

Income Tax Appellate Tribunal - Mumbai

Season Apparels Pvt. Ltd, Mumbai vs Assessee

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

Before Shri D.K. Agrawal, (Judicial Member),  
and Shri Pramod Kumar, (Accountant Member)

I.T.A No.4567/Mum./2007  
Assessment Year : 2001-02

Date of Hearing - 6.4.2010

Season Apparels P. Ltd., Leela Baug, Sir  
M.V. Road, Andheri (E), Mumbai 400 059  
PAN - AAEC50578A

Vs

Dy. Commissioner of Income Tax  
Range - 8(3), Aayakar Bhavan, M.K.  
Marg, Mumbai 400 020

Appellant by : Shri Nitesh Joshi  
Respondent by : Shri L.K. Agrawal

O R D E R

Per Pramod Kumar A.M.

By way of this appeal, the assessee has challenged correctness of order dated 20th March 2006, passed by the learned Commissioner (Appeals) - XXIX, Mumbai, confirming concealment penalty of Rs.17,575/- imposed u/s 271(1)(c) of the Income Tax Act, 1961 (for ITA No.4567/Mum./2007 Season Apparels P. Ltd.

[2] short "the Act") for the assessment year 2001-02, the assessee has raised following grievances:-

"1. The learned CIT(A) erred in upholding the penalty order passed by the Assessing Officer u/s 271(1)(c) of the Income Tax Act, 1961.

2. The learned CIT(A) further erred in directing the Assessing Officer to enhance the quantum of penalty levied by him u/s 271(1)(c) of the Income Tax Act."

2. The material facts giving rise to this dispute before us are as follows. The assessee owns an immovable property situated at Zonkhana Apartment, 3 rd Floor, Narmada Nagar, Surat. This property was given on an annual rent of Rs.1,200/-. The assessee also received an interest free refundable deposit of Rs.3.00 lakhs from the tenant to whom the said flat was rented out. In the course of scrutiny assessment proceedings, the Assessing Officer noticed that as against this rental income of Rs.1,200/- and other income of Rs.7,537/-, the assessee has claimed deduction for expenditure aggregating to Rs.23,30,338/-. On these facts, the Assessing Officer proceeded to treat notional interest @ 16% on interest free deposit as part of the rateable value and treated the rental income as also this notional interest income as taxable under the head "Income From House Property" rather than "Business Income", as claimed by the assessee. The assessee filed a revision petition u/s 264, but without any success. The matter, however, did not rest there. The Assessing Officer also proceeded to impose penalty @ 100% of tax sought to be evaded which was computed at Rs.17,575/-. Aggrieved, assessee carried the matter in appeal before the learned CIT(A) but without any success. The learned CIT(A), on the contrary, directed the Assessing Officer to quantify the tax sought to be evaded by taking into account also the loss which was claimed as deduction but which has not been allowed to be carried forward. Aggrieved by the stand so taken by the learned CIT(A), the assessee is in further appeal before us.

3. We have heard the rival contentions, perused the material on record and duly considered the applicable legal position as also the factual matrix of the case.

ITA No.4567/Mum./2007 Season Apparels P. Ltd.

[3]

4. There are two aspects to the penalty impugned in appeal before us - first, rental income being brought to tax as "Income From House Property", as against "Income From Business" claimed by the assessee and addition on account of notional interest on deposit, and - second, business loss carry forward being declined to the assessee. As far as the first aspect is concerned, we find that the issue is covered in favour of the assessee, by decision of a co-ordinate bench in the case of DCIT Vs Tivoli Investment & Trading Co. Ltd. (ITA No.1441, 1442/Mum./1997 and ITA No.4804/Mum./1998, order dated 28th July 2006), wherein the Tribunal has, inter-alia, observed as follows:-

