

IN THE INCOME TAX APPELLATE TRIBUNAL "E" BENCH, MUMBAI
**BEFORE SHRI D. KARUNAKARA RAO, ACCOUNTANT MEMBER
AND SHRI RAM LAL NEGI, JUDICIAL MEMBER
ITA No.2528/M/2012 (2004-2005)**

M/s. Sanghavi Jewellery Mfg. Co. Pvt Ltd., Plot No.75, C-14, Cross Road, Marol M.I.D.C., Andheri (E), Mumbai – 400 093.	बनाम/ Vs.	Income Tax Officer-8(3)(1), Aayakar Bhavan, M.K. Road, Mumbai-20.
स्थायी लेखा सं./PAN : AAACS7836B		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी की ओर से / Appellant by :	Shri B.V. Jhaveri
प्रत्यर्थी की ओर से/ Respondent by :	Dr. A.K. Nayak, DR

सुनवाई की तारीख /Date of Hearing : 17.04.2017

घोषणा की तारीख /Date of Pronouncement : 19.04.2017

आदेश / O R D E R

PER D. KARUNAKARA RAO, AM:

This appeal filed by the assessee on 16.4.2012 is against the order of the CIT (A)-18, Mumbai dated 29.2.2012 for the assessment year 2004-05. In this appeal, assessee raised four grounds in toto and they revolve around the CIT (A)'s decision in confirming the order of the AO u/s 271(1)(c) of the Act.

2. At the outset, Ld Counsel for the assessee submitted that the grounds raised in this appeal need to be set aside to the file of the AO for fresh adjudication after giving effect to the order of the Tribunal in ITA No. 577/M/2008, dated 22.12.2016 on merits of the addition.

3. After hearing the Ld Representatives of both the parties and on perusal of the above cited order of the Tribunal dated 22.12.2016 (supra), we find, the Tribunal deleted few additions (vide para 8) or remanded certain issues (para 12 of the said Tribunal's order is relevant). Without going into the details of the same, we are of the opinion, the prayer of the assessee given in para 10 of his written submissions should be allowed. The said para reads as under:-

"10. The assessee company, therefore, respectfully, submits that the order levying penalty u/s 271(1)(c) of the Act may be set aside and the penalty proceedings may be restored to the file of the Income Tax Officer with a direction to pass the order giving effect to the order of the Appellate Tribunal and thereafter to decide denovo whether it can be held that the assessee company has concealed its income in the year under consideration."

3. Considering the above and after hearing both the parties, we direct the AO to give effect to the order of the Tribunal and decide the levy of penalty denovo after granting a reasonable opportunity of being heard to the assessee as per the set principles of natural justice. Accordingly, grounds raised by the assessee in the appeal are allowed for statistical purposes.

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

Order pronounced in the open court on 19th April, 2017.

Sd/-
(RAM LAL NEGI)
JUDICIAL MEMBER
मुंबई Mumbai; दिनांक 19.04.2017
व.नि.स./ OKK, Sr. PS

Sd/-
(D. KARUNAKARA RAO)
ACCOUNTANT MEMBER

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
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR,
ITAT, Mumbai
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

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