

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

INCOME TAX APPEAL NO. 888 OF 2014

The Commissioner of Income Tax-2 .. Appellant
Mumbai
v/s.

M/s. Sharad Fibers & Yarn Processors Ltd. ..Respondent

Mr. Suresh Kumar a/w Ms. Samiksha Kanani for the appellant
None for the respondent

**CORAM : M.S. SANKLECHA &
S.C. GUPTE, J.J.**

DATED : 15th OCTOBER, 2016.

PC.

1. This Appeal under Section 260-A of the Income Tax Act, 1961 (the Act) challenges the order dated 23rd October, 2013 passed by the Income Tax Appellate Tribunal (the Tribunal). The impugned order is in respect of Assessment Year 2004-05.

2. The Revenue urges only following question of law for our consideration :-

“(i) Whether on the facts and in the circumstances of the case and in law, the Tribunal was correct in upholding the decision of the CIT(A) cancelling penalty u/s 271(1)(c) of the

I.T. Act, 1961, without appreciating that the assessee had filed inaccurate particulars intending to evade taxes to extent of Rs.1,82,83,210/- by not adding back an amount of Rs.5,09,63,653/- u/s 43B of the Income Tax Act, 1961?”

3. The respondent assessee during the subject assessment year had claimed expenditure on account of bank interest to the tune of Rs.7.99 crores. The respondent assessee added back an amount of Rs.2.89 crores in terms of Section 43B(e) of the Act being the interest paid on term loans. The Assessing Officer during the assessment proceedings added the further amount of Rs.5.09 crores to the income being the interest payable on loan and advances as not satisfying the provisions of Section 43B(e) of the Act. Consequently, penalty proceedings were also initiated in the assessment order against the respondent assessee.

4. The respondent assessee carried the issue in quantum proceedings in appeal to the Commissioner of Income Tax (Appeals) [CIT(A)]. However, by order dated 12th September, 2008, the order of the Assessing Officer was upheld. This in view of the amendment made to Section 43B(e) of the Act by the Finance Act, 2003 w.e.f. 1st April, 2004. This amendment substituted the words “term loans” therein with interest payable on “loans and advances”. This order of CIT(A) in

quantum proceedings was accepted by the respondent assessee.

5. In the penalty proceedings, the respondent assessee explained that the failure to add back the amount of Rs.5.09 crores was a *bona fide* mistake on its part in view of the recent amendment to Section 43B(e) of the Act. This mistake it submitted was clear from the fact that the amounts paid as interest on “terms loans” were added back by it in terms of unamended Section 43B(e) of the Act. However, the Assessing Officer was not satisfied with the Explanation of the respondent assessee and imposed a penalty of Rs.1.82 crores under Section 271(1)(c) of the Act.

6. Being aggrieved, the respondent assessee carried the issue in appeal to the CIT(A). By order dated 5th January, 2012, the CIT(A) recorded the fact that prior to amendment of Section 43B(c) of the Act by the Finance Act, 2003 w.e.f. 1st April, 2004, only interest on any term loan was dis-allowable, if not actually paid. The CIT(A) also records the fact that the assessee himself has disallowed the interest on term loan, which had not been paid. In these circumstances, the CIT(A) held dis-allowance of interest not paid on loans and advances by the respondent assessee was a *bona fide* mistake. Thus, allowed the appeal

of the respondent assessee.

7. Being aggrieved, the Revenue carried the issue in appeal to the Tribunal. By the impugned order, the Tribunal accepted the explanation of the respondent assessee of *bona fide* mistake. This as the amendment was recently made in Section 43B(e) of the Act and for that reason not pointed out during the course of the audit. In the above view, the Tribunal dismissed the respondent Revenue's appeal.

8. We find that there are concurrent findings of fact by the CIT(A) as well as the Tribunal that the mistake in not adding back the interest not paid on advances and loans to the income during the subject assessment years was a *bona fide* mistake. This mistake, it held, was on account of the fact that the amendment to Section 43B(e) of the Act requiring the actual payment of interest on loans and advances came into force only w.e.f. 1st April, 2004. The Apex Court in ***Price Waterhouse Coopers (P) Ltd. Vs. Commissioner of Income Tax, (2012) 25 taxmann.com 400 (SC)***, held that the penalty should not be imposed where the error / mistake is *bona fide*, to which we are all susceptible.

9. In view of the concurrent finding of fact by the CIT(A) as well as the Tribunal and in the absence of the same being shown to be perverse, the question as proposed does not give rise to any substantial question of law. Thus, not entertained.

10. The appeal is dismissed. No order as to costs.

(S.C. GUPTE, J.)

(M.S. SANKLECHA, J.)