

**IN THE INCOME-TAX APPELLATE TRIBUNAL “E” BENCH,
MUMBAI**

**BEFORE SHRI SANDEEP SINGH KARHIAL, JUDICIAL MEMBER
&
SMT. RENU JAUHRI, ACCOUNTANT MEMBER**

**ITA No.4171/MUM/2024
(A.Y. 2007-08)**

Karan Rajan Bahl 222, Kewal Industrial Estate, Senapati Bapat Marg, Lower Parel, Mumbai-400013	v/s. बनाम	CIT/NFAC, Mumbai Maharashtra
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: AGPPB9301E		
Appellant/अपीलार्थी	..	Respondent/प्रतिवादी

Assessee by :	Shri Rajesh Kothari
Revenue by :	Shri Kiran Unavekar

Date of Hearing	23.12.2024
Date of Pronouncement	24.12.2024

आदेश / O R D E R

PER RENU JAUHRI [A.M.] :-

This appeal is filed by the assessee against the order of the Learned Commissioner of Income-tax (Appeals), Mumbai/National Faceless Appeal Centre, Delhi [hereinafter referred to as “CIT(A)”] dated 24.06.2024 passed u/s. 250 of the Income-tax Act, 1961 [hereinafter referred to as “Act”] for Assessment Year [A.Y.] 2007-08.

2. The assessee has raised following grounds of appeal:

“1) The learned CIT(A) erred in upholding the order of penalty passed under section 271(1)(c) of the Act and erred in not treating the impugned order as bad in law even though it is not discernible from the notice issued under section 274 read with section 271 of the Act as to whether the penalty proceeding is

initiated for furnishing inaccurate particulars of income or for concealing the particulars of income.

2) The learned CIT(A) erred in not deleting the penalty levied under section 271(1)(c) as the penalty was imposed without issuing notice to the appellant under section 274 read with section 271 of the Act and that the notice received by the appellant was in the name of M/s. Nanavati Construction and not in the name of the appellant.

3) Without prejudice to the above grounds, the learned CIT(A) erred in confirming the levy of penalty of Rs. 13,04,650 u/s. 271(1)(c) for assessing short term capital gain of Rs. 42,21,735 earned on transfer of listed equity shares as business income though:

a) the Appellant had submitted all the information and explanations during the assessment proceeding and in the return of income, statement of income, etc.

b) there is no finding in the assessment order that the appellant had concealed the particulars or furnished inaccurate particulars of income.

c) the assessee has neither concealed any particulars of income nor furnished any inaccurate particulars of income relating to share transactions offered as short term capital gain.

d) no tax is sought to be evaded as per Explanation 4 to section 271(1)(c).

e) the claim of the assessee is bonafide based on judicial decisions.

f) the earning from share transactions were duly disclosed in the return of income.”

3. The brief facts of the case are that the assessee filed its return for AY 2007-08 declaring total loss of Rs. 7,03,51,434/-. The case was selected for scrutiny and assessment u/s 143(3) was finalized on 16.12.2009 determining total loss at Rs. 6,94,96,406/-.

4. The assessee filed an appeal against this order and Ld. CIT(A)-20, Mumbai passed the appellate order on 25.10.2011, against which the assessee filed further appeal before this Tribunal. Vide order dated 22.03.2013, the Tribunal directed the AO to decide the issue afresh after considering the directions given by the co-ordinate bench in the assessee's own case for AY 2006-07. Accordingly, assessment u/s 143(3) r.w.s. 254 was finalized on 16.03.2014 at loss of Rs. 6,94,96,410/- after treating the short term capital gains



of Rs. 42,21,735/- returned by the assessee under the head Income from Business or Profession. Penalty proceedings u/s 271(1)(c) for filing inaccurate particulars/concealment of income were also initiated. Subsequently, Penalty u/s 271(1)(c) was levied at Rs. 13,04,515/- (being 100% of the tax) vide order dated 30.03.2019.