"5. .... We are in considered agreement with the views expressed by the learned CIT(A) that there is neither concealment of any particulars nor concealment of an income or particular. The issue as to whether or not the notional interest on interest free deposits received by the assessee as landlord is a purely legal issue on which

divergent views have been expressed even by co- ordinate benches of this Tribunal. As we have noted earlier the decisions rendered in assessee's own case in favour of the revenue have been referred to a larger Bench. This shows that the correctness of the said decision is not entirely free from doubt. As a matter of fact, another Bench of this Tribunal in the case of Gagan Trading Co. Ltd. Vs ACIT, 93 ITD 426, has taken a contrary view and distinguished Tribunal's decision in the case of Tivoli Investment and Trading Co. P. Ltd. on the ground that the assessee received only deposits and no rent was stipulated to the same order the Tribunal has also observed "notional interest on interest free deposits cannot be taken into consideration while determining the annual letting value of the building under section 23 of the Income Tax Act, 1961". In the light of this discussion, we agree with the learned CIT(A) that impugned addition is made on the basis of a debatable interpretation of law and therefore it was not a fit case of imposition of penalty u/s 271(1)(c) of the Act. The law is trite that the penalty is not an automatic consequence of a quantum addition being made in the light of this discussion and bearing in mind the entirety of the case, we confirm the conclusion arrived at by the learned CIT(A) and declined to interfere in the matter."

5. In any event, whether an amount is to be taxed under the head "Income From Business" or under the head "Income From House Property" is purely a legal issue and it cannot be said to be a case of concealment of particulars of income, as is held by the Hon'ble Supreme Court in the case of CIT Vs Reliance Petroproducts Ltd., 322 ITR 158. There cannot be thus any question of imposing a penalty merely because head under which it is taxed is shifted by the Revenue authorities.

ITA No.4567/Mum./2007 Season Apparels P. Ltd.

[4]

6. Coming to the enhancement of penalty because of business loss carry forward being declined, we have noted that the only mention about this aspect of the matter, in the assessment order, is that "the losses claimed in the return are not allowed to be carried forward". There is no finding about the nature of expenses or even disallowance of expenditure claimed as deduction. It is difficult to understand the reasoning of the observation that "losses claimed in the return are not allowed to be carried forward", but then it is not necessary to do so either since this observation is wholly devoid of any legal implication since, as held by the Hon'ble Supreme Court in the case of CIT Vs Manmohan Das, 59 ITR 699, the question whether a loss incurred by the assessee is eligible to be set- off against subsequent eligible incomes can only be adjudicated in the year in which set-off is claimed. Any observation by the Assessing Officer in the year incurring the loss declaring ineligibility of loss not being allowed to be carried forward is an exercise in futility and has to be ignored. Of-course, situation would have been materially different if the Assessing Officer had disallowed the claim of expenditure on merits, but there are no findings, not even a suggestion, to that effect in the assessment order, which has since received finality. We are thus unable to approve imposition of penalty in respect of loss not allowed to be carried forward. On the second aspect also, thus, the penalty cannot be imposed. In view of these discussions, we quash the orders of both the

authorities below and hold that no penalty is leviable on the facts of this case. The assessee gets the relief accordingly.

7. In the result, assessee's appeal is allowed. Pronounced in the open court today on 30th day of April 2010.

Sd/-  
(D.K. Agrawal)  
Judicial Member

Sd/-  
(Pramod Kumar)  
Accountant Member

Mumbai; 30th day of April 2010

ITA No.4567/Mum./2007  
Season Apparels P. Ltd.  
[5]

Copies of the order forwarded to :

- (1) The Appellant
- (2) The Respondent
- (3) CIT, Mumbai
- (4) CIT(A), Mumbai
- (5) DR, "J" Bench
- (6) Guard File

True Copy  
By Order, etc.

Pradeep J. Chowdhury  
Sr. Private Secretary

Assistant Registrar  
Income Tax Appellate Tribunal  
Mumbai Benches

ITA No.4567/Mum./2007  
Season Apparels P. Ltd.  
[6]

	Date	Initial
1. Draft dictated on	21.4.2010	Sr.PS
2. Draft placed before author	22.4.2010	Sr.PS
3. Draft proposed & placed before the second member	22.4.2010	JM/AM

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|----|---|-----------|----------|
| 4. | Draft discussed/approved by Second Member | 22.4.2010 | JM/AM    |
| 5. | Approved Draft comes to the Sr.PS/PS      | 22.4.2010 | Sr.PS/PS |
| 6. | Date of pronouncement                     | 30.4.2010 | Sr.PS    |
| 7. | File sent to the Bench Clerk              | 30.4.2010 | Sr.PS    |
| 8. | Date on which file goes to the Head Clerk |           |          |
| 9. | Date of dispatch of Order                 |           |          |