

Income Tax Appellate Tribunal - Mumbai

Acit - 17(2), Mumbai vs Jai Hind Oil Mills Company, Mumbai on 23 December, 2016

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

BEFORE SHRI R.C.SHARMA, AM

ITA No.2569/Mum/2016

(Assessment Year :2011-12)

ACIT - 17(2), Mumbai Vs. M/s. Jai Hind Oil Mills  
Company, 387-389, Narshi  
Natha Street, Katha Bazar,  
Mumbai - 400 009  
PAN/GIR No. AACFJ5169K  
Appellant) .. Respondent)

Revenue by Shri S.R.Kirtane  
Assessee by Sri Reepal G. Tralshawala

Date of Hearing 19/12/2016

Date of Pronouncement 23/12/2016

/ O R D E R

PER R.C.SHARMA (A.M):

This is an appeal filed by the Revenue against the order of CIT(A)  
for the assessment year 2011-12 in the matter of imposition of penalty  
u/s.271(1)(c) of the IT Act.

2. Rival contentions have been heard and record perused.

3. Facts

in brief are that the assessee is engaged in the business of warehousing of goods. In the original return of income the assessee had offered the income from warehousing under the head 'income from house property' and claimed deduction u/s.24(1) @ 30%. Subsequently, the assessee filed revised computation of income treating warehousing charges as business income in view of finality of assessment in its case for A.Y. 2010-11 wherein the AO had treated warehousing charges as business income and not income from house property as offered by the ITA No.2569/Mum/2016 M/s. Jai Hind Oil Mills Company assessee. During the assessment proceedings the assessee submitted that it had accepted the order of the AO for A. Y. 2010-11 and not preferred further appeal and decided to follow the same in subsequent years by considering warehousing income as business income. Further the assessee stated that it has filed a revised return for A.Y.2012-13 also offering warehousing income as business income and paid tax thereon.

The assessee stated that revised return for A. Y. 2011-12 could not be filed as the time limit for filing the revised return had already expired by the time the assessee received the assessment order for

A.Y. 2010-11.

However the AO was of the opinion that the assessee had offered income from warehousing under 'house property income' to avail deduction u/s.24(a). In his submission to the AO the assessee had stated that it has filed a revised return but on perusal of the records it was revealed that no revised return has been filed by the assessee. Considering the facts of the case, the AO treated the warehousing charges as business income and held that it was an afterthought by the assessee of filing a revised return. Thus the AO was of the opinion that the assessee had made a wrong claim of deduction by filing inaccurate particulars of its income.

Accordingly penalty u/s.271(1)(c) was levied.

4. By the impugned order CIT(A) deleted the penalty after observing as under:-

DECISION: I have carefully considered the facts of the case, grounds of appeal and written submissions made before me. The appellant seeks to challenge the validity of the penalty order as well as the merits of the case. I would prefer to deal with the merits first.

ITA No.2569/Mum/2016 M/s. Jai Hind Oil Mills Company 5.1 The facts are not in dispute. The appellant returned the warehousing charges as income from house property which was assessed as income from business. This change of head of income has been made in the assessment order for the AY 2010-11, i.e. the preceding AY. The appellant accepted this order and did not file appeal. Consequently the same stand was taken by the AO in the present AY. I find that upto AY 2009-10, warehousing charges have been returned by the appellant as house property income and this position has been accepted by the AO in scrutiny assessments. In AY 2010-11, the AO took a different view that warehousing charges have to be assessed as business income. The appellant also accepted this order of the AO citing business prudence. In the current year, having reclassified the head of income for warehousing charges, the AO levied penalty on the grounds that the appellant has concealed income to the extent of 1,00,08,318 which was the claim u/s.24(a) in the original ROI. The AO overlooked the fact that the appellant has filed a revised computation before the AO during assessment as the time for filing revised return had lapsed. The AO has also overlooked the fact that the appellant has filed a revised ROI for the AY 2012-13 accepting this stand of the AO. I also note that in the present case, the quantum of warehousing charges has not been disturbed. Merely the classification of the same has changed from house property to business income. Consequently, the deduction U/S 24 has been naturally denied to the appellant. On these facts, I am afraid I cannot agree with the AO on the issue of penalty on reclassification of warehousing receipts. The facts of this case are squarely covered by the decision of the Hon'ble Bombay High Court in the case of Bennett Coleman & Co Ltd. 259 CTR 383 (Bom)(HC). In para 3 of the said judgment, the Hon'ble High Court has held as under:-

