

BEFORE INCOME TAX APPELLATE TRIBUNAL, BENCH “D” MUMBAI

BEFORE SHRI BR BASKARAN, ACCOUNTANT MEMBER AND

SH PAWAN SINGH, JUDICIAL MEMBER

ITA No. 2780/M/2015 for AY 2009-10

M/s Gharandaj Builders Mohanlal Jain &Co. Chartered accountants 10, Chartered House, Ground Floor, Dr C H Street, Marine lines, Mumbai-400002 PAN- AABFG9249G	Versus	Income Tax Officer 21(1)(4) Room No. 108, Piramal Chambers Mumbai - 400012
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Assessee represented by: Shri Sanjay Kapadia –AR

Revenue represented by: Shri BS Bist DR

Date of hearing: 25/07/2016

Date of pronouncement: 05/08/2016

ORDER

Per PAWAN SINGH, JUDICIAL MEMBER

1. The present appeal is filed by assessee against the confirmation of penalty order levied under section 271 (1) (c) of the act, by the Commissioner of Income Tax Appeals dated 19 March 2015 for assessment year 2009 –10.
2. Brief facts of the case are that the assessee filed return of income for the relevant assessment year on 26th of September 2009 declaring total income at Nil. The return of income was selected for scrutiny. While framing assessment order the AO observed that the assessee has received interest income of Rs. 2,58,300/- from Cosmos Co-operative Bank Ltd, which was not shown either in the Profit and Loss Account or in Computation of Income furnished during the proceedings. When this fact was brought to the notice of assessee, assessee agreed to consider the interest as income from ‘other sources.’ The AO concluded that the assessee concealed the interest income, thus penalty proceeding were initiated against the assessee. Notice for initiating the penalty proceeding was issued on 29 December 201, no reply was furnished by the assessee despite opportunity. Therefore, the assessee was held as

defaulter under section 271(1) (c) of the Act and minimum penalty @ of 100% was levied i.e.f Rs. 79,815/- vide order dated 28th June 2012. Aggrieved by the order of penalty the assessee filed appeal before Commissioner of Income Tax Appeals but without any success. Thus the present appeal is filed before us.

3. We have heard Id AR for assessee and Ld DR for revenue and perused the material available on record. The Id AR of the assessee argued that the assessee is a Builder and the amount lying deposited in the bank was the amount of contribution of the occupants of the building. The assessee has not earned any interest income. The assessee has fully and truly disclosed all particular of his income. The assessee has not concealed the particular of income. The order of penalty is an ex parte order. On the other hand Learned DR for revenue argued that the assessee intentionally and deliberately concealed the particulars of income. The assessee may have successfully concealed the income, unless the return was not selected for scrutiny.
4. We have considered the rival contention of the parties and gone through the orders of authorities below. The order of penalty passed against the assessee is ex-parte order. During the stage of First appellate proceeding, it was submitted that the assessee neither received any interest, nor any intimation was received from bankers. It was further pleaded that this was a bonafide mistake without any malafide intention and prayed that no penalty should have been levied. The contention of assessee was not accepted by the first appellate authority and the order of penalty was confirmed. Now, the assessee has come with the plea that the amount on which interest was accrued is the amount/contribution of occupant, deposited in the bank, who is occupying the building. No such evidence in the form of document substantiating the argument of Id AR of assessee is placed on record. However, keeping in view the smallness of the matter and the assessee was ex-party before AO, we deem it appropriate to restore the case to the file of AO for verification of the claim of the assessee. If the amount on which interest accrued is the amount deposited by the occupants of the building. After such verification the AO shall pass appropriate order in accordance with law. In case, assessee failed to substantiate his claim during the proceeding before the AO, the AO would be at liberty to initiate the penalty proceeding afresh.

5. With these observations the present appeal is allowed for statistical purpose.

Order announced in open court on 5th day of August 2016.

Sd/-

(B.R.BASKARAN)
ACCOUNTANT MEMBER

Sd/-

(PAWAN SINGH)
JUDICIAL MEMBER

Mumbai; Dated 05/08/2016

Copy of the Order forwarded to:

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file

By ORDER,

(Asstt.Registrar)
ITAT, Mumbai