

**IN THE INCOME TAX APPELLATE TRIBUNAL "C", BENCH MUMBAI
BEFORE SHRI JASON P BOAZ, AM
&
SHRI RAM LAL NEGI, JM**

**ITA No.2761/Mum/2015
(Assessment Year :2005-06)**

Shri Vinod Chaturbhuj Valecha, Flat No.301, Sai Malhar Bldg., 3 rd Floor, 12 th Road, Khar (W), Mumbai – 400 052	Vs.	ITO – 19(1)(2), Mumbai
PAN/GIR No.		AACPV7652B
Appellant)	..	Respondent)

Assessee by	Shri Vimal Punmiya
Revenue by	Shri Rajat Mittal
Date of Hearing	04/01/2017
Date of Pronouncement	11 /01/2017

आदेश / O R D E R

PER JASON P BOAZ (A.M):

This appeal by the assessee is directed against the order of the CIT(A)-34, Mumbai dated 23/02/2015 for A.Y. 2005-06 upholding the levy of penalty of Rs.4,75,730/- u/s.27(1)(c) of the Income Tax Act, 1961 (in short 'the Act') on income of Rs.15,00,000/- on which tax was sought to be evaded.

2. The grounds raised by the assessee on this appeal are as under:-

1. *On the facts and circumstances of the case and law, the Ld. CIT(A) erred in confirming the penalty of Rs.4,75,730/- under Section 271 (1)(c) of the Income Tax Act, 1961.*
2. *The appellant craves leave to add further grounds or to amend or alter the existing grounds of appeal on or before the date of hearing.*

3. At the outset of the hearing itself the learned AR for the assessee submitted that the issue on which penalty of Rs.4,75,730/- was levied u/s.271(1)(c) of the Act was in respect of gifts amounting to Rs.15 lacs declared by the assessee

which were held to be not genuine and treated as unexplained u/s.68 of the Act. According to the learned AR, in quantum appeal by the assessee, a co-ordinate bench of this Tribunal in the assessee's own case for the year under consideration in its order in ITA No.8065/Mum/2011 dated 15/05/2015 has deleted the addition of Rs.15 lakhs made by the AO u/s.68 of the Act. Therefore the addition of Rs.15 lakhs u/s.68 of the Act on the basis of which the penalty u/s.271(1)(c) of the Act was levied having itself been deleted, the penalty would now no longer survive and the same is to be deleted. The learned DR for Revenue fairly conceded the matter.

4.1. We have heard the parties and perused and carefully considered the material on record, including the judicial pronouncements cited. We have perused the order of the Co-ordinate bench in the assessee's appeal before it quantum proceedings in the year under consideration in ITA No.8065/Mum/2011 dated 15/05/2015 and find that the submission of the learned AR is correct that the co-ordinate bench had deleted the addition of Rs.15 lakhs made by the AO u/s.68 of the Act on the basis of which the impugned penalty u/s.271 (1)(c) of the Act had been imposed. At para 9 of its order the co-ordinate bench deleted the said addition of Rs.15 lakhs holding as under:-

“9. We have carefully considered the rival submissions. Ostensibly, section 68 of the Act casts an obligation on the assessee to satisfactorily explain the nature and source of any sum found credited in the account books. It is quite well settled that the onus cast on the assessee u/s 68 can be said to have been discharged in a given case, where assessee is able to satisfactorily explain the identity of the creditor, creditworthiness of the creditor and the genuineness of the transaction. In the present case, the plea of the assessee is that the impugned credits from seven persons are in the nature of gifts totaling to Rs. 15,00,000/-, as per the details enumerated in para 5 of the assessment order. The assessee furnished the Gift deed/Declarations duly averred by the donors in support of the nature of credits. Assessee also furnished his own bank account which evidenced receipt of money through banking channels. In the Paper Book filed,

assessee has drawn our attention to the bank account of six of the seven donors from where the monies had flowed to the bank account of the assessee. Assessee has also adduced copies of the cheques issued by the donors before the lower authorities, the same have also been placed in the Paper Book filed before us. The donors have indeed confirmed the fact of giving gifts to the assessee in their confirmations which, inter-alia, included the particulars of income tax PAN numbers. The occasion for giving the gift was also explained by the assessee to be his thread ceremony and in support xerox copy of the invitation card was adduced before the lower authorities. In the face of the aforesaid material, the point to be decided is as to whether the assessee can be said to have discharged his initial burden cast u/s 68 of the Act. As per the Revenue, the donors were not men of means as their annual income was around Rs. One lac to Rs. One lac sixty thousand; and, therefore, they could not be expected to give gifts ranging from Rs. 2 lakh to 2.5 lakh to the assessee. In our considered opinion, the aforesaid observation of the Assessing Officer is quite subjective and devoid of any objective merits. Moreover, the objection of the Assessing Officer that the relationship between the assessee and the donors was not established is also based on surmises and conjectures. In this context it is to be noted that though assessee had failed to produce the parties, but the said factor was explained by the appellant. According, to the appellant his father passed away after the said event and subsequently, it was difficult for him to persuade the donors to physically present themselves before the income tax authorities. On the contrary, copies of the respective bank accounts including their confirmations, PAN etc., were produced and in our view it lends credence to the assertions of the assessee that the donors are not strangers to the assessee. Therefore, in our view, the stand of the Assessing Officer as also of the CIT(A) is based on mere doubts and suspicion, which cannot take the place of evidence. The material on record suggests that assessee has duly established that the source of monies are the seven persons and the nature of credit also stood established in terms of the Gift Deeds/Declarations furnished by assessee. It is also pertinent to note that if at all the Assessing Officer was not satisfied with the assertions of the assessee, it was open to him to make necessary enquiries from the income tax records of the donors, whose particulars were made available to him. No such effort has been made but the material furnished by the assessee is sought to be disbelieved. As a consequence and after considering the entirety of the facts and circumstances of the case, we deem it fit and proper to hold that assessee has succeeded in establishing the nature and source of impugned credits, being gifts received from the seven persons, as detailed in para 5 of the assessment order; and accordingly the ingredients of section 68 of the Act stand fulfilled. Accordingly, we set aside the order of CIT (A) and direct the Assessing Officer to delete the addition of Rs. 15,00,000/- made u/s 68 of the Act.”

4.2. In view of the co-ordinate bench deleting the addition of Rs.15 lakhs made u/s.68 of the Act in its order (supra), the basis on which the penalty of Rs.4,75,730/- was levied u/s.271(1)(c) of the Act does not now survive and

consequently the said penalty also would not survive for consideration. We, therefore, accordingly quash the penalty and allow the assessee's appeal for statistical purposes.

5. In the result, the assessee's appeal for A.Y.2005-06 is allowed for statistical purposes as indicated above.

Order pronounced in the open court on this 11/01/2017

**Sd/-
(RAM LAL NEGI)
JUDICIAL MEMBER**

**Sd/-
(JASON P BOAZ)
ACCOUNTANT MEMBER**

Mumbai; Dated 11/01/2017

Karuna Sr.PS

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.

सत्यापित प्रति //True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai