

आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई।
IN THE INCOME TAX APPELLATE TRIBUNAL
'A' BENCH: CHENNAI

श्री महावीर सिंह, उपाध्यक्ष एवं श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष
BEFORE SHRI MAHAVIR SINGH, VICE PRESIDENT AND
SHRI MANOJ KUMAR AGGARWAL, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.145/Chny/2021
निर्धारण वर्ष /Assessment Year: 2016-17

Shri M. Prabakaran,
Managing Director,
389/5, Vellalar Street,
Aynambakkam – 600 095,
Tamil Nadu.
[PAN: AAGCR-4875-F]
(अपीलार्थी/Appellant)

The Income Tax Officer,
Vs. Corporate Ward-5(3),
Chennai.

(प्रत्यर्थी/Respondent)

आयकर अपील सं./ITA No.548/Chny/2021
निर्धारण वर्ष /Assessment Year: 2016-17

RKP Poly Bags Pvt. Ltd.,
389/5, Vellalar Street,
Aynambakkam – 600 095,
Tamil Nadu.
[PAN: AAGCR-4875-F]
(अपीलार्थी/Appellant)

The Income Tax Officer,
Vs. Corporate Ward-5(3),
Chennai.

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by
प्रत्यर्थी की ओर से /Respondent by

: Shri B. Jeevarathinam, C.A
: Shri ARV Sreenivasan, Addl. JCIT

सुनवाई की तारीख/Date of Hearing : 07.09.2022
घोषणा की तारीख /Date of Pronouncement : 07.09.2022

आदेश / ORDER

Per Mahavir Singh, Vice President :

ITA No.548/Chny/2021 in the case of RKP Poly Bags Pvt. Ltd.:

This appeal by the assessee is arising out of the order of
Commissioner of Income Tax (Appeals)-3, Chennai, in ITA No.20

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/CIT(A)-3/2019-20 dated 22.08.2020. The penalty under dispute levied by Income Tax Officer, Corporate Ward-5(3), Chennai for the Assessment Year 2016-17 vide order dated 16.11.2018 u/s. 143(3) of the Income Tax Act, 1961 (hereinafter 'the Act').

2. The only issue in this appeal is as regards to the order of Ld. CIT(A) confirming the action of the A.O in levying penalty u/s. 271(1)(c) of the Act on differential amount of opening WDV of assets as on 01.04.2015 and the closing WDV of assets as on 31.03.2015.

3. The brief facts of the case are that the assessee-company is engaged in the business of manufacturing and exporting of packaging material. The assessee filed its return of income for A.Y 2016-17 and assessee's case was selected for limited scrutiny under CASS for the reason that, "Opening Written Down Value of current year is greater than Closing Written Down Value of previous year". The A.O noted the details and he noted from the schedule of depreciation filed along with return of income that the opening WDV as on 01.04.2015 for the block of assets, where claim of depreciation is at 15% is at Rs. 2,27,47,077/-, whereas the closing WDV for the same block as on 31.03.2015 is at Rs. 1,08,39,164/-. Therefore, the depreciation claimed as per revised depreciation chart and calculated the differential depreciation was at Rs. 17,86,187/- which was disallowed

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and added to the returned income of the assessee. This assessment was finally accepted and the assessee paid tax on the same. No appeal was preferred against the assessment.

4. Subsequently, the A.O started penalty proceedings u/s. 271(1)(c) of the Act and levied the penalty for furnishing of inaccurate particulars of income chargeable to tax to the extent of Rs. 17,86,187/-. Accordingly, the minimum penalty levied was Rs. 5,51,930/- equivalent to 100% tax showed to be evaded. The A.O levied the penalty despite explanation submitted by the assessee that the assessee itself re-check of total depreciation and found to be incorrect due to the mistake in calculating the depreciation which happened due to duplication of the value of assets as it has added the individual assets as well as their subtotal. It was not accepted by the A.O and levied the penalty accordingly. The Ld. CIT(A) also confirmed the action of the A.O only for the reason that there was discrepancy with respect to additions made and for this, the Ld. CIT(A) observed in para 5.2 to 5.2 as under:

“5.2 As per the appellant the error has happened at the auditor’s office, but it has failed to provide any affidavit or any communication with the auditor which could substantiate the said claim.

5.3 Though the appellant had paid off the relevant tax and interest, it was paid only when it was specifically pointed out to him about the wrong claim.

5.4 The AO in its order has also noted the discrepancies with respect to the additions made and not only the opening and closing WDV balances.”

Aggrieved, the assessee came in appeal before the Tribunal.

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5. We have heard rival contentions and gone through the facts and circumstances of the case. Before us, the Chartered Accountant Shri B. Jeevarathinam categorically admitted in writing that the duplication of assets has happened while calculating the depreciation as per Income Tax Act while computing the tax computation sheet by his staff. He admitted that while doing so, the staff has wrongly computed the deprecation value filed 15% block of assets with respect to the said assessment year and accordingly, excess depreciation claimed was made to the extent of Rs. 17,86,187/-. The Chartered Accountant vide letter filed during the course of hearing and admitted this mistake as under:

“Here we admit that the mistake above was done by one of my staff and the same was totally not aware of by the company as the same was not related to the book of accounts of the company as it alters only the statement of accounts and the annexure in the Income tax Depreciation statement. Indeed the companies itself are very much ignorant about all the tax rules and laws.

Hence I kindly request your honor to consider the true factual grounds that the company has no intention to evade tax or to provide any false statement to suppress any profits with any malafide intentions.”

6. We noted that this mistake has occurred at the office of the Chartered Accountant and there is no intention of the assessee to evade the tax. Moreover, the assessee has already accepted assessment and paid taxes. In view of the facts and circumstances narrated above and the cumulative effect of the facts, if we analyze, it clearly shows that the assessee was under bonafide belief in claiming

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this depreciation. Hence, we delete the penalty and allow the appeal of the assessee.

ITA No.145/Chny/2021 for Assessment Year 2016-17 in the case of M. Prabakaran:

7. We noted that this appeal is not maintainable for the reason that the above appeal in ITA No.548/Chny/2021 is actual appeal against penalty order in the case of the company RKP Poly Bags Pvt. Ltd. and this penalty is levied only on the company and not the Managing Director i.e., assessee individually. Hence, this appeal filed by the assessee in individual capacity is not maintainable and hence dismissed.

8. In the result, the appeals of the assessee in ITA No. 548/Chny/2021 is allowed and the appeal in ITA No.145/Chny/2021 is dismissed as not maintainable.

Order pronounced in the open Court on 07th September, 2022.

Sd/-
(मनोज कुमार अग्रवाल)
(Manoj Kumar Aggarwal)
लेखा सदस्य /Accountant Member

Sd/-
(महावीर सिंह)
(Mahavir Singh)
उपाध्यक्ष / Vice President

चेन्नई/Chennai, दिनांक/Dated: 07th September, 2022.

EDN/-

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)
4. आयकर आयुक्त/CIT
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF