/2019
निर्धारण वर्ष / Assessment Year : 2013-14

Aster Premises Private Limited,
201, Phoenix Building,
Bund Garden Road,
Pune – 411001

PAN : AAGCA6254K

.....अपीलार्थी / Appellant

बनाम / V/s.

Joint Commissioner of Income Tax (OSD),
Circle – 1(1), Pune

.....प्रत्यर्थी / Respondent

Assessee by : N O N E
Revenue by : Shri Ramnath P. Murkude

सुनवाई की तारीख / Date of Hearing : 10-10-2022

घोषणा की तारीख / Date of Pronouncement : 13-10-2022

आदेश / ORDER

PER S.S. VISWANETHRA RAVI, JM :

This appeal by the assessee against the order dated 26-11-2018 passed by the Commissioner of Income Tax (Appeals)-1, Pune ['CIT(A)'] for assessment year 2013-14.

2. We find no representation on behalf of the assessee nor any application filed seeking adjournment. Thus, the assessee called absent

and set ex-parte. Therefore, we proceed to dispose of the appeal by hearing the ld. DR and perusing the material available on record.

3. The assessee raised three grounds of appeal amongst which the only issue emanates for our consideration is as to whether the CIT(A) justified in confirming the order of AO in imposing penalty of Rs.42,75,040/- u/s. 271(1)(c) of the Act in the facts and circumstances of the case.

4. Heard ld. DR and perused the material available on record. We note that the assessee is a company engaged in the business of construction and real estate. The assessee filed its return of income declaring total loss of Rs.1,31,76,281/- which was processed u/s. 143(1) of the Act. Later on, under scrutiny, notices u/s. 143(2) and 142(1) of the Act were issued to the assessee. In response to the said notices, authorized representative on behalf of the assessee attended and explained the return of income by furnishing details as called by the AO. The AO asked the assessee to furnish details concerning brought forward long term capital loss. The assessee submitted its submissions vide letter dated 30-10-2015 justifying carry forward long term capital loss. The AO reproduced the said submissions of the assessee in his order at para 4.2. The AO considering the said submissions, rejected the claim of carry forward long term capital loss being wrong claim. At the same time, the AO held that the assessee furnished inaccurate particulars of income vide its order dated 30-10-2015 passed u/s. 143(3) of the Act.

5. In pursuance of said finding the AO initiated penalty proceedings u/s. 271(1)(c) of the Act. The assessee submitted its submissions vide letter dated 14-12-2015 contending there was no concealment of income or

furnishing inaccurate particulars of income by the assessee. Further, there was no finding by the AO as to which information formed to be incorrect or inaccurate concerning the furnishing the inaccurate particulars of income. The assessee also placed reliance on the decision of Hon'ble Supreme Court in the case of CIT Vs. Reliance Petroproducts Pvt. Ltd. reported in 322 ITR 158 (SC). The AO found the said submissions of the assessee as not acceptable and levied penalty of Rs.42,75,040/- vide its order dated 29-04-2016. Aggrieved by the order of AO, the assessee preferred an appeal before the CIT(A) and we note that the CIT(A) confirmed the order of AO levying penalty u/s. 271(1)(c) of the Act by holding the claim of carry forward loss is not bonafie. Aggrieved by the order of CIT(A), now, the assessee is before us by raising above mentioned grounds.

6. We note that the AO clearly held the assessment order passed u/s. 143(3) of the Act that the assessee is not entitled to claim carry forward long term capital loss as it is long term capital gain which clearly establishes that the assessee made a claim of carry forward of long term capital loss by furnishing all the details relevant to such claim. The AO by examination of such details only held the assessee is not entitled to claim carry forward loss but nowhere the AO found the assessee furnished inaccurate particulars of income. Further, we note that the assessee placed reliance on the decision of Hon'ble Supreme Court in the case of Reliance Petroproducts Pvt. Ltd. (supra) which held that a mere making of claim, which is not sustainable in law, by itself would not amount to furnishing inaccurate particulars of income. In the present case also the assessee furnished all the details in respect of its claim to carry forward long term capital loss in response to query raised by the AO. The AO examined all the said details and found the assessee is not entitled to such

claim which clearly shows that the assessee made a claim which is not maintainable under law, so therefore, does not amount to furnishing of inaccurate particulars of income as held by the AO. Therefore, in our opinion, the order of CIT(A) is not justified in confirming the order of AO in levying penalty u/s. 271(1)(c) of the Act by holding the claim of assessee is not bonafide. Thus, the order of CIT(A) is set aside and the penalty imposed by the AO is deleted. Thus, grounds raised by the assessee are allowed.

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

Order pronounced in the open court on 13th October, 2022.

Sd/-
(G.D. Padmahshali)
ACCOUNTANT MEMBER

Sd/-
(S.S. Viswanethra Ravi)
JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 13th October, 2022.
रवि

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A)-1, Pune
4. The Pr. CIT-1, Pune
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "ए" बेंच,
पुणे / DR, ITAT, "A" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

//सत्यापित प्रति// True Copy//

आदेशानुसार / BY ORDER,

वरिष्ठ निजी सचिव / Sr. Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune