

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

INCOME TAX APPEAL NO.356 OF 2016

The Pr. Commissioner of Income Tax-9	..	Appellant.
v/s.		
M/s. Bunge India Pvt. Ltd.	..	Respondent.

Mr. Arvind Pinto, for the Appellant.
Mr. Sanjiv M. Shah for the Respondent.

**CORAM: M.S.SANKLECHA &
SANDEEP K. SHINDE,JJ.**
DATE : 8th August, 2018.

P.C:-

This Appeal under Section 260-A of the Income Tax Act, 1961 (the Act), challenges the order dated 18.2.2015 passed by the Income Tax Appellate Tribunal (the Tribunal). The impugned order dated 18.2.2015 is in respect of Assessment Year 2004-05.

2 Revenue urges the following question of law, for our consideration:

“ Whether in law and on the facts of the instant case, was the Tribunal justified in deleting penalty u/s.271(1)(c) by holding that the explanation given by the Company was bonafide; whereas the explanation given that depreciation charts were because of the computer was a contrived afterthought and not a bonafide explanation ?”

3 Respondent-Assessee in its return of income claimed depreciation @ 40% on plant and machinery when the applicable rate of depreciation was only 25% for the subject Assessment Year. During the assessment proceedings the Assessing Officer re-computed the depreciation and disallowed the excess claim. Besides, he initiated penalty proceedings under Section 271(1)(c) of the Act.

4 In the penalty proceedings, the Respondent offered an explanation that the depreciation chart for the current year was prepared through the computer system by adopting the relevant figures from immediately preceding year. The Respondent had in the immediately preceding year had added plant and machinery. Thus, entitling it to additional depreciation of 15%. Therefore, claiming 40% depreciation in the preceding year. As a result, the depreciation claimed in the subject Assessment Year on the basis of figures in the computer for earlier year, was inadvertent. The Assessing Officer and CIT (A) did not accept the explanation in Penalty proceedings.

5 On further appeal, the Tribunal by the impugned order dated 18.2.2015 allowed the Respondent's Appeal on this issue and deleted the penalty. This by the impugned order of the Tribunal holding as under:

“4 Now the effective question that arises before us is whether the above said explanation of the assessee is a bonafide one or not. If it is found to be a bonafide one, then the penalty shall not lie in view of the Explanation 1 to sec 271(1)(c) of the Act. The fact that the assessee was eligible to claim higher rate of depreciation @ 40% in the immediately preceding year was not disputed. It is also quiet natural in this computer era to prepare Depreciation chart by downloading the relevant figures from the chart of the immediately preceding year. Viewed from this angle, we are of the view that the explanation of the assessee appears to be bonafide one. It is quite possible that the depreciation rate may escape the attention while preparing the Depreciation Chart, since the

basic depreciation rate has not been changed in the Statute during the year under consideration. Hence, we are of the view that the explanation given by the assessee should be considered as bonafide one and hence Explanation 1 to sec.271(1)(c) shall apply to the same. Accordingly, we set aside the order of Ld. CIT(A) on the penalty levied on the disallowance of depreciation claimed on Plant and Machinery and direct the AO to delete the penalty levied thereon.”

(emphasis supplied)

6 From the above, it is very clear that the view taken by the Tribunal on the facts of this case is a very possible view. Thus, no substantial question of law arises.

7 Accordingly, Appeal dismissed.

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(SANDEEP K. SHINDE,J.)

(M.S.SANKLECHA,J.)