

**IN THE INCOME TAX APPELLATE TRIBUNAL,
'A' BENCH, KOLKATA**

**Before Shri Rajpal Yadav, Vice-President
&
Shri Girish Agrawal, Accountant Member**

**I.T.A. No. 743/KOL/2022
Assessment Year: 2012-2013**

***Robbs Traders & Finance Pvt. Limited,.....Appellant
C/o. Subash Agarwal & Associates,
Advocates,
Siddha Gibson,
1, Gibson Lane, Suite-213, 2nd Floor,
Kolkata-700069
[PAN: AABCR1913K]***

-Vs.-

***Assessing Officer,Respondent
National Faceless Assessment Centre (NFAC),
Income Tax Department,
Kolkata***

Appearances by:

*Shri Siddharth Agarwal, Advocate, appeared on behalf of
the assessee*

*Shri B.K. Singh, JCIT (Sr. DR), appeared on behalf of the
Revenue*

Date of concluding the hearing : August 10, 2023

Date of pronouncing the order : October 10, 2023

O R D E R

Per Rajpal Yadav, Vice-President (KZ):-

The assessee is in appeal before the Tribunal
against the order of ld. Commissioner of Income Tax

(Appeals), National Faceless Appeal Centre (NFAC), Delhi dated 12th December, 2022 passed for A.Y. 2012-13.

2. The assessee has taken four grounds of appeal, but its solitary grievance is that ld. CIT(Appeals) has erred in upholding the levy of penalty amounting to Rs.1,94,760/- by the ld. Assessing Officer under section 271(1)(c) of the Income Tax Act.

3. Brief facts of the case are that the assessee-company has filed its return of income electronically on 24.08.2012 declaring total income of Rs.1,06,120/-. The ld. Assessing Officer thereafter received information from DDIT (Investigation), Unit-7(3), Mumbai exhibiting the fact that certain entry providers and hawala operators involved in providing entries of bogus LTCG, STCL and bogus business loss. The ld. Assessing Officer thereafter issued notice under section 148 of the Income Tax Act. In response to this show-cause notice, the assessee filed its return of income and a notice under section 143(2) was issued and served upon the assessee. It is a very brief assessment order running into only one & half page and the whole finding is based on the admission of the assessee, which reads as under:-

“Further to our submission in respect of loss on sale of shares of Scan Steel Ltd this is to inform you that to buy peace and avoid litigation we are admitting the loss and we want to increase the total income disclosed in

the original return at Rs.1,06,120/- resulting in total income at Rs.6,30,290/- by withdrawing the claim of loss in trading of shares of Scan Steel Ltd. of Rs.5,24,170/-.

The contentions of the assessee-company as well as the return of income were examined with respect to the details and records available in this case and accordingly the claim of loss in trading of shares of Scan Steel Ltd. amounting to Rs.5,24,170 is disallowed.

Penalty proceedings u/s 271(1)(c) of the Income Tax Act, 1961 is initiated separately on this issue, for furnishing inaccurate particulars of income in its return of income.

Disallowance of loss : Rs.5,24,170/-

In the light of above discussions, and also considering the materials available on records in this case, the total income of the assessee is as under:-

Computation of total income

<i>Income as per return of income</i>	<i>Rs.1,06,120/-</i>
<i>Addl. Disallowance of loss (As discussed in para 1.4)</i>	<i>Rs.5,24,170/-</i>
<i>Assessed total income</i>	<i>Rs.6,30,290/-</i>

4. Accordingly he disallowed the claim of loss amounting to Rs.5,24,170/-. The ld. Assessing Officer has initiated penalty proceeding for furnishing inaccurate particulars. In response to the notice received

under section 274 read with section 271(1)(c), the assessee has filed written submission. It contended that it is engaged in the trading of shares and this investment was made through broker in a recognized Stock Exchange. Payment and receipt is through banking channel. Documentary evidences for transactions like contract note, demat statement and bank statement were filed. On these detailed evidences, the ld. Assessing Officer has recorded the following finding:-

“The arguments of the assessee related to the trading of shares and their genuineness must have already been raised during the assessment proceedings. These penalty proceedings cannot take the character of assessment and cannot sit in judgment over whether the addition made during assessment was right or not. It can be said that if the transactions are indeed genuine, then there was no need to voluntarily admit the declared loss as own income. So the penalty proceedings will be restricted to determine whether the assessee actually furnished inaccurate particulars or not.

