

Income Tax Appellate Tribunal - Mumbai

Parle Pet P. Ltd, Mumbai vs Department Of Income Tax on 20 July, 2011

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ITA 391/M/2010

M/s Parle Pet Pvt. Ltd.

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES "C"

BEFORE SHRI D.K. AGARWAL, J.M. AND SHRI R.K. PANDA, A.M.

ITA No. 391/Mum/2010

Assessment year 2004-05

DCIT - 8(2),
R. No. 216-A,
Aaykar Bhawan, M.K. Road,
MUMBAI - 20.

M/s Parle Pet Pvt. Ltd.,
Western Express Highway,
Andheri (East),
Vs. Mumbai.400099.
PAN AABCP1640D

Appellant

Respondent

Appellant by
Respondent by

Shri Anexander Chandy
Shri Yogesh Thar

ORDER

PER R.K. PANDA A.M.

This appeal filed by the Revenue is directed against the order dt. 28.10.2009 of CIT(A)- 17, Mumbai relating to A.Y. 2004-05.

2. The only effective ground raised by the Revenue reads as under:-

"On the facts and in the circumstances of the case and in law, the ld CIT(A) erred in deleting the penalty of ` 39,05,601/- u/s 271(1)(c) of the I.T. Act without appreciating the facts of the case."

3. Facts of the case, in brief, are that the assessee is engaged in the activity of business service center, trading of packaged drinking water and health fitness center. The assessee company filed its return of income for A.Y. 2004- 05 on 30.10.2004 declaring total income at ` 6,37,04,300/-. While framing the assessment, the A.O. noted that the assessee company has let out an area admeasuring 11329 sq. ft. to M/s Parle International Pvt. Ltd., M/s Parle Sales & Services Pvt. Ltd., M/s Parle Agro Pvt. Ltd. and M/s Alnas Plastics Pvt. Ltd.

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@ ` 90/- per sq. ft. per month and received total compensation of ` 1,31,80,800/-. The assessee treated the same as business income and claimed various expenses out of the same amounting to ` 53,18,142/-. It also claimed depreciation on the premises amounting to ` 18,38,952/-. Rejecting the

various explanations given by the assessee and distinguishing the various decisions cited before him, the A.O. treated the compensation as "income from house property". After allowing deduction u/s 24 of the I.T. Act at ` 37,97,245/- and Municipal Tax amounting to ` 5,23,315/-, he determined the income from house property at ` 88,60,240/-.

3.1 Similarly, the A.O. noted that the assessee has declared prior period income at ` 11,45,378/- and prior period expenditure at ` 5,59,747/- and net prior period income amounting to ` 5,85,631/- has been credited to the Profit & Loss Account. According to the A.O. in case of mercantile system of accounting, expenses of the relevant year are only allowable in that year. Earlier years expenses cannot be allowed as deduction in the current year. Since the expenses of current year are only allowable u/s 37(1) of the Act in mercantile system of accounting, the A.O. rejected the various explanations given by the assessee and disallowed the prior period expenditure of ` 5,59,747/-.

3.2 The A.O. further noted that the assessee company has received dividend at ` 6,54,388/- and also received tax free interest from Konkan Railway Bond of ` 2,17,61,645/-. Both the income have been claimed to be exempt from tax. Rejecting the various explanations given by the assessee, the A.O. disallowed an amount of ` 29,30,340/- u/s 14A of the Act being interest expenditure for earning tax free income.

3.3 Similarly, the A.O. also disallowed bad debts of ` 13,58,475/- to the total income of the assessee.

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3.4 In appeal before the CIT(A), the assessee got part relief only in case of bad debts wherein the Id. CIT(A) sustained ` 2,49,513/- and deleted the balance amount. Before the Tribunal, the assessee did not press grounds relating to treatment of the compensation as "income from house property" and disallowance u/s 14A. The grounds relating to disallowance of ` 5,59,747/- on account of prior period expenses and the addition of ` 2,49,513/- on account of bad debts were confirmed by the Tribunal.

3.5 In the meantime, the A.O. initiated penalty proceedings u/s 271(1)(c) of the Act and levied penalty of ` 39,05,601/- on account of the following additions which were upheld by the Id. CIT(A):-

(a) Disallowance of expenditure incurred ` 53,18,142/-

at Business Centre.

(b)	Depreciation on premises	` 18,38,952/-
(c)	Prior period expenses	` 5,59,747/-
(d)	Disallowance u/s 14A	` 29,20,340/-
(e)	Bad debts	` 2,49,513/-
Total		` 1,08,86,694/-

While doing so, the A.O. noted that the assessee has made claim of the expenditure which has not been substantiated in the assessment proceedings.

Therefore, the same amounts to furnishing of inaccurate particulars of income as per provisions of section 271(1)(c) read with explanations thereto. Therefore, it is proved that the assessee has furnished inaccurate particulars of income. Relying on the decision of Hon'ble Supreme Court in the case of Union of India & Ors vs. Dharmendra Textile Processors & Ors. reported in 306 ITR 277, the A.O. levied penalty of ` 39,05,601/-.

