

आयकर अपीलीय अधिकरण, मुंबई न्यायपीठ “डी” मुंबई
IN THE INCOME TAX APPELLATE TRIBUNAL “D” BENCH, MUMBAI
BEFORE SHRI MAHAVIR SINGH, JM AND SHRI RAJESH KUMAR, AM

आयकर अपील सं./I.T.A. No.2747/Mum/2014
(निर्धारण वर्ष / Assessment Year : 2006-07)

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| Mrs. Rani Kusum Rai, 87, Ranade road, Bhatia Bldg, 2 nd floor, Dadar, Mumbai- 400028 | बनाम/ Vs. | Income Tax Officer -18 (2)(1), Piramal Chambers, Lalbaug, Mumbai-400012 |
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स्थायी लेखा सं./ PAN :ADMPRO143C

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| अपीलार्थी ओर से / Appellant by | Shri S J Jain |
| प्रत्यर्थी की ओर से/Revenue by | Shri B S Bist |

सुनवाई की तारीख / **Date of Hearing** : **8.11.2016**
घोषणा की तारीख / **Date of Pronouncement** : **8.11.2016**

आदेश / ORDER

PER RAJESH KUMAR, AM

The appeal filed by the assessee is directed against the order dated 18.2.2014, passed by the CIT(A)-29, Mumbai, for the assessment year 2006-07 in the penalty order passed by the AO u/s 271(1)(c) of the Act.

2. The sole ground raised in this appeal is against the confirmation of penalty levied by the AO under section 271(1)(c) of the Income Tax Act. 1961.

3. Brief facts of the case are that the assessee filed her return of income on 8.3.2007 declaring total income at Rs.1,20,000/- for the assessment year under consideration. Subsequently, the case was selected for scrutiny CASS and statutory notices u/s 143(2) and 142(1) of the Income Tax Act, 1961 were issued and served upon the assessee. Thereafter, the AO completed the assessment u/s 143(3) of the Act at an amount of Rs.35,42,876/- by making addition of Rs.17,40,000/- on account of cash deposits and cheque deposits of Rs.17,02,876/- totaling to Rs.34,42,876/-. The AO also initiated penalty proceedings u/s 271 (1)(c) of the Act for concealment particulars of income.

4. At the time of hearing, the learned counsel submitted before us that the quantum on which the AO has imposed penalty u/s 271(1)(c) of the Act has been challenged before the Mumbai Bench of the Tribunal and the Tribunal vide order dated 26.4.2016 passed in ITA No. 8474/Mum/2010 for the assessment year under consideration has restored the appeal to the file of AO for verification of facts and framing fresh assessment. Therefore, the penalty order passed by the AO has no legs to stand. The Id. AR prayed that in the changed circumstances, the penalty imposed by the AO and confirmed by Id.CIT(A) be deleted and appeal filed by the assessee be allowed.

5. The Id. DR did not object to the plea put forth by the Id.AR.

6. We have considered the rival submissions and perused the material placed on record including the orders passed by the lower authorities and the order of the Tribunal in quantum appeal of the assessee. We find that in the quantum appeal, the tribunal has noted that the AO has made addition of Rs.34,42,876/- without verifying the facts on record and even without calling the parties in question for cross-verification including giving an opportunity of being heard to the assessee to argue her case and therefore, the quantum appeal was restored to the file of the AO for cross-verification and providing fair and reasonable opportunity to the assessee to submit her contention. The relevant finding of the Tribunal are as under :

"6. We have considered the rival submissions and perused the relevant material placed before us. We find from the records that the assessee has produced the bank accounts and other documents which prove the fact that the assessee had advanced money by account payee cheques to various parties in earlier years and also proved that the assessee was having FDRs which were matured and credited in the bank of the assessee. Under the present circumstances and facts, we are of the considered opinion that ends of justice would be met if the assessee is given one more opportunity before the AO to prove her case. Therefore, in view of the above discussions, we set aside the orders of Id.CIT(A) on all the issues and restore the same back to the AO for both the years for adjudication afresh after considering and verification of various evidences as may be filed by assessee. The assessee is also directed to co-operate with the AO for speedy disposal of the appeals."

In view of the above order of the coordinate bench restoring the matter to the file of the AO for fresh adjudication, the penalty order passed by the AO did not

have legs to stand, therefore, we set aside the order of Id.CIT(A) and direct the AO to delete penalty with the liberty to initiate the said proceedings afresh if so warranted while making the fresh assessment in the set aside proceedings.

7. In the result, appeal of assessee is allowed for statistical purposes.

Order has been pronounced in the Open Court on 8.11.2016.

Sd

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(MAHAVIR SINGH)
Judicial Member

(RAJESH KUMAR)
Accountant Member

मुंबई Mumbai; दिनांक Dated : 8.11.2016

Sr.PS:SRL:

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,

True copy

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