

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
MUMBAI BENCH "J", MUMBAI**

**BEFORE SHRI D. KARUNAKARA RAO, ACCOUNTANT MEMBER AND  
SHRI SANJAY GARG, JUDICIAL MEMBER**

**ITA Nos.345 & 346/M/2015  
Assessment Years: 2004-05 & 2006-07**

Mr. Satish Babladi, 404, Akruiti Arcade, J.P. Road, Opp. Wadia School, Andheri (West), Mumbai – 400 053 <b>PAN: AAIPB8946N</b>	Vs.	DCIT, Central Circle-36, Aayakar Bhavan, Mumbai
(Appellant)		(Respondent)

**Present for:**

Assessee by : Shri V.C. Shah, A.R.  
Revenue by : Shri Sujit Bangar, D.R.  
  
Date of Hearing : 27.07.2016

**ITA Nos.343 & 344/M/2015  
Assessment Years: 2001-02 & 2004-05**

Smt. Asha Babladi, A-16, Navshilpavani CHS, Lallubhai Park Road No.1, Ville Parle (West), Mumbai – 400 056 <b>PAN: AGSPB1432B</b>	Vs.	DCIT, Central Circle-36, Aayakar Bhavan, Mumbai
(Appellant)		(Respondent)

**Present for:**

Assessee by : Shri V.C. Shah, A.R.  
Revenue by : Shri Sujit Bangar, D.R.  
  
Date of Hearing : 28.07.2016  
**Date of Pronouncement : 28.07.2016**

**ORDER**

**Per Sanjay Garg, Judicial Member:**

The above captioned appeals in the case of assessee Mr. Satish Babladi have been preferred by the assessee against two separated orders dated 25.09.2014 & 10.05.2011 of the Commissioner of Income Tax (Appeals)

[hereinafter referred to as the CIT(A)] relevant to assessment years 2004-05 & 2006-07 respectively. Whereas the appeals preferred by Smt. Asha Babladi are against two separate orders of Ld. CIT(A) of even date 25.09.2014 relevant to A.Y. 2001-02 and 2004-05 in relation to assessment orders passed under section 143(3) of the Act. Both the assesseees are closely related being son and mother. The appeals in the case of Mr. Satish Babladi were heard on 27.07.16 whereas in the case of Smt. Asha Babladi were heard on 28.07.16. Since the facts involved in all the above captioned appeals are identical, hence the same are taken together for disposal by this common order.

2. The issue raised in all the appeals is relating to the levy of penalty under section 271(1)(c) of the Income Tax Act. First we take up the assessee Mr. Satish Babladi's appeal for A.Y. 2004-05 in ITA No.345/M/2015.

**ITA No.345/M/2015 for A.Y. 2004-05**

3. In this case, the penalty aggregating of Rs.2,21,443/- had been levied by the Assessing Officer (hereinafter referred to as the AO) under section 271(1)(c) of the Act on account of following disallowances/additions.

- a. Capital receipt of Rs.500000/- claimed to be received as gift.
- b. Expenses deductible of Rs.43832/-
- c. Income treated as understated of Rs.45081/-
- d. Short term capital gain of Rs.114763/-

4. The Ld. CIT(A) confirmed the penalty so levied by the AO. The assessee, thus, has come in appeal before us.

5. The Ld. A.R. of the assessee has made his submissions regarding the explanation of the assessee relating to the above additions made by the AO and has further contended that the levy of penalty under section 271(1)(c) of the Act in relation to the above stated additions was not justified.

The Ld. D.R., on the other hand, has relied upon the finding of the lower authorities.

6. We have heard the rival contentions and have also gone through the records. So far as the penalty on account of additions of Rs.5 lakhs claimed to have been received by the assessee as gift from his friend is concerned, the Ld. A.R. of the assessee has explained that the assessee had produced all the information relating to donor viz. his name, address and PAN number, copy of declaration of gift, copy of returns, and filing of accounts by the donor with the Income Tax Authorities. He has further submitted that it was also explained to the lower authorities that the donor was assessed to tax, his identity was established and that there was no reason to disbelieve the transaction which has been carried out through the banking channel and was supported with the confirmation of the donor. However, the AO disbelieved the transaction observing that the assessee had failed to establish the creditworthiness of the donor and the genuineness of the gift.

