

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

BEFORE SHRI G.S. PANNU, PRESIDENT
SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER

ITA no.6356/Mum./2012
(Assessment Year : 2006-07)

M/s. Taj Exim International Limited
C/o Jayesh Sanghrajka & Co.
Chartered Accountants
Unit no.405, Hind Rajasthan Centre
D.S. Phalke Road, Dadar (East)
Mumbai 400 014 PAN – AACET6983H

..... Appellant

v/s

Dy. Commissioner of Income Tax
Circle-3(3), Mumbai

.....Respondent

Assessee by : Shri D.C. Agarwal a/w
Shri Rajeshwar Prasad
Revenue by : Ms. Richa Gulati

Date of Hearing – 09/05/2023

Date of Order – 11/05/2023

ORDER

The present appeal has been filed by the assessee challenging the impugned order dated 03/04/2012, passed under section 250 of the Income Tax Act, 1961 (*"the Act"*) by the learned Commissioner of Income Tax (Appeals)-7, Mumbai, [*learned CIT(A)*], for the assessment year 2006-07, which in turn, arose from the penalty order dated 10/03/2011, passed under section 271(1)(c) of the Act.

2. The present appeal has been listed for hearing before us pursuant to the order dated 28/09/2018, passed by the coordinate bench of the Tribunal in M/s. Taj Exim International Limited vs DCIT, M.As. no. 905 to 911/Mum./2017, whereby, the earlier common ex-parte order dated 01/04/2016, passed under section 254(1) of the Act was recalled and the appeal was directed to be re-fixed for hearing.

3. The present appeal is delayed by 46 days. The assessee along with the present appeal has filed an application seeking condonation of delay supported by an affidavit sworn by Mrs Jasbir Kaur Bakshi, Director of the assessee company. In the affidavit, it has been submitted that the husband of the deponent was the Managing Director and Chairman of the company, who expired and left his only son (who is a mentally disabled person). It is further submitted that the assessee company is near bankruptcy and bankers have lodged the matter against the company in Debt Recovery Tribunal. Thus, due to the poor financial condition of the company, the present appeal could not be filed within the limitation period. We find that in assessee's own case in Taj Exim International Ltd vs DCIT, in ITAs No. 6351- 6354/Mum./2012, for the assessment years 2001-02 to 2004-05, also the assessee made similar submissions for seeking condonation of delay in filing the appeal before the Tribunal. We find that vide order dated 15/10/2018, the coordinate bench of the Tribunal condoned the delay in filing the aforesaid appeals. Since the basis for seeking condonation of delay is similar in the present case, therefore, in view of the above, the delay in filing the present appeal is condoned and we proceed to decide the appeal on merits.

4. In this appeal, the assessee has raised the following grounds:-

"1. On the facts and circumstances of the case and judicial proposition, Ld. CIT (Appeals) erred in confirming the levying of penalty u/s 271(1)(c) by Ld. AO on let out property, excess claim of depreciation on Plant & Machinery and Building block of assets and late payment of PF/ESIC and such levy is erroneous in facts and bad in law and liable to be quashed.

2. Without prejudice to above, on the facts and circumstances of the case and judicial proposition, Ld. CIT (Appeals) erred in confirming the levying of penalty u/s 271(1)(c) by Ld. AO on let out property, excess claim of depreciation on Plant & Machinery and Building block of assets and late payment of PF/ESIC and such levy is erroneous in facts and bad in law and liable to be reduced.

3. The appellant craves leave to add, amend, alter or delete all or any of the previously mentioned grounds of appeal.

4. The assessee hereby contends that all known and evident facts have been disclosed by the assessee in its Return as was considered proper by the assessee and that there is no deliberate intention on the part of the assessee in furnishing inaccurate particulars of income or concealing the particulars of any amount in his Return of Income.

5. CIT(Appeals)-7 confirmed the order passed by Ld. AO u/s 271(1)(c) of Income Tax Act, 1961."

5. The only grievance of the assessee, in the present appeal, is against the penalty levied under section 271(1)(c) of the Act.

6. We have considered the rival submissions and perused the material available. The brief facts of the case are that the assessee is engaged in the business of manufacturing and export of garments and fabrics made on SBPF. For the year under consideration, the assessee filed its return of income on 30/11/2006 declaring a total income of Rs.59,56,779. Vide order dated 26/12/2008 passed under section 143(3) of the Act, the Assessing Officer ("AO") assessed the total income of the assessee at Rs.2,36,26,410 after making addition on account of rejection of deduction under section 80IB of the

Act, depreciation on let out property, excess claim of depreciation on plant & machinery and building, and late payment of PS/ESIC. In further appeal, the learned CIT(A) vide order dated 01/04/2010 dismissed the appeal filed by the assessee against the aforesaid order passed under section 143(3) of the Act. In the quantum appeal against the aforesaid order passed by the learned CIT(A), the coordinate bench of the Tribunal vide order dated 14/02/2020 passed, inter-alia, in ITA No.617/Del./2019 set aside the order passed by the learned CIT(A) and remanded the matter to the file of the AO to conclude the assessment afresh after affording opportunity to the assessee.

7. Meanwhile, vide penalty order dated 10/03/2011 passed under section 271(1)(c) of the Act, the AO levied a penalty of Rs.58,31,000 on the basis that the assessee has furnished inaccurate particulars of its income. In further appeal, learned CIT(A) vide impugned order dated 03/04/2012 granted partial relief to the assessee in respect of the penalty imposed on the issue of late payment of PS/ESIC. Being aggrieved, the assessee is in appeal before us.

8. We are of the considered opinion that since in the quantum appeal, the coordinate bench of the Tribunal has already restored the matter to the file of the AO for *de novo* assessment, the penalty as levied under section 271(1)(c) of the Act, at this stage, does not survive and therefore is set aside. However, the AO shall be at liberty to take a fresh call on the levy of penalty, as per law, in consonance with the fresh assessment as and when framed. As a result, grounds raised by the assessee are allowed for statistical purposes.

9. In the result, the appeal by the assessee is allowed for statistical purposes.

Order pronounced in the open Court on 11/05/2023

Sd/-
G.S. PANNU
PRESIDENT

Sd/-
SANDEEP SINGH KARHAIL
JUDICIAL MEMBER

MUMBAI, DATED: 11/05/2023

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The PCIT / CIT (Judicial);
- (4) The DR, ITAT, Mumbai; and
- (5) Guard file.

Pradeep J. Chowdhury
Sr. Private Secretary

True Copy
By Order

Assistant Registrar
ITAT, Mumbai