

**[2013] 33 taxmann.com 227 (Bombay)/[2013] 215 Taxman 93 (Bombay)  
(MAG.)/[2013] 259 CTR 383 (Bombay)**

**IT : Where assessee by mistake claimed interest received on Government of India Capital Index Bonds as interest received on tax free bonds, levy of penalty under section 271(1)(c) upon assessee was not justified**

**IT : Where assessee claimed premium received on redemption of debentures as income from capital gains, whereas Assessing Officer held that said premium was assessable to tax under head 'income from other sources' and also levied penalty under section 271(1)(c) upon assessee, since there was only a change of head of income, levy of penalty was not justified**

**[2013] 33 taxmann.com 227 (Bombay)**

**HIGH COURT OF BOMBAY**

**Commissioner of Income-tax - I, Mumbai**

**v.**

**Bennett Coleman & Co. Ltd.\***

**J.P. DEVADHAR AND M.S. SANKLECHA, JJ.**

**IT APPEAL (LOD) NO. 2117 OF 2012**

**FEBRUARY 26, 2013**

**Section 271(1)(c) of the Income-tax Act, 1961 - Penalty - For concealment of income [Bona fide claim, disallowance of] - Assessment year 1999-2000 - Assessee claimed deduction of interest on tax free bonds - Assessing Officer asked assessee to give details of interest on tax free bonds - While preparing said details, assessee noticed that 6 per cent Government of India Capital Index Bonds purchased during year had been categorized as tax free bonds and, therefore, interest earned on such bonds had escaped tax - Thereupon Assessing Officer levied penalty under section 271(1)(c) upon assessee - Tribunal after recorded a finding of fact that there was an inadvertent mistake on part of assessee in claiming interest received on Government of India Capital Index Bonds as interest received on tax free bonds, deleted penalty levied upon assessee - Whether since it was not contended by revenue that above finding of fact by Tribunal was perverse, order of Tribunal deserved to be upheld - Held, yes [Para 2] [In favour of assessee]**

**Section 271(1)(c) of the Income-tax Act, 1961 - Penalty - For concealment of income [Bona fide claim, disallowance of] - Assessment year 1999-2000 - Assessee claimed premium received on redemption of debentures as income from capital gains - Assessing Officer held that said premium was assessable to tax under head 'income from other sources' - Thereupon he also levied penalty under section 271(1)(c) on assessee - Tribunal deleted penalty on plea that there was only a change of head of income by Assessing Officer and**

**it was not case of department that assessee had concealed any particulars of income or furnished inaccurate particulars of income by stating incorrect facts - Whether Tribunal was justified in cancelling penalty levied upon assessee - Held, yes [Para 3] [In favour of assessee]**

## **CASES REFERRED TO**

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*Goetze India Ltd. v. CIT* [\[2006\] 284 ITR 323/157 Taxman 1 \(SC\)](#) (para 1).

**Suresh Kumar** for the Appellant. **Jas Sanghavi** for the Respondent.

## **JUDGMENT**

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1. In this appeal by the revenue for the assessment year 1999-2000, following questions of law have been raised for our consideration :-

- (i) Whether on the facts and in the circumstances of the case and in law, the ITAT was justified in cancelling the penalty levied of Rs.26,25,000/- u/s.271(1)(c) in the light of decision of Supreme Court in the case of *Goetze (India) Ltd. v. CIT* [\[2006\] 284 ITR 323/157 Taxman 1](#) in respect of addition of Rs.75,00,000/- on account of interest received on 6% Government of India Capital Index tax free bonds which was accepted by the assessee during the course of assessment proceedings vide reply dated 28/2/2002 and not offered voluntarily ?
- (ii) Whether on the facts and in the circumstances of the case and in law, the ITAT was justified in cancelling the penalty levied of Rs.35,64,000/- u/s.271(1)(c) in respect of addition made on account of treating premium received on redemption of debentures as income from other sources against claim of assessee as capital gain ?

2. So far as question (i) is concerned, the respondent-assessee has claimed deduction of interest on tax free bonds of Rs.5,60,11,644/-. During the course of the assessment proceedings, the assessee was asked to give details of interest on tax free bonds. While preparing the said details, it was noticed that 6% Government of India Capital Index Bonds purchased during the year had inadvertently been categorized as tax free bonds and, therefore, interest of Rs.75,00,000/- earned on such bonds had also inadvertently escaped tax. The assessing officer levied penalty under Section 271(1)(c) of the Income Tax Act, 1961 (the Act). The CIT(A) upheld the order of the Assessing Officer. On further appeal, the Tribunal in the impugned order records a finding of fact that by inadvertent mistake interest @ 6% on the Government of India Capital Index Bonds was shown as tax free bonds. The Tribunal concluded that there was no desire on the part of the respondent-assessee to hide or conceal the income so as to avoid payment of tax on interest from the bonds. In that view of the matter, the Tribunal deleted the penalty imposed upon the respondent-assessee under Section 271(1)(c) of the Act. In view of the fact that the decision of the Tribunal is based on finding of fact that there was an inadvertent mistake on the part of the assessee in including the interest received of 6% on the Government of India Capital Index Bonds as interest received on tax free bonds. It is not contended by the Revenue that above finding of fact by the Tribunal is perverse. In these circumstances, we see no reason to entertain the proposed question (i).

3. 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 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).

4. Accordingly, the appeal is dismissed with no order as to costs.

SKJ

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\*In favour of assessee.