

IN THE INCOME TAX APPELLATE TRIBUNAL "B", BENCH KOLKATA
BEFORE SHRI S.S.VISWANETHRA RAVI, JM & DR. A.L.SAINI, AM

आयकर अपील सं./ITA No.690/KoI/2014

(निर्धारण वर्ष /Assessment Year:2006-07)

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| M/s Sony Jewellers, 169A, B.B.Ganguly Street, Kolkata-700012 | Vs. | ITO-39(3), Kolkata Pddon Court, 8 th Floor, 18 Rabindra surani, Kolkata- 700001 |
| स्थायी लेखा सं./जीआइआर सं./PAN/GIR No.: AASFS 4447 H | | |
| (अपीलार्थी /Appellant) | .. | (प्रत्यर्थी / Respondent) |

Assessee by : Shri Dilip Kumar Shah, FCA
Revenue by : Shri Satyajit Mondal, JCIT, SR-DR

सुनवाई की तारीख / Date of Hearing : 09/01/2017

घोषणा की तारीख/Date of Pronouncement 22/02/2017

आदेश / O R D E R

Per Dr. Arjun Lal Saini, AM:

The captioned appeal filed by the Assessee pertaining to Assessment Year 2006-07, is directed against the order passed by Id. CIT(A)-IV, Kolkata in Appeal No.05/CIT(A)-IV/2010-11, dated 17.12.2013, which in turn arises out of an order passed by the Assessing Officer (AO) Under Section 271FB of the Income Tax Act 1961, (hereinafter referred to as the 'Act'), dated 18.03.2010.

2. Brief facts of the case qua the assessee are that the assessee filed its return of income for the relevant A.Y.2006-07 on 18-10-2006 declaring total income of Rs.77,315/-. The case of the assessee was selected for scrutiny by CASS and the AO framed the assessment u/s.143(3) on dated 08/12/2008. However, the assessee did not file FBT return u/s.115WD for the assessment year 2006-07 therefore, the Assessing Officer, issued notice u/s.115WH to the assessee. Thereafter, the assessee firm has filed

FBT return for the assessment year 2006-07 on 03.09.2009 showing the total value of fringe benefit at Rs. 0/- (Zero).

The AO did not convince with the reply submitted by the assessee and therefore, completed the assessment u/s.115WE(3) at a total value of Fringe Benefit at Rs.13,584/-. Consequent upon, penalty proceedings was initiated u/s.271FB for belated filing of FBT return.

3. Aggrieved from the order of AO, the assessee filed an appeal before the Id. CIT(A), who has confirmed the order passed by the AO observing the followings :-

"5.2 I have examined the submission of the A.R of the appellant. I am of the view that the appellant cannot take the plea of ignorance of law. The accounts of the appellant are duly audited u/s.44AB in Form No.3CD and Auditor is also the Authorised Representative of the appellant. I am not prepared to believe that a qualified Chartered Accountant who is also the Auditor and AR of the appellant can be excused for claiming ignorance of law. I am also of the view that Telephone and Travelling & Conveyance Expenses paid to the employees will attract FBT. I am, therefore, of the view that the action of the AO to levy penalty u/s.271FB for Rs.1,03,600/- should be upheld."

4. Not being satisfied with the order of Id. CIT(A), the assessee is in further appeal before us and has taken the following grounds of appeal :-

For that the Authorities below have not properly appreciated the fact:-

1)That FBT was introduced for the A.Y 2006-2007 for the first time. As a result, the assessee firm was not fully aware the provisions Section 115WB for payment of FBT on deemed expenditure.

2) The assessee firm had no intention of evading FBT. It has been proved by smart payment of FBT as assessed by the L.d A.O.

3)That the assessee firm did not file the FBT return due to ignorance of the provisions of FBT on deemed expenditure.

4) That the L.d. A.O. did not point out the fact of non-filing of FBT return at the time of scrutiny assessment though it was brought to his notice, vide Annexure- II of Form 3CD submitted on 18/10/2006.

5) That the assessee Firm still under honest belief that the Firm did not pay any expenditure on account of Travelling & Telephone to the employees.

6) That the assessee firm should not suffer for the fault of the Accountant or Authorised Representative.

7) Normally under Income tax Act, Penalty should not exceed the amount or tax sought to be evaded.