"So far as question (ii) is concerned, the respondent-assessee had claimed premium on redemption of debentures as income from capital gains. Whereas the assessing officer held that the redemption of debentures is revenue receipt assessable to tax under the head income from other sources. The

CIT(A) confirmed the order of the assessing officer. The respondent- assessee did not file any further appeal on the quantum proceedings. Thereafter, the assessing officer levied penalty under Section 271 (1)(c) of the Act on the respondent- assessee. The CIT(A) also confirmed the levy of penalty upon the respondent- assessee. On further appeal, the Tribunal held that there is no dispute with regard to the fact that the respondent-assessee had disclosed that the amount received ITA No.2569/Mum/2016 M/s. Jai Hind Oil Mills Company as premium on redemption of debentures in its computation of income. Further, the Tribunal records that it is not the case of the department that the respondent-assessee had concealed any particulars of income or furnished inaccurate particulars of income by stating incorrect facts. The assessing officer considered the said premium received on redemption of debentures to be taxable under the head income from other sources while the respondent-assessee considered the same to be taxable under the head capital gains. In view of the fact that there is only a change of head of income and in the absence of any facts that the claim of the assessee was not bonafide, the Tribunal deleted the penalty imposed under Section 271(1)(c) of the Act. The revenue has not been able to point out that the finding of the Tribunal is perverse. In these circumstances, we see no reason to entertain the proposed question {ii}."

It is clear that the ratio of the decision of the Hon'ble Bombay High Court cited supra very clearly apply to the facts of this case. Respectfully following the decision of the Hon'ble Court, I hold that there is no case of levying penalty on the issue of warehousing charges being assessed as business income instead of income from house property.

2 The AO has also levied penalty on the issue of disallowance of depreciation. The appellant admitted before the AO that this was an inadvertent mistake which has happened due to a cascading effect from AY 2006-7 onwards. However the AO was not convinced and levied penalty on this disallowance too. Before me, the appellant submitted that on identical facts the AO has dropped penalty in his case on this issue for the AY 2006-07 to 2009-10. He has filed copies of the letter of the AO dropping penalty for those years. In those letters, I observe that the AO has made a categorical statement that there is no malafide intention on part of the appellant on this issue and therefore penalty is dropped. The AO has therefore in the earlier years accepted that there is no malafide intention on the issue of incorrect claim of depreciation. With these facts, I am at a loss to understand as to how the AO says there is malafide on the part of the appellant on the issue of incorrect depreciation. The AO having admitted in the earlier years that, this is an inadvertent mistake on part of the appellant, cannot now turn around and hold the conduct of the appellant as malafide. In any case, the AO has overlooked the fact that this issue arose in AY 2006-07 and the disallowance of depreciation in this year is only a cascading effect. In these circumstances, I hold that there is no case for levy of penalty on this issue.

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5. I have considered rival contentions and carefully gone through the orders of the authorities below and found that penalty has been levied with respect to the additions made by changing head of income so offered by the assessee. The CIT(A) has recorded a categoric finding to the effect that there was a full disclosure by the assessee on all the material facts and after applying the decision of jurisdictional High Court in case of Bennett Coleman & Co. Ltd., 259 CTR 383 deleted penalty so

imposed.

6. I also found that on identical facts AO has dropped penalty in the case of assessee for the assessment year 2006-07 to 2009-10. Copies of the letter of the AO dropping penalty for these orders were also placed on record. A detailed finding so recorded by CIT(A) has not been controverted by learned DR by bringing any positive material on record.

Accordingly, I do not find any reason to interfere in the order of CIT(A) for deleting the penalty so imposed.

7. In the result, appeal of the revenue is dismissed.

Order pronounced in the open court on this 23/12/2016 Sd/-

(R.C.SHARMA)  
ACCOUNTANT MEMBER

Mumbai; Dated 23/12/2016

Karuna Sr.PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT  
DR, ITAT, Mumbai
- 5.

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6. Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar)  
ITAT, Mumbai