

**IN THE INCOME TAX APPELLATE TRIBUNAL “F” BENCH MUMBAI
BEFORE SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER
AND
SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

**ITA Nos.311 & 313/MUM/2024
Assessment Years: 2006-07 & 2005-06**

Income Tax Officer – 12(3)(2), Mumbai	Vs.	Jas Trading Private Limited, 6-D-603, Prem Nagar, SVP Road, Borivali West, Mumbai – 400 092 (PAN : AAACJ9837H)
(Appellant)		(Respondent)

Present for:

Assessee : Shri Rahul Hakani, Advocate
Revenue : Shri Nischal B, CIT, DR

Date of Hearing : 29.05.2024
Date of Pronouncement : 31.05.2024

ORDER

PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:

Both the appeals filed by the Revenue are against the orders of Ld. CIT(A), National Faceless Appeal Centre (NFAC), Delhi, vide order no. ITBA/NFAC/S/250/2023-24/1058269249(1) and order no. ITBA/NFAC/S/250/2023-24/1058275564(1), dated 28/11/2023, passed against the penalty orders by the Income Tax Officer, Ward 9(2)(1), Mumbai, u/s. 271(1)(c) r.w.s 274 of the Income-tax Act (hereinafter referred to as the “Act”), dated 26.03.2014 for Assessment Year 2006-07 and by the Income Tax Officer, Ward-12(3)(1), Mumbai, dated 31.03.2016 for Assessment Year 2005-06.

2. Grounds taken by the Revenue are reproduced as under:

ITA Nos.311/MUM/2024

1. “Whether on the facts and in the circumstance of the case and in law the Ld. CIT(A) is justified to delete penalty of Rs. 4,01,16,280/- made by AO u/s. 271 (1)(c) of the Income Tax Act, 1961, without appreciating the fact that the

quantum proceedings vide appeal no. 3603/MUM/2013 dated 21.10.2022 was not accepted by the Revenue Department and further appeal u/s. 260A of the Act has been filed before the Hon'ble Bombay High Court ?"

ITA Nos.313/MUM/2024

1. "Whether on the facts and in the circumstance of the case and in law the Ld. CIT(A) is justified to delete penalty of Rs. 3,08,10,000/- made by AO u/s.271(l)(c) of the Income Tax Act, 1961, without appreciating the fact that the quantum proceedings vide appeal no. 5850/MUM/2014 dated 21.10.2022 was not accepted by the Revenue Department and further appeal u/s. 260A of the Act has been filed before the Hon'ble Bombay High Court ?"

2.1. Since common issue is involved in both the appeals, the same are disposed off by this consolidated order by drawing facts from ITA No.311/Mum/2024 for Assessment Year 2006-07. Our observations and findings arrived in this appeal shall apply mutatis mutandis for the other appeal in ITA No.313Mum/2024 for Assessment Year 2005-06.

3. Brief facts of the case as culled out from records are that assessee filed its return of income on 10/10/2005 reporting total income at Rs.1,22,845/-. Ld. Assessing Officer concluded the assessment proceedings u/s. 143(3) r.w.s. 147, dated 15.3.2013. while making addition on Short Term Capital Gain (STCG) of Rs.2,13,00,000/- and alternately added disallowance of the reduction in investment u/s. 40A(3A) of Rs.2,13,00,000/-, addition to income on account of undisclosed income Rs.7,79,31,997/- (being payment to creditors) and alternately made a disallowance u/s. 40(3A) of Rs.7,11,53,823/- (being payments through journal entries) and addition of undisclosed commission income of Rs.4,47,650/-. Penalty proceedings were initiated under Section 271(1)(c) for furnishing inaccurate particulars of income and concealment of income.

4. Assessee appealed the assessment order before the ld. CIT(A) who upheld the additions made by the ld. AO of Rs.7,11,53,823/- and Rs.4,47,650/-. With regard to the addition of Rs.2,13,00,000/-, ld. CIT(A) directed the ld. Assessing Officer to recalculate the STCG who

again made addition of Rs.2,13,00,000/- as the assessee failed to furnish necessary details.

4.1 Assessee took up the quantum matter before the Tribunal for both the assessment years i.e., AY 2006-07 and 2005-06 in appeal before us vide ITA No.5850/MUM/2014 for assessment year 2005-06 and ITA No. 3603/MUM/2013 for assessment year 2006-07 whereby the re-assessment proceedings u/s 147 have been quashed.

5. Before us, the ld. counsel for assessee asserted that proceedings during which the penalty proceedings were initiated have been quashed, and the quantum addition has been deleted, the penalty levied u/s 271(1)(c) cannot survive. To substantiate his claim, he placed on record copies of order of coordinate bench in assessee's quantum appeals for both the assessment years.

6. We have perused the aforesaid orders of the coordinate bench and note that para 14 deals with Assessment Year 2005-06 whereas para 19 deals with Assessment Year 2006-07. In both the said paragraphs, the finding arrived at is that order of ld. Assessing Officer passed u/s.143(3) r.w.s.147 is not sustainable in law and is quashed. Both the appeals of the assessee were allowed. We note that ld. CIT(A) has based his decision on this vital fact of the assessment orders having been quashed by the coordinate bench whereby the finding recorded by him is as under:

"I have carefully considered the facts of the case as well as submissions filed by the appellant. The Assessee has submitted a copy of the order of the ITAT in the quantum proceedings in appeal no. ITA no. 3603/MUM/2013 for assessment year 2006-07 whereby the re-assessment proceedings u/s 147 have been quashed. The proceedings during which the penalty proceedings were initiated have been quashed, and the quantum addition has been deleted. In such circumstances, the penalty levied u/s 271(1)(c) cannot survive. Accordingly, the penalty of Rs.4,01,16,280/- imposed by the AO u/s. 271(1)(C) of the Act is hereby deleted. Thus, the ground of appeal No.1 is allowed."

7. Considering the above facts and circumstances of the case, since the quantum appeal is held in favour of the assessee in terms of the

observations and findings noted above, the penalty so imposed is not justified. There is no tax sought to be evaded as contained in explanation to section 271(1)(c) and therefore, no penalty is leviable in the present case. We do not find any reason to interfere with the factual finding arrived at by ld. CIT(A) as extracted above. Accordingly, we delete the penalty of Rs. 4,01,16,280/- imposed by the ld. Assessing Officer. Ground taken by the Revenue is thus dismissed. In the result the appeal of the Revenue is dismissed.

8. In respect of appeal in ITA No.313/Mum/2024 for Assessment Year 2005-06, identical set of facts exists except variation in amount. Our observations and findings noted above in the case of ITA No.311/Mum/2024 for Assessment Year 2006-07 applies mutatis mutandis for Assessment Year 2005-06. Accordingly, ground taken by the Revenue in this year is dismissed. In the result appeal of the Revenue is dismissed.

9. In the result, both the appeals of the Revenue are dismissed.

Order is pronounced in the open court on 31 May, 2024

Sd/-
(Pavan Kumar Gadale)
Judicial Member

Sd/-
(Girish Agrawal)
Accountant Member

Dated: 31 May, 2024

MP, Sr.P.S.

Copy to :

1. The Appellant
2. The Respondent
3. DR, ITAT, Mumbai
4. Guard File
5. CIT

BY ORDER,

(Dy./Asstt.Registrar)
ITAT, Mumbai