8) That the appellant may be allowed to urge any other ground / grounds at the time of hearing of the appeal.

4.1. Ld. AR for the assessee has submitted before us that the assessee firm had no malafide intention of evading FBT as the assessee firm paid the tax immediately as levied by Id. Assessing Officer. The assessee firm was under a bonafide belief that the provisions of FBT were not applicable to the deemed expenditure on telephone, travelling and conveyance etc. The AR for the assessee has further submitted that section 273B of the Act says that inspite of provisions contained in section 271FB, no penalty shall be imposable on the person of the assessee for any failure, if he proves that there was reasonable cause for such failure. Hence the assessee firm was under the bonafide belief that the provisions of FBT were not applicable on deemed expenditure. The assessee under consideration was not aware of the intricate provisions of section 115 WB on deemed expenditure, therefore, he has committed the delay in filing the FBT return, as it was the first year of assessment of FBT in filing FBT return. The AR for the assessee also relied on the following judgments:

(1). ITA No. 141/Kol/2013 ITAT Kolkata A.Y. 2006-07

(2). ITA No. 172 (Asr)/2014 ITAT Amritsar A.Y. 2006-07

(3) ITA No. 158 to ITA No. 163/Ind/2011 A.Y. 2006-07

The sum and substance of these judgments are that the provisions of section 273B of the Act has been incorporated which says that inspite of provisions contained in section 271FB, no penalty shall be imposable on the assessee for any failure if he proves that there was a reasonable cause for such failure. Assessment Year 2006-07 was the first year where the FBT provisions are applicable. The FBT amount paid by the assessee is too small to invite the penalty. The Fringe Benefit Tax provisions was introduced for the first time with effect from the assessment year 2006-07 therefore there may be some ignorance of law by the assessee, that is the assessee was not fully acquaint with the provisions of the Act and in addition to this the tax payable by the assessee is very small and not a material item to attract the huge penalty.

Ratio of these judgments are squarely applicable to the assessee under consideration. The total tax payable by the assessee on account of FBT provisions comes at Rs.6432/- whereas the penalty imposed on this amount is at Rs. 1,03,600/- which is highly disproportionate.

4.2. On the other hand, Ld. DR for the revenue has also primarily relied on the findings of the AO which we have already noted in our earlier para and is not being repeated for the sake of brevity.

4.3. Having heard the rival submissions, perused the material on record, we are of the view that there is merit in the submissions of the assessee, as the proposition canvassed by Id. AR for the assessee are supported by

the judgments cited above. As Ld. AR for the assessee has pointed out that the total tax payable by the assessee on account of FBT provisions comes at Rs.6432/- whereas the penalty imposed on this amount is at Rs. 1,03,600/- which is highly disproportionate, and even applying a common sense it is not acceptable, as this was the first year where the FBT provisions were applicable to the assessee therefore naturally there was some small ignorance of law on the part of the assessee. However, ignorance of law is not an excuse, but in this case very small tax amount is involved on which the Assessing Officer imposed penalty at Rs.1,03,600/-. We are of the view that tax payable under consideration by the assessee comes at Rs.6432/- on the value of Fringe Benefit at Rs.13,584/- therefore, considering the insignificant amount the heavy penalty should not be imposed. Accordingly we delete the penalty.

4.4. In the result, appeal filed by the assessee is allowed.

Order pronounced in the open court on this 22/02/2017.

Sd/-
(S.S.VISWANETHRA RAVI)
न्यायिक सदस्य / JUDICIAL MEMBER

Sd/-
(DR. A.L.SAINI)
लेखा सदस्य / ACCOUNTANT MEMBER

कोलकाता /Kolkata; दिनांक Dated 22/02/2017

प्रकाश मिश्रा/Prakash Mishra,नि.स/ PS

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

1. अपीलार्थी / The Appellant-M/s Sony Jewellers
2. प्रत्यर्थी / The Respondent.- ITO Wd. 39(3), Kolkata
3. आयकर आयुक्त(अपील) / The CIT(A), Kolkata.
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, कोलकाता / DR, ITAT, Kolkata
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार
(Asstt. Registrar)

आयकर अपीलीय अधिकरण, कोलकाता / ITAT, कोलकाता