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3.6 In appeal, the Id. CIT(A) deleted the penalty so levied. While doing so, she noted that the facts relating to the claim of income from business centre as business income has been disclosed by the assessee. The income was assessed under a different head i.e. income from house property. Relying on a couple of decisions cited by the assessee, she held that no penalty is leviable when the head of income as claimed by the assessee is changed by the A.O. resulting in addition to the total income. Further, it was a clear case of difference of opinion between the assessee and the A.O. as to whether the income was assessable as rental income under the head 'income from house property' or as 'business income' and therefore it is not a case of concealment of income as the expenses incurred by the assessee were genuine expenses and the same were not questioned by the Assessing Officer.

3.6 So far as the issue relating to penalty on prior period expenses, the Id. CIT(A) noted that the details of prior period expenses were made available in the copy of audited accounts and tax audit report. Further it was claimed on the ground that liability to incur the same crystallized during the year, therefore, the disallowance of the claim would not call for levy of penalty as there was no concealment of income or filing of inaccurate particulars of income.

3.7 So far as penalty levied in account of disallowance u/s 14A is concerned, the Id. CIT(A) noted that the assessee had offered an explanation that the interest claim related to debentures issued in A.Y. 2002-03 whereas tax free investments were obtained subsequently on de-merger. Therefore, it cannot be held that the assessee had concealed its income or filed inaccurate particulars nor there was deemed concealment under Explanation 1 to section 271(1)(c).

3.8 As regards the penalty levied on disallowance of bad debts of ` 2,49,513/-, the Id. CIT(A) cancelled the penalty on the ground that the details ITA 391/M/2010 M/s Parle Pet Pvt. Ltd.

of bad debts claimed has been disclosed in operative expenses. The addition was sustained on the ground that these amounts do not pertain to debtors. Hence the disallowance would not justify penalty u/s 271(1)(c) of the Act.

3.9 Aggrieved with such orders of the Id. CIT(A), the Revenue is in appeal before us.

4. The ld. D.R. strongly relied on the order of the A.O.

5. The ld. Counsel for the assessee, on the other hand, submitted that the A.O. disallowed the expenditure of ` 53,18,142/- and depreciation on assets of business service center of ` 18,38,952/- as a result of assessing the compensation under the head 'house property' as against 'business income' claimed by the assessee. Referring to the copy of the Memorandum of Association and Articles of Association of the company, a copy of which is placed at page 69 to 71 of the paper book, the ld. Counsel for the assessee submitted that business of construction, developing, maintaining, operating, buying and selling, leasing and letting out of Business Centre, office premises, apartments etc. are one of the main objectives of the assessee company. Referring to a few decisions filed in the paper book, the ld. Counsel for the assessee submitted that cases of business centres/malls have been decided in favour of various assessees as "business income" by the ITAT and various High Courts as against "house property income" treated by the A.O. It is the settled proposition of law that in case of debatable issues, penalty u/s 271(1)(c) cannot be levied. He submitted that the nature of business has been disclosed in the tax audit report. Referring to the copy of the assessment order, he submitted that no penalty was levied on similar disallowance made by the A.O. for A.Y. 2003-04, 2005-06 and 2006-07. In the instant case, although the A.O. has treated the business centre income as income from house property and the assessee has not pressed this ground before the Tribunal that by itself will not ITA 391/M/2010 M/s Parle Pet Pvt. Ltd.

attract levy of penalty u/s 271(1)(c) of the I.T. Act. Referring to a couple of decisions, he submitted that when no penalty proceedings were initiated in the preceding year and subsequent years on similar issue, it becomes a case of difference of opinion and there is no concealment of income so as to attract levy of penalty u/s 271(1)(c) of the Act.

5.1 So far as the levy of penalty on prior period expenses is concerned, he submitted that there was complete disclosure of the same in the computation of income as well as tax audit report. Referring to a couple of decisions, he submitted that no penalty is leviable u/s 271(1)(c) when the claim has been made by way of note in the computation of income/tax audit report. He submitted that no advantage has accrued to the assessee because of such claim since the tax rates were same in all the years. Relying on a couple of decisions, he submitted that when the tax rates are same, prior period expenses cannot be disallowed.

5.2 So far as penalty levied on disallowance u/s 14A, he submitted that there was no such disallowance in A.Y. 2003-04 and 2005-06. Referring to the balance sheet of the company, he submitted that there was reduction in loans and increase in owned funds, therefore, disallowance in this year is not at all justified. Referring to a couple of decisions, he submitted that no penalty can be levied u/s 271(1)(c) on account of disallowance made u/s 14A.

5.3 So far as the penalty levied on disallowance of bad debts is concerned, he submitted that full particulars were given to the A.O. Therefore, merely because some amount has been disallowed, the same does not call for levy of penalty u/s 271(1)(c) of the Act. He submitted that the CIT(A) has passed an elaborate order while cancelling the penalty levied by the A.O. He accordingly submitted that the order of the ld. CIT(A) should be upheld and the appeal filed by the Revenue should be

dismissed.

