

IN THE INCOME TAX APPELLATE TRIBUNAL “G” BENCH, MUMBAI
BEFORE SHRI AMIT SHUKLA, JM AND SHRI RAJESH KUMAR, AM

आयकर अपील सं./I.T.A. No 1828/Mum/2014
(निर्धारण वर्ष / Assessment Year: 2006-07)

I.T.O. 16(2)(4), 2 nd Floor, Matru Mandir, Tardeo Road, Mumbai-400 007.	बनाम/ Vs.	Girdhardas K. Damani L/R Anand G. Damani, 41, Sujata Apartments, 8, Little Gibbs Road, Malabar Hill, Mumbai-400 006.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. AACPD 3860B		
(अपीलार्थी /Appellant)	:	(प्रत्यर्थी / Respondent)
अपीलार्थी की ओर से / Appellant by	:	Shri. B.D. Naik
प्रत्यर्थी की ओर से/Respondent by	:	Shri Mitesh Shah
सुनवाई की तारीख / Date of Hearing	:	03/09/2015
घोषणा की तारीख / Date of Pronouncement	:	06/01/2016

आदेश / ORDER

PER RAJESH KUMAR, A. M:

This appeal by the assessee is directed against the order dated 24-12-2013 of Commissioner of Income Tax (Appeals)-27, Mumbai (Hereinafter called as the CIT(A)) for assessment year 2006-07. The assessee has raised the following grounds of appeal:

1. *“Whether on the facts and circumstances and in law, the Ld. CIT(A) has erred in deleting penalty u/s 271(1)(c) levied for concealment of income by assessee of Rs.3.77 Lacs which was levied as per Act?”*
 2. *“Whether on the facts and circumstances and in law, the Ld. CIT(A) has erred in not taking cognizance of Hon. Delhi High Court case in of CIT V/S Zoom Communication (P) Ltd, 327 ITR 510 (Delhi) which clarifies that, if assessee makes any claim which is not only incorrect in law, but is also wholly without any basis and explanation furnished by him for making such a claim is not found to be bona-fide, Explanation 1 to section 271(1)(c) would come into play and assessee would be liable for penalty.*
2. The common issue raised in all the grounds of appeal relates to deletion of penalty of Rs.3.77 lacs by CIT(A) levied by AO u/s 271(1)(c) of the Act by not taking cognizance of Hon’ble Delhi High Court.
3. The brief facts of the case are that the assessee filed his return of income on 03-11-2006 declaring total loss of Rs.14,16,900/- by claiming exempt income of Rs.29,36,840/-. The AO framed the assessment u/s 143(3) at Rs. 29,36,840/- vide order dated 29-12-2008 by making the disallowance of interest u/s 14A of Rs.13,88,011/-. The assessee was engaged in the business of Civil construction and declaring a net profit at the rate of 8.1% on the gross total income of Rs.38,80,360/- and thus declaring the net profit of Rs.3,10,907/-. The assessee had also shown net loss under the head income from other sources of Rs.12,89,646/- by deducting interest of Rs.13,88,011/- from the interest income of Rs.98,365/-. The assessee had also received dividend income of Rs.5,07,800/- on investment of shares of Rs.6,18,310/- as

share on profit from the firm. During the course of assessment proceedings the AO asked the assessee to furnish the details of interest paid and received. The assessee could not prove the interest received and paid. It was also found by the AO that sum of Rs.29,78,117/- was advanced to his mother as interest free loan. The CIT(A) vide order dated 26.11.2010 sustained the addition of Rs.12,89,646/- out of total addition of Rs.13,88,011/-. The AO imposed the penalty of Rs.3,77,955/- u/s 271(1)(c) by holding that assessee has concealed income to the tune of Rs.12,89,646/- and also filed inaccurate particulars of income. The Id. CIT(A) deleted the penalty by holding as under.

