

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "SMC", MUMBAI**

BEFORE SHRI G.S. PANNU, ACCOUNTANT MEMBER

ITA NO. 4106/MUM/2015 : (A.Y : 2007-08)

M/s. Transocean Shipping Agency Ltd. (Formerly known as The Oceanic Shipping Agency Pvt. Ltd.)
Darabshaw House, 4th floor,
Ballard Estate, Mumbai – 1.
PAN : AA ACT1800E (Appellant) Vs. DCIT-1(2), Mumbai
(Respondent)

Assessee by : Shri Yazad K. Wadia
Revenue by : Shri A.K. Kardam

Date of Hearing : 14/07/2016
Date of Pronouncement : 15/07/2016

ORDER

The captioned appeal by the assessee is directed against the order of CIT(A)-2, Mumbai dated 18.03.2015, pertaining to the Assessment Year 2007-08, which in turn has arisen from the order passed by the Assessing Officer dated 28.06.2010 under section 271(1)(c) of the Income Tax Act, 1961 (in short 'the Act').

2. The only issue in this appeal relates to imposition of penalty u/s 271(1)(c) of the Act amounting to Rs.4,85,666/-. In brief, the relevant facts are that the appellant is a company which is engaged in the business of shipping agency and other connected activities. In the course of assessment proceedings, the Assessing Officer noted that

assessee had sold its premises at B-219, Somdutt Chambers, Bhikaji Cama Place, New Delhi for a consideration of Rs.29,68,000/- vide an agreement to sale dated 13.9.2006 and it had disclosed Long Term Capital Gain of Rs.17,16,159/- on such sale. The Assessing Officer noted that assessee had been claiming depreciation on such premises and, therefore, according to him, gain arising on sale of a depreciable asset was liable to be assessed u/s 50 of the Act as Short Term Capital Gain. As a consequence, the Assessing Officer determined Short Term Capital Gain u/s 50 of the Act at Rs.27,62,990/- after reducing the WDV as on 31.3.2006 of Rs.2,05,010/-. Subsequently, the Assessing Officer has held the assessee guilty of furnishing inaccurate particulars of income within the meaning of Sec. 271(1)(c) of the Act. As per the Assessing Officer, assessee had furnished inaccurate particulars of its income inasmuch as the gain on sale of property was wrongly declared as Long Term Capital Gain as against Short Term Capital Gain in terms of Sec. 50 of the Act. As a consequence, Assessing Officer imposed penalty @ 100% of the tax sought to be evaded on such income of Rs.27,62,990/-, thereby resulting in levy of penalty of Rs.4,85,666/-. The CIT(A) has also affirmed the penalty imposed by the Assessing Officer.

3. Before me, the learned representative for the assessee pointed out that in the case of assessee's sister concern, M/s. Transocean Shipping Agency Ltd., vide ITA No. 4243/Mum/2013 dated 25.3.2015 for Assessment Year 2007-08, similar issue had arisen, wherein the Tribunal found it expedient to delete the levy of penalty. It was, therefore, contended that as the fact and circumstances in the present case are on identical footing, the impugned penalty is liable to be deleted. The Ld.

DR has not controverted the factual matrix brought out by the learned representative for the assessee.

4. Having considered the rival stands, I find that the dispute in the present appeal is fully covered by the decision of the Mumbai Bench of the Tribunal in its order dated 25.3.2015 in the case of M/s. Transocean Shipping Agency Ltd. (*supra*) and the following discussion is relevant :-

"2. The brief facts of the case are that, the assessee company is engaged in the business of running business centre. During the previous year the assessee has sold its office premises for a consideration of Rs.23,68,000/-, vide sale agreement dated 18.12.2006. On such a sale, assessee offered the income as a long term capital gains of Rs.13,68,060/-. The Assessing Officer noted that the assessee has been claiming depreciation on this office premises and therefore, gain from sale of said premise is liable to be taxed u/s.50 i.e. short term capital gain. The assessee admitted that the capital gain arisen from the sale of the office premises ought to have been treated as short term capital gain and the computation of long term capital gain was done by the mistake of the accountant. Who took it as a sale of a long term asset under the normal provision. Accordingly, the short term capital gain was computed at Rs.21,15,992/-, after reducing the WDV as on 31st March, 2006 of Rs.2,52,008/-.

3. In the penalty proceedings, the assessee submitted that the long term capital gain on the sale of the office premises was erroneously claimed and instead should have been shown as short term capital gain u/s.50 as against it was a depreciable asset. This mistake had occurred bonafidely by the accountant, who calculated the sale of the asset i.e. office premises as long term capital gain. However, the Assessing Officer levied the penalty on the ground that assessee has admitted the mistake only when the Assessing Officer pointed out the

said deficiency in the assessment proceedings. Accordingly, he levied the penalty of Rs.3,61,186/-.

4. This penalty has been confirmed by the CIT(A) on the ground that it cannot be said that it was an inadvertent mistake because the accounts were audited by statutory auditors and assessee is assisted by qualified chartered accountants therefore, assessee was well aware of this fact. Accordingly, he justified the levying of penalty.

5. Before us learned counsel, Shri Nishant Thakker submitted that the assessee had sold the office which was held by assessee for long and by mistake, treated it long term capital gain on the belief that it was a long term capital asset held for more than 3 years. The Accountant of the assessee failed to take note of the deeming provision of section 50, which provides that sale of depreciable assets is deemed to be short term capital gain, therefore, it cannot be held that the assessee is liable for levy of penalty u/s.271(1)(c). In support of his contention, he strongly relied upon the decision of Hon'ble Supreme Court in the case of Price Water House.

6. On the other hand, strongly relied AO as well as CIT(A).

7. After considering the rival submissions and on perusal of records, we find that in the computation of income filed along with return, the assessee had shown long term capital gain on the sale of office at New Delhi, while taking cost index and purchase cost. The said office was in fact appearing in the schedule of depreciable asset in the balance sheet. As per the provisions of section 50, such a sale of depreciable asset deemed to give rise to short term capital gain. The assessee was pointed out by the AO, that the long term capital gain should have been declared as short term capital gain. The assessee realizing the error of law, agreed that it was a mistake of the accountant. On these facts, it cannot be held that the assessee had furnished any inaccurate particulars, because all the particulars for the computation of income of capital gain was duly furnished, instead of declaring the sale of office as short term capital gain, the same was declared as long term capital gain. This appears to be a mistake

only. The assessee has also filed an affidavit of the accountant that it was his mistake of treating the office as long term capital asset, instead of asset appearing in the schedule of fixed assets. On these facts, we are of the opinion that no penalty u/s.271(1)(c) should be levied as it appears to be bonafide mistake on the part of the assessee. Accordingly, penalty levied is deleted."

Following the aforesaid precedent, which has been rendered under an identical situation, the penalty of Rs. 4,85,666/- is directed to be deleted. Thus, assessee succeeds in its appeal.

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

Order pronounced in the open court on 15th July, 2016.

Sd/-
(G.S. PANNU)
ACCOUNTANT MEMBER

Mumbai, Date : 15th July, 2016

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Copy to :

- 1) The Appellant
- 2) The Respondent
- 3) The CIT(A) concerned
- 4) The CIT concerned
- 5) The D.R, "SMC" Bench, Mumbai
- 6) Guard file

By Order

Dy./Asstt. Registrar
I.T.A.T, Mumbai