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6. We have considered the rival submissions made by both the sides, perused the orders of the A.O. and the CIT(A) and the paper book filed on behalf of the assessee. We have also considered the various decisions cited before us. In our opinion, the Id. CIT(A) was justified in cancelling the penalty levied by the A.O. u/s 271(1)(c) of the Act. The issue relating to treatment of the compensation as "business income" or "income from house property" is a debatable issue. One of the main objects of the assessee company as set out in the Memorandum of Association is letting out of business centre, office premises, apartments etc. As per the MOU, the assessee has to provide various facilities as set out in the agreement such as electricity, telephone, secretarial service, providing chairs, tables, cabinet, computer and Xerox machine etc. The genuineness of the expenses are not disputed by the Revenue. Therefore, merely because the claim of the assessee has been disallowed the same, in our opinion, do not call for levy of penalty u/s 271(1)(c) especially when full particulars were given. Further, no penalty proceedings u/s 271(1)(c) of the Act were initiated under identical facts and circumstances in the proceeding assessment year i.e. A.Y. 2003-04 or in the subsequent assessment year i.e. A.Y. 2005-06. Therefore, the penalty so levied by the A.O. in the impugned A.Y. at best can be termed as due to change of opinion. Further, the co-ordinate benches of the Tribunal in a number of cases have held that no penalty is leviable due to disallowance of expenditure made only on account of change of head of income and when there is no allegation about the genuineness of the expenditure. It is the settled proposition of law that penalty proceedings are different from assessment proceedings and the assessee can always advance fresh arguments while arguing penalty matters. Since the assessee has furnished full details of the various expenses claimed by it and since the issue is a debatable one and since no penalty has been levied on account of similar disallowances in the preceding or subsequent assessment years, therefore, we find no infirmity in the order of the Id. CIT(A) deleting the penalty levied on ITA 391/M/2010 M/s Parle Pet Pvt. Ltd.

account of disallowance of expenses of ` 53,18,142/- and disallowance of depreciation of ` 18,38,952/- by treating the business centre income as income from house property.

6.1 So far as the issue relating to prior period expenses is concerned, we find merit in the arguments of Id. Counsel for the assessee that full disclosure were made in the computation of income and in the tax audit report and no advantage has accrued to the assessee since the tax rates are same in all the years. Therefore, the order of the Id. CIT(A) deleting the penalty on account of prior period expenses is justified and does not call for any interference.

6.2 As regards the penalty levied on disallowance u/s 14A, we find no such disallowances u/s 14A were made during A.Y. 2003-04 and 2005-06. Further, it has been held by various Co-ordinate benches of the Tribunal that no penalty can be levied u/s 271(1)(c) on account of disallowance made u/s 14A. In view of the same and in view of our observations while deleting the penalty on treating "business centre income" as "income from house property", we hold that the Id. CIT(A) was justified in deleting the penalty levied u/s 14A.

6.3 So far as the penalty levied on account of disallowance of bad debts is concerned, we find that out of the total bad debts disallowed by the A.O. at ` 13,58,475/-, the ld. CIT(A) has sustained an amount of ` 2,49,513/- on the ground that the same did not pertain to debtors as such amount was not treated as income in the earlier year. However, the fact remains that the assessee had given full particulars of such claim. Therefore merely because the bad debt was disallowed, the same, in our opinion, under the facts and circumstances of the case does not call for levy of penalty u/s 271(1)(c) of the Act. It cannot be termed as concealment of particulars of income or furnishing of inaccurate particulars of its income. In this view of the matter and in view of the detailed discussion by the ld. CIT(A), we are of the considered opinion ITA 391/M/2010 M/s Parle Pet Pvt. Ltd.

that this is not a fit case for levy of penalty. We, therefore, uphold the order of the ld. CIT(A) and the ground raised by the Revenue is dismissed.

7. In the result, the appeal filed by the Revenue is dismissed.

Order pronounced on 20.7.2011.

Sd/-
(D.K. AGARWAL)
JUDICIAL MEMBER

sd/-
(R.K. PANDA)
ACCOUNTANT MEMBER

Mumbai, dated 20.7.2011.

RK

Copy to...

1. The appellant
 2. The Respondent
 3. The CIT(A) - 17, Mumbai
 4. The CIT - 8 Mumbai
 5. The DR Bench, "C"
 6. Master File
- // Tue copy//

BY ORDER

DY/ASSTT. REGISTRAR
ITAT, MUMBAI

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	Date	Initials	
1 Draft dictated on	11.7.2011,		Sr. PS
	14.7.11		
2 Draft placed before the Author	12.7.2011,		Sr. PS
	14.7.11		
3 Draft placed before the second Member			
4 Approved draft comes to the Sr. PS			Sr. PS

- | | | |
|---|---|--------|
| 5 | Kept for pronouncement on | Sr. PS |
| 6 | File sent to the Bench Clerk | Sr. PS |
| 7 | Date on which file goes to the Head Clerk | |
| 8 | Date on which file goes to the AR | |
| 9 | Date of dispatch of order | |