5. Aggrieved with the order, the assessee filed an appeal before Ld. CIT(A), who confirmed the penalty levied by the AO vide appellate order dated 24.06.2024.

6. Before us, Ld. AR has submitted that the assessee has been regularly showing business income from partnership firm along with capital gains from investment in shares. Till AY 2006-07, the assessee's return was accepted. However, from AY 2007-08 onwards, the AO started treating the capital gains from sale of shares as income from business. Ld. AR has further submitted that the issue is covered by the order of the co-ordinate bench for AY 2008-09 wherein on exactly identical facts and circumstances, the penalty u/s 271(1)(c) has been deleted. Relevant portion of the order of the co-ordinate bench in ITA No. 1497/MUM/2015 in assessee's own case for AY 2008-09 is reproduced below:

"6. We have carefully considered the contentions of the Id DR. and pursued the material placed before us including the impugned orders. We find that in the case of the assessee, the penalty has been imposed by the AO on the ground that the assessee has shown income from shares as LTCG and claimed the same as exempt u/s 10(38) of the Act in order to evade tax and treated, the same as income from business which was confirmed by the Id.CIT(A). The Ld.CIT(A) deleted the penalty by observing that the assessee has duly disclosed the LTCG under the head capital gain and therefore the bonafide of the assessee cannot be doubted and it was a case of change of head of



income from one head to another and hence deleted the penalty. The Case of the assessee is also fortified by the decision of the Mumbai Bench of the Tribunal in the case of DCIT V/s G C Property P. Ltd in I.T.A.No.95/Mum/2015 (AY:2008-09) dated 10.10.2016 wherein the Author is party. The operative portion of the order is reproduced below:

"6. We have considered the rival submissions and perused the materials on records including the orders of authorities below. The assessee was incorporated for the purpose of real estate business as per the main objects in memorandum and articles of association of the assessee company. The building of the company was let out and the rental received from the letting out by way of leave and license basis was shown as business income on the ground that the assessee's business was of real estate and expenses such as administrative and depreciation were claimed accordingly. The AO assessed the income of the assessee under the head "House Property" as against the business income showed by the assessee and as a result disallowed all the expenses including depreciation claimed by assessee. The AO also imposed penalty u/s 271(1)(c) of the Income Tax Act equal to 100% of the tax sought to be evaded for furnishing inaccurate particulars of Income. The Id CIT(A) deleted the penalty by holding that provisions of section 271(1)(c) of the Act were wrongly invoked as it was a case of difference of opinion and the issue was debatable one. In our opinion the Id conclusion drawn by the FAA was correct as the assessee has shown full particulars of income in the return of income itself and mere fact the income shown under one head of income was assessed by the AO under the other head could not be taken as tantamount to filing inaccurate particulars. Therefore the order of FAA is correct and does not required to be disturbed or interfered with. Accordingly we uphold the same by dismissing the appeal of the revenue."

7 Since the issue has already been decided by us that the penalty is not liveable when the income assessed under the one head, whereas the assessee has shown it under different head. Therefore, in order to maintain the Consistency with our order passed in the aforesaid appeal, we uphold the finding of the Ld.CIT(A) by dismissing the appeal of the revenue."

7. As the facts in the year under consideration are identical, respectfully following the order of the co-ordinate bench, we hereby delete the penalty u/s 271(1)(c).

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

Order pronounced in the open court on 24.12.2024.

Sd/-

SANDEEP SINGH KARHAIL

(न्यायिक सदस्य/JUDICIAL MEMBER)

Sd/-

RENU JAUHRI

(लेखाकार सदस्य/ACCOUNTANT MEMBER)



Place: मुंबई/Mumbai

दिनांक /Date 24.12.2024

अनिकेत सिंह राजपूत/ स्टेनो

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त / CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण DR, ITAT,
Mumbai
5. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//
आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण/ ITAT, Bench,
Mumbai.