7. In the quantum proceedings, the matter travelled before the Tribunal. The Ld. A.R. has invited our attention to the order of the Tribunal dated 19.03.13 passed in ITA Nos.1732 & 2109/M/2010 in relation to the quantum additions.

8. We find that the Tribunal has upheld the addition in relation to the transaction of gift, not because that the claim of the assessee has been disproved by the AO, but, only on the basis of the assumption that a person having an annual average income of Rs.1.50 lakhs to 1.70 lakhs was not supposed to make a gift of Rs.5 lakhs to his friend without establishing that the said friend was in immediate need of such fund. As discussed above, the assessee had produced the evidence which was in his possession to prove the creditworthiness of the donor and genuineness of the transaction. Merely because the AO insisted the assessee to bring more evidence and the assessee could not produce the same, as the assessee was not in possession of the same, that itself does not establish that the assessee had furnished inaccurate particulars of income or that his claim was disproved. The additions in this

case have been made not because that the AO has disproved the claim of the assessee or the AO had brought any falsehood in the evidences submitted by the assessee relating to the genuineness of the transaction. The Revenue could not prove that the claim put by the assessee was wrong or bogus. Merely because the additions have been made by the AO and confirmed by the Tribunal on account of inability of the assessee to furnish more evidences as required by the authorities to prove the genuineness of the transaction that itself is not sufficient to hold that the claim of the assessee was wrong, inaccurate or that there was any concealment of income. The penalty proceedings are separate from quantum assessment proceedings. In the case of levy of penalty, it should be proved on the file that the particulars furnished by the assessee were inaccurate particulars of income or that there was concealment of income. Every case of confirmation of addition or disallowance cannot be regarded as a case of furnishing of inaccurate particulars of income or concealment of income. Even it cannot be said that this case of the assessee was a case of no evidence at all. The assessee had already submitted evidences in the shape of gift deed, PAN number of the donor, the bank statement reflecting the transaction and even the copy of the income tax returns and accounts of the assessee. The evidences produced on the file by the assessee have not been proved wrong or false. The Hon'ble Bombay High Court in the case of "CIT vs. Upendra V. Mithani" in ITA (L) No.1860 of 2009 decided on 05.08.2009, has observed in the matter of levy of penalty under section 271(1)(c) of the Act, that if the assessee gives an explanation which is unproved but not disproved i.e. it is not accepted but circumstances do not lead to the reasonable and positive inference that the assessee's case is false, then no penalty can be imposed in such cases. When the facts of the case in hand are considered in the light of the decision of the Hon'ble Bombay High Court in the case of "CIT vs. Upendra V. Mithani" (supra), the levy of penalty on this issue cannot be held to be justified in this case. The same is accordingly ordered to be deleted.

9. Now coming to the second issue of disallowance of expenses of Rs.43,832/- in relation to which the penalty has also been levied. The Ld. A.R. of the assessee has invited our attention to page 7 of the paper book to show that the assessee, during the year, had earned Rs.40,50,000/- by way of professional fees. He further, inviting our attention to the computation of income and has stated that the assessee in the return of income had shown the net income on this account at Rs.4,06,168/-. He, in this respect, has explained that the expenses of Rs.43,832/- were incurred in relation to the above income which were claimed in the computation of income. However, the AO has disallowed the same because the assessee could not furnish the proof regarding the actual incurring of the expenses. He has further submitted that every earning of income certainly has corresponding expenditure also. He has further submitted that the assessee has not been maintaining books of account and that the accounts submitted by the assessee were the rough accounts not prepared by a professional; that there were certain minor discrepancies in those accounts; that there was no concealment of income or furnishing of inaccurate particulars of income.

