

आयकर अपीलीय अधिकरण, मुंबई न्यायपीठ “ए” मुंबई
IN THE INCOME TAX APPELLATE TRIBUNAL “A” BENCH, MUMBAI

BEFORE HON’BLE S/SHRI JOGINDER SINGH (JM), AND RAJESH KUMAR,(AM)

आयकर अपील सं./I.T.A. No.7548/Mum/2014
(निर्धारण वर्ष / Assessment Year :2009-10)

Shri Amit R Agarwal, 221, Kewal Industrial Estate, Senapati Bapat marg, Lower Parel (W), Mumbai-400013	बनाम/ Vs.	Asstt. Commissioner of Income Tax, 12(2), Aayakar Bhavan, M K Road, Mumbai-400020.
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

स्थायी लेखा सं./जीआइआर सं./PAN No. :AAAPA7489D

अपीलार्थी ओर से / Appellant by:	Ms Neelam Jadhav
प्रत्यर्थी की ओर से/Respondent by	Shri Kailash Kanojia

सुनवाई की तारीख / Date of Hearing : 21.7.2016
घोषणा की तारीख /Date of Pronouncement : 6.10.2016

आदेश / O R D E R

Per RAJESH KUMAR, Accountant Member:

This is an appeal by the assessee and is directed against the order of the Ld. CIT(A)-23, Mumbai dated 28.10.2014 pertaining to A.Y.2009-10.

2. The issue raised in grounds of appeal no.1 and 2 is against the confirmation of penalty levied under section 271(1) (c) of the Income Tax Act, 1961 (hereinafter referred to as the Act) by the Id. CIT(A) as levied by

the AO on the disallowance of Rs.8,83,883/- made under deeming provisions of section 94(7) of the Act.

3. Facts of the case are that the assessee filed his return of income on 30.9.2009 declaring total loss of Rs.1,71,87,067/-. The case of the assessee was selected for scrutiny and the assessment was framed vide order dated 12.12.2011 passed under section 143(3) of the Act at a total loss of Rs.1,60,54,886/- by making two disallowances. One of Rs.8,83,883/- being dividend on mutual funds which was claimed as exempt u/s 10(35) of the Act by the assessee treating the same as deemed interest under deeming provisions of section 94(7) of the Act and second Rs.1,78,227/- which relates to cost of acquisition of Birla Sunlife Income Plus. The penalty proceedings under section 271(1)(c) of the Act were initiated and show cause notice dated 12.11.2011 issued. The assessee replied that since the assessee has fully and truly made disclosure of all particulars qua the said items in the return of income and were so treated under the bonafide belief and also that during the course of assessment proceedings on his own offered the same for addition and accordingly the loss was reduced by the AO. The AO not finding any substance in the submissions of the assessee imposed a penalty of Rs.3,28,192/- u/s 271(1)(c) of the Act vide order dated 27.6.2012 on the ground that the assessee did not disclose full particulars of income. Aggrieved by the order of the AO, the assessee preferred an appeal before the First Appellate Authority (FAA) who deleted the penalty on the

disallowance of Rs.1,78,227/- while upholding the penalty on second item of disallowance of Rs.8,83,883/-and thus partly allowed the appeal of the assessee by relying on the decision of the Hon'ble Supreme Court in the case of Reliance Petroproduct Pvt Ltd reported in 322 ITR 158 (SC) on the ground that the explanation of the assessee was found to be true and bonafide.

4. We have carefully considered the rival submissions and perused the material placed before us including the orders of authorities below. We find that penalty was imposed on two items, one of which was deleted by the Id. CIT(A) and second item of disallowance on which the penalty was upheld is in respect of short term capital loss of Rs.8,83,883/- in respect of Reliance Mutual Funds which was rejected by the AO during the course of assessment proceedings under the provisions of section 94(8) of the Act and correspondingly the income of the assessee went up. Perusal of these facts clearly reveals that the assessee has fully disclosed all the particulars of loss qua the said short term capital loss of Rs.8,83,883/- from mutual fund in the return of income and thus has not furnished inaccurate particulars qua the said Short term loss. The Id. AR vehemently submitted that the penalty u/s 271(1)9c) of the Act was not imposable in respect of Rs.8,83,883/- being short term capital loss on mutual funds, the full particulars of which stands disclosed in the return of income filed by the assessee. Ld AR submitted that this has happened due to bonafide and inadvertent mistake

committed by the accountant of the appellant. The Id. AR strongly relied on the decision of the co-ordinate bench of the Tribunal in the case of Janus Investment Fund V/s Dy. Director of Income Tax (International Taxation) in ITA No.6975/Mum/2010, Assessment Year: 2007 -08, dated 4.7.2012, which as per the Id.AR directly covers the case of the assessee. We also note that the Short term capital loss on the mutual funds was disallowed by applying deeming provisions of section 94(8) of the Act. The Id. AR submitted that in view of the bonafide error committed by the accountant and the facts being fully disclosed, the penalty was wrongly upheld by the Id. CIT(A) and deserved to be deleted. On the contrary, the Id. DR relied on the orders of authorities below.

5. We find that in the case of Reliance Petro product Pvt Ltd reported (supra), in which it has been held that in order to expose to the vigour of penal provision, the case is required to be strictly covered by the provisions of section 271(1)(c) of the Act. It was further held that wrong claim made by the assessee which is not accepted to the revenue cannot be subjected to the provisions of section 271(21)(c) of the Act merely on the ground that the claim of the assessee was wrong. In this case, the assessee had made genuine claim which was found to be wrong by applying deeming provisions of section 94(8) of the Act and thus the penalty was imposed by the AO and also sustained by the Id. CIT(A). In the case of Zoom Communications P Ltd (2010) 191 Taxmann 179, relied upon by the Id CIT(A), the Hon'ble

High Court has held that where the assessee makes a claim which is not only incorrect in law but also wholly without any basis and explanations furnished by him are not bonafide for making such claim. In that case, the penalty would be levied under section 271(1)(c) of the Act. In our opinion the case of the assessee is squarely covered by the ratio laid down in the case of Reliance Petro Products Ltd (supra). The facts of the case in Zoom Communications P Ltd (supra) are distinguishable from that of the assessee's case, as in the case of assessee wrong claim was under bonafide belief of the accountant which was disallowed under the deeming provisions of section 94(8) of the Act and therefore, the Id.CIT(A) has wrongly relied on the decision in order to uphold the order of the AO. In view of the above discussion and legal position, we set aside the order of the Id. CIT(A) and direct the AO to delete the penalty.

6. In the result, the appeal of the assessee is allowed.

The above order was pronounced in the open court on 6th Oct, 2016.

घोषणा खुले न्यायालय में दिनांक: 6th Oct, 2016 को की गई ।

Sd
(JOGINDER SINGH)
Judicial Member

sd
(RAJESH KUMAR)
Accountant Member

मुंबई Mumbai: 6th Oct, 2016.

व.नि.स./ SRL , Sr. PS

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)- concerned
4. आयकर आयुक्त / CIT concerned

5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई /
DR, ITAT, Mumbai concerned
6. गार्ड फाईल / Guard file.

True copy

आदेशानुसार/ BY ORDER,

सहायक पंजीकार (Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई /ITAT, Mumbai