

आयकर अपीलीय अधिकरण, मुंबई "ए" खंडपीठ
Income-tax Appellate Tribunal -"A" Bench Mumbai

सर्वश्री राजेन्द्र,लेखा सदस्य एवं अमित शुक्ल न्यायिक सदस्य

Before S/Sh.Rajendra,Accountant Member and Amit Shukla,Judicial Member

आयकर अपील सं./I.T.A. No.6377/Mum/2011 निर्धारण वर्ष / Assessment Year: 2004-05

Shri Anil C. Kilachand Kilachand House 95, Napeansea Road Mumbai-400 006. PAN:AACPK 3838 J	Vs.	ACIT, Circle-8(1) Aayakar Bhavan Mumbai-400 006.
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(अपीलार्थी /Appellant)

(प्रत्यर्थी / Respondent)

Revenue by: Shri M. Murli

Assessee by: Shri Anil Sathe

सुनवाई की तारीख / **Date of Hearing:07.03.2016**

घोषणा की तारीख / **Date of Pronouncement: 16.03.2016**

आयकर अधिनियम,1961 की धारा 254(1)के अन्तर्गत आदेश

Order u/s.254(1)of the Income-tax Act,1961(Act)

लेखा सदस्य राजेन्द्र के अनुसार PER RAJENDRA, AM-

Challenging the order of the CIT (A)-16,Mumbai,dated 22/07/2011,the assessee has filed the present appeal.The effective ground of appeal is about confirming the order of levying penalty under section 271 (1)(c) of the Act.

Brief facts:

2.In this case return of income was filed on 31/10/2004, declaring total income at Rs. 19.87 Lacs. The Assessing officer(AO)completed the assessment u/s.143 (3) of the Act,on 8/11/2006, determining the income of the assessee at Rs. 29.22 lakhs. In the assessment order, penalty proceedings were initiated in respect of the disallowance of short term capital loss of Rs. 19.11 lakhs.The assessee preferred an appeal against the disallowance before the first appellate authority(FAA),who confirmed the order of the AO. The assessee did not press the ground with regard to the said disallowance,before the Tribunal.

3.In the meanwhile,the AO issued a show cause notice,on 15/02/2010 and asked the assessee to show cause as to why the penalty should not be levied for concealing the particulars of the income as well as for filing inaccurate particulars.Vide his letter, dated 24/02/2010,the assessee submitted that he had filed his return of income without any professional help as he was from technical background,that he was not aware of the provisions of section 94 (7),that he had disclosed all the facts relating to competition of income,that all the necessary details with regard to short term capital loss of Rs. 88,00,370/-were available on record,that there was a genuine mistake in not this allowing loss under the provisions of section 94.

After considering the submission of the assessee,the AO held that particulars of income filed by the assessee were incorrect. He referred to the case of standard mercantile company (160 ITR 613) and other cases, that the assessee had falsely claim of deduction, that he had conceded the particulars of income for the year under consideration. Finally, the AO imposed a penalty of Rs. 6.30 Lacs.

4. During the appellate proceedings, before the (First Appellate Authority)FAA, the assessee made the same submissions that are part of the explanation filed before the AO and further argued that he had not disallowed loss under section 94 (7) under a bona fide belief that no such disallowance was required to be made, that there was neither deliberate concealment of particular of income nor deliberate furnishing of inaccurate particulars of income, that at best it could be stated that there was a genuine mistake in not disallowing loss under section 94 (7).

The FAA after considering the available material, held that assessee had filed inaccurate particulars of income, that the ignorance of law was no excuse as far as compliance of law was concerned, that he was a regular income tax filer and was represented by competent chartered accountant, that assessee is not filed any bona fides explanation, that it was a fit case for levy of penalty. The FAA confirmed the order of the AO.

5. Before us, the Authorised Representative (AR) stated that it was a case of bona fide mistake and not of filing inaccurate particulars or concealing the income, that the form prescribed for the assessment year under consideration did not contain any column where transaction in dispute could be reported, that the provisions of section 94 (7) were introduced from AY.2002-03, that from the AY.2006-07 a column was introduced in the return for reporting such transactions. He relied upon the cases of Walter Saldana (44 SOT26), Hindalco Industries (41 SOT 254), Chetan V Mehrotra (32 CCH 126 – MUM). The Departmental Representative (DR) stated that AO had clearly established the fact of dividend stripping, that the FAA had upheld the disallowance and the assessee had not challenged the order of the FAA before the Tribunal.

6. We have heard the rival submissions and perused the material before us. We find that the penalty has been levied because the assessee had not made the disallowance as per the provisions of section 94 (7) of the Act. It is a fact that said section found place in the Act for the first time during AY.2002-03, that a specific column was introduced in the return with regard to transactions covered by section 94 (7) from the AY.06-07 only, that the assessee had made disclosure about the short term capital loss were disclosed in his return. Considering the above facts, we are of the opinion that it was a case of bona fides mistake. Secondly, merely making a claim cannot be equated with concealment of income or furnishing of inaccurate particulars of income. We find that in the case of Chetan V Mehrotra (supra), the Tribunal has specifically dealt with the issue i.e. levy of penalty for concealment of income with regard to section 94 (7) of the Act. Similar view was taken by the Tribunal in the cases of Walter Saldana and Hindalco Industries Ltd (supra). In the case of Walter Saldana the Tribunal had held that a mere making of claim, which was not sustainable in law by itself would not amount to furnishing inaccurate particulars regarding the income of the assessee, that penalty under section 271 (1)(c) could not be levied on the ground that the assessee violated the provisions of section 94 (7) by not ignoring losses while computing short-term capital gains on transactions related to the above section.

Respectfully following the above decisions of the Tribunal, we decide the effective ground of appeal in favour of the assessee and reverse the order of the FAA.

As a result, appeal filed by the assessee stands allowed.

फलतः निर्धारिती द्वारा दाखिल की गई अपील मंजूर की जाती है.

Order pronounced in the open court on 16th March, 2016.

आदेश की घोषणा खुले न्यायालय में दिनांक 16 मार्च, 2016 को की गई।

Sd/-

(अमित शुक्ल/ **Amit Shukla**)

न्यायिक सदस्य/**Judicial Member**

मुंबई Mumbai, दिनांक Date: 16.03.2016

व.नि.स.Jv.Sr.PS.

Sd/-

(राजेन्द्र / **Rajendra**)

लेखा सदस्य/**Accountant Member**

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

1.Appellant /अपीलार्थी

2. Respondent /प्रत्यर्थी

3.The concerned CIT(A)/संबद्ध अपीलीय आयकर आयुक्त, 4.The concerned CIT /संबद्ध आयकर आयुक्त

5.DR "D" Bench, ITAT, Mumbai /विभागीय प्रतिनिधि, A खंडपीठ,आ.अ.न्याया.मुंबई

6.Guard File/गार्ड फाईल

सत्यापित प्रति //True Copy//

आदेशानुसार/ **BY ORDER,**

उप/सहायक पंजीकार **Dy./Asst. Registrar**

आयकर अपीलीय अधिकरण, मुंबई /**ITAT, Mumbai.**