The assessee says that it has already paid the tax due and did not file any appeal. Payment of due tax is the duty of a citizen. Payment of taxes and non-filing of any appeal do not prevent someone from the civil liability of penalty under Income Tax Act”.

5. The ld. Assessing Officer thereafter made reference to a large number of judgments filed by the assessee from his written submission and distinguished them. The

ld. Assessing Officer thereafter imposed a penalty of Rs.1,94,760/- for furnishing inaccurate particulars of income.

6. Appeal to the ld. CIT(Appeals) did not bring any relief to the assessee.

7. Ld. Counsel for the assessee reiterated his argument as was raised before the ld. Assessing Officer. He further relied upon the orders of ITAT, namely in ITA No. 150/AHD/2013 in the case of DCIT -vs.- Abhishek Export, ITA No. 1093/MUM/2013 in the case of Shri Rameshkumar D. Jain -vs.- ITO, ITA No. 367/AHD/.2023 in the case of Dinesh Kumar Kanjibhai Patel HUF and ITA No. 1301/DEL/2018 in the case of Deepty Agarwal - vs.- ITO.

8. On the other hand, ld. D.R. relied upon the order of ld. Assessing Officer.

9. We have duly gone through the facts of the present case. A perusal of the assessment order would reveal that ld. Assessing Officer has nowhere demonstrated as to how the loss claimed by the assessee is bogus. He only issued a show-cause notice and the Assessee withdrew its claim just in order to avoid litigation with Department. But when the Department intended to

impose a penalty upon the assessee under section 271(1)(c), the assessee has contested the issue in the penalty proceeding. The Id. Assessing Officer instead of entertaining the arguments on merit summarily rejected it on the ground that all these issues must have been raised during the assessment proceedings and must have been rejected. He observed that this penalty proceeding cannot take the character of assessment and cannot sit in judgment. It is pertinent to observe that the addition is only on the admission of the assessee that it withdrew its claim. Nowhere, it has been demonstrated that the claim of the assessee was false or bogus. Explanation 1 to section 271(1)(c) provides that, if the assessee fails to offer an explanation or offers an explanation which is found by the Id. Assessing Officer to be false, but now in the present case, the assessee has an explanation and it has buttressed this explanation with the following documentary evidence, i.e.

- (a) Trading of shares was done through broker in a recognized stock exchange.
- (b) Payment and receipt is through banking channel.
- (c) Documentary evidence for transactions like contract note, demat statement, and bank statement are enclosed.

(d) We offered the loss voluntarily to avoid litigation and requested the Assessing Officer to not initiate penalty proceedings u/s 271(1)(c).

(e) We paid the tax due and challan copy is enclosed.

(f) No appeal is filed.

In addition, the assessee referred to various case laws.

These documents have not been held as false either by the ld. Assessing Officer during the assessment proceeding or during penalty proceeding. Therefore, the assessee does not deserve to be visited with penalty.

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

Order pronounced in the open Court on October 10, 2023.

Sd/-
(Girish Agrawal)
Accountant Member

Sd/-
(Rajpal Yadav)
Vice-President(KZ)

Kolkata, the 10th day of October, 2023

*Copies to : (1) Robbs Traders & Finance Pvt. Limited,
C/o. Subash Agarwal & Associates,
Advocates,
Siddha Gibson,
1, Gibson Lane, Suite-213, 2nd Floor,
Kolkata-700069*

*(2) Assessing Officer,
National Faceless Assessment Centre (NFAC),
Income Tax Department, Kolkata*

*(3) Commissioner of Income Tax (Appeals),
National Faceless Appeal Centre (NFAC), Delhi;*

(4) Commissioner of Income Tax ,

(5) The Departmental Representative

(6) Guard File

TRUE COPY

By order

*Assistant Registrar
Income Tax Appellate Tribunal,
Kolkata Benches, Kolkata*

Laha/Sr. P.S.