10. In relation to the addition on account of understated income of Rs.45,081/-, the Ld. A.R. has given somewhat identical submissions stating that this addition was on account of difference in some figures noticed as the assessee was not maintaining any regular books of accounts. Hence, during the assessment proceedings, the assessee could not reconcile each and every amount that was not a case of any concealment of income or avoidance of tax but only because of the inability of the assessee to reconcile some figures. Regarding the addition of Rs.1,14,763/- on account of income from short term capital gains, the Ld. A.R. has explained that the said income had accrued to the assessee on account of redemption of units in mutual funds. He has explained that the assessee had invested the monies in mutual funds which were disclosed in the accounts maintained and that the source of investments

was fully explained. However, as advised by the mutual fund advisor, the assessee opted to reshuffle some schemes of mutual funds. The funds received from some schemes on redemptions were further invested in some other scheme of mutual funds of the same organizations. That the assessee was under impression that as the final realization would be beyond the prescribed limit of exemption, therefore no tax was attracted. The assessee was ill-advised by the mutual fund advisor that as the investments continued and therefore there was no liability of tax. The Ld. A.R. has further submitted that when the matter was pointed out to the assessee, the assessee immediately agreed for the said additions and has never contested the said additions by way of appeal. Considering the above submissions of the Ld. A.R. and smallness of amounts involved and also that the assessee was not maintaining the accounts and that the disallowances relating to the claim of expenditure of Rs.43,832/- and under statement of income of Rs.45,081/- were not on account of inaccurate particulars of income but due to the reason that the assessee could not furnish the required evidences/reconciliation during the assessment proceedings, we do not find it to be a case for levy of penalty under section 271(1)(c) of the Act.

11. The third disallowance relating to the non offering of the income from short term capital gains, the assessee has explained that he was under bonafide belief that the said gain was not attracted to tax. The explanation given by the assessee in respect to the disallowance of expenditure understatement of income and addition on account of short term capital gain seems to be plausible. The facts of the case do not suggest that there was any intention on the part of the assessee to furnish inaccurate particulars of income or to conceal his income.

12. We, therefore, do not find justification on the part of lower authorities in levying/confirming the penalty on these issues also. In view of our above discussion, the penalty levied by the lower authorities under section 271(1)(c)

of the Act in relation to the above stated disallowances, is hereby ordered to be deleted.

13. Now coming to the assessee Mr. Satish Babladi's appeal bearing ITA No.346/M/2015 for A.Y. 2006-07.

**ITA No.346/M/2015 for A.Y. 2006-07**

14. The penalty in this case has been levied under section 271(1)(c) of the Act on account of difference of opinion as to whether the compensation of amount of Rs.6 lakhs received by the assessee was exigible to capital gains tax in A.Y. 2006-07 or in A.Y. 2007-08. The Ld. A.R. of the assessee, at the outset, has brought our attention to the decision of the co-ordinate bench of the Tribunal dated 10.06.14 in the case of the mother of the assessee in ITA Nos.1733, 1734 & 2110/M/2010. The Ld. A.R. of the assessee has explained that the assessee along with his mother had received the above stated compensation in the same transaction. The matter relating to the levy of penalty on this issue was considered by the Tribunal and it was held by the Tribunal that this was not a case of concealment of income. It was only a case of difference of opinion as the AO had taken the view that transfer of asset was in A.Y. 2006-07 and that capital gains were also assessable in A.Y. 2006-07. Whereas, in view of the assessee, since the possession had been taken in the Financial Year 2006-07 relevant to A.Y. 2007-08, therefore amount of capital gain was assessable in A.Y. 2007-08 and the assessee had also offered the same in A.Y. 2007-08. The Tribunal, considering the facts, has held that it was a case of difference of opinion and that the issue was a debatable issue but there was no concealment of particulars of income or furnishing of inaccurate particulars of income. The Tribunal therefore deleted the penalty relating to the similar transaction in the case of the mother of the assessee namely Smt. Asha Laxmikant Babladi. Since the facts of the case of the assessee are identical and are relating to the same transaction, hence respectfully following the above cited decision of the co-ordinate bench of the Tribunal, we hold that

the penalty under section 271(1)(c) of the Act is not leviable on this issue in the case of the assessee also.

15. In view of our findings given above, both the appeals of the assessee Mr. Satish Babladi are hereby allowed.

16. Now coming to the appeals of the assessee Smt. Asha Babladi bearing ITA No.343/M/2015 for A.Y. 2001-02.

**ITA No.343/M/2015 for A.Y. 2001-02**

17. In this appeal, the assessee has agitated the confirmation of the levy of penalty under section 271(1)(c) of the Act on account of the following additions:

a. Capital Receipt being gift received of Rs.1000000/-.

b. Addition of Rs.10200/- on account of undisclosed bank balance though full explanation was given to clarify that there was no concealment particularly when there was capital receipt and all evidences were filed.