“ In view thereof and particularly taking cognizance of the following case law, penalty of Rs.3,77,995/- is cancelled:-

- i) Reliance Petro Products Ltd. (supra) – it was held that a mere making of a claim, which is not sustainable in law, but itself, will not amount to furnishing inaccurate particulars.*
- ii) CIT Vs. Shiv Lal Desai and Sons 114 ITR377 (Bom) - it was held that merely because the disallowance was made in the assessment proceedings, it would not necessarily lead to imposition of penalty.*
- iii) Shri Ishar Alloys & Steel Ltd. vs. ACIT 68 ITD 117 (Mum)- it was held that action under section 271(1)(c) was not valid as the assessee had made a bonafide but unsuccessful claim for depreciation.”*

4. The Id. DR submitted before us that the assessee has wrongly claimed the interest paid on the money borrowed by him from its income from other sources and

therefore the assessee had furnished in accurate particulars of income and also considered the particulars of income. The Id. DR relied on the decision in the case of CIT Vs. Zoom Communication (P.) Ltd., 327 ITR 510 (Delhi) in support of the case of the revenue and submitted that the order of the CIT(A) be reversed and that of the AO be restored.

5. The Id. AR submitted before us that the assessee had expired on 22.01.2011 whereas the penalty u/s 271(1)(c) was levied on 31.03.2011 when the assessee was not alive. It was also submitted by the AR in case of death of the assessee no order of assessment including order of penalty could not be passed against such dead person and if any order was passed as such that would be null and void. The Id. Counsel placed reliance on the CIT Vs. Amarchand N. Shroff 48 ITR 59,65,55(SC) and ITO Vs. Ramprasad 70 ITR 59 (All.), and therefore submitted that the order of the penalty passed in the name of the deceased is non-est and liable to be quashed and annulled. The Id. Counsel further submitted that in view of the various decisions by the various High Court and Supreme Court that penalty proceeding under Act are quasi-criminal in nature. In criminal jurisprudence a crime dies with a man and the legal representative of the Deceased offender or criminal cannot be penalized for the offences or crimes committed by the Deceased. The Id. Counsel therefore submitted that penalty as imposed by the AO was irrational and harsh and inequitable as it punished the Legal representatives in respect of quasi-crimes committed by the

Deceased. The Id. Counsel drew out attention to the provision of section 159 subsection 2 clauses (b) and (c) which provides that any proceeding which could have been taken against the deceased if he had survived may be taken against the legal representative and legal heirs and the provisions of Act was applied accordingly. The Id. Counsel however submitted the legislature was aware of the cardinal principle of criminal jurisprudence that a crime dies with the man which can also apply to quasi criminal proceedings i.e penalty proceedings. Therefore provisions of section 159(2)(b) authorizes the continuation of proceedings against the legal representatives which could have been taken against the deceased had he survived, it does not by any stretch of arguments mean that the legal representatives could be proceeded against for the offences or contraventions, if any, committed by the deceased for any provisions of the Act. The Id. Counsel also placed on reliance on *Bhuban Mohan Mitter Charitable Trust vs. ITO 45 ITD 617 (Cal.)* wherein it has been held that when an assessee is a deceased not existent in the world, the penalty proceedings abate on the death of an assessee. The Id. Counsel finally prayed that in view of these facts the order of the CIT(A) did not suffered from legality or infirmity and same deserved to be upheld in the interest of the assessee.

6. We have heard the rival submissions and perused the material on the record. We find from the facts before us that the assessee expired on 21.2.2011 and the penalty order was passed on 28.03.2012 an approximately more than 1 year after the

date of the death. We are in agreement with the Id AR for the assessee that penalty order in the name of the deceased cannot be passed and any such order imposing penalty on the deceased person is null and void. Even on merit the Id. CIT(A) had rightly cancelled the penalty after taking into account the various decisions as mentioned in para 2.4.17 of the appeal order. We therefore did not find any reason to interfere or disturb the order of the CIT(A) as the same was passed after taking into account all the technical and legal issues involved in the matter. We, therefore, by following the ratio laid down in the cases CIT Vs. Amarchand N. Shroff 48 ITR 59,65,55(SC) , ITO Vs. Ramprasad 70 ITR 59 (All.) and Bhuban Mohan Mitter Charitable Trust vs. ITO 45 ITD 617 (Cal.) uphold the order of CIT(A) by dismissing the appeal of the revenue. The AO is directed accordingly.

In the result, the Revenue's appeal is dismissed.

Order pronounced in the open court on 6th January, 2016

Sd/-

Sd/-

(Amit Shukla)

(Rajesh Kumar)

न्यायिक सदस्य / Judicial Member

लेखा सदस्य / Accountant Member

मुंबई Mumbai; दिनांक Dated :06 .01.2016

Ps. Ashwini Gajakosh

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)
4. आयकर आयुक्त / CIT – concerned
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard File

आदेशानुसार/ BY ORDER,

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