18. So far as the levy of penalty in relation to the addition of Rs.10 lakhs claimed as gift by the assessee is concerned, the facts are almost identical to that of the case of the son of the assessee i.e. Mr. Satish Babladi except that the recipient and donor are different persons. The Ld. A.R. has demonstrated that the assessee had produced all the details such as name and PAN number of the donor Smt. Mamta V. Singhavi, address of the donor, confirmation of gift, copy of documents evidencing gift, bank statement showing payment by cheque of the gift amount, copy of return of income and final accounts filed by the donor with the Income Tax Authorities.

19. We have already discussed above in the case of the assessee Mr. Satish Babladi that it cannot be said to be a case of furnishing of inaccurate particulars of income or concealment of income. Hence, in view of our findings given above, we hold that it is not a fit case for levy of penalty under

section 271(1)(c) of the Act and hence the same is accordingly ordered to be deleted.

20. The second issue upon which the penalty has been levied on account of addition of Rs.10200/- on account of undisclosed bank balance. In this respect, the Ld. A.R. of the assessee has submitted that the assessee was holding only one bank account which was fully disclosed to the Revenue Authorities. The assessee explained that it was not the case of furnishing of inaccurate particulars of income or concealment of income. It was just a simple accounting error.

21. Considering the smallness of the amount and also considering that the assessee has fully disclosed her bank account to the Revenue Authorities but due to some mistake it could not match the bank balance along with accounts, we do not think that it is a case of furnishing of inaccurate particulars of income or concealment of income.

22. In view of our above findings, this appeal of the assessee is allowed and the penalty levied under section 271(1)(c) is hereby ordered to be deleted.

23. Now coming to the appeal of the assessee Smt. Asha Babladi bearing ITA No.344/M/2015 for A.Y. 2004-05.

**ITA No.344/M/2015 for A.Y. 2004-05**

24. In this case the penalty under section 271(1)(c) of the Act has been levied on account of the following additions:

- (a) Short term capital gain on redemption of mutual funds of Rs.2,53,690/-.
- (b) Long term capital gain on redemption of mutual funds of Rs.1847/-.
- (c) Capital Receipt being gift received of Rs.7,50,000/- though full explanation was given to clarify that there was no concealment.

25. So far as the additions in relation to the point (a) & (b) are concerned, the Ld. A.R. of the assessee has submitted that the facts are identical to that of case of the assessee Mr. Satish Babladi. It has been submitted that it was not a case of furnishing of inaccurate particulars of income or concealment of income but the capital gains were not offered because of the fact that the assessee was of the belief that the since the investments were further made, hence the resultant short term capital gains were not taxable during the year. It has been further explained that in relation to the amount which was not reinvested, the corresponding short term capital gain of Rs.142249/- were offered for taxation but the AO failed to take note of the same. In view of our observations made above while adjudicating the appeal of the son of the assessee namely Mr. Satish Babladi, we are of the view that it is not a fit case for levy of penalty under section 271(1)(c) of the Act. In view of this, the penalty levied in relation to the additions made under heading (a) & (b) are hereby ordered to be deleted.

26. So far as the addition under point (c) in relation to gift is concerned, the facts are identical and the issue has already been discussed above in the case of the son of the assessee Mr. Satish Babladi, and in view of our findings given above, we hold that penalty under section 271(1)(c) of the Act is not attracted on this issue also.

27. In the result, all the captioned 4 appeals of the assessee's are hereby allowed.

**Order pronounced in the open court on 28.07.2016.**

**Sd/-**  
**(D. Karunakara Rao)**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**(Sanjay Garg)**  
**JUDICIAL MEMBER**

Mumbai, Dated: 28.07.2016.

\* Kishore, Sr. P.S.

Copy to: The Appellant  
The Respondent  
The CIT, Concerned, Mumbai  
The CIT (A) Concerned, Mumbai  
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.