

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES "B", MUMBAI**

BEFORE SHRI R.C.SHARMA (AM) AND SHRI RAM LAL NEGI (JM)

**ITA No. 6361/MUM/2012
Assessment Year: 2005-2006**

Smt. Neeta G. Karia. 3, Vasudha, B.P.S. Road, Mulund (W), Mumbai-400 080. PAN: ADOPK3848H	Vs.	The ITO-23 (3) (1), B.K.C. Bandra (E), Mumbai- 400051
(Appellant)		(Respondent)

Appellant by : Shri J.K. Shah
Respondent by : Shri. Rajesh Kumar Yadav

Date of Hearing: 13/01/2017
Date of Pronouncement: 31/01/2017

ORDER

PER RAM LAL NEGI, JM

This appeal has been filed by the assessee against order dated 11/09/2012 passed by the Ld. CIT(Appeals)-34, Mumbai, for the assessment year 2005-06, whereby the Ld. CIT(A) dismissed the appeal filed by the assessee against penalty order dated 18/06/2009 passed u/s 271(1)(c) of the Income Tax Act, 1961 (For short 'the Act').

2. Brief facts of the case are that the assessee an individual, filed her return of income for the relevant assessment year declaring the total income of Rs. 1,73,754/-. During the course of scrutiny proceedings u/s 143(3), The A.O made an addition of Rs. 13,50,000/- u/s 68 of the Act, rejecting the contention of the assessee that the said amount had been received by way of gifts penalty

proceedings u/s 274 r.w.s. 271(1)(c) was ordered to be initiated. During the appellate proceedings the appellant failed to prove genuineness of the transaction and could not controvert the findings given by the A.O in the scrutiny assessment, therefore the Ld. CIT(A) dismissed the appeal of the assessee and confirmed the addition . Accordingly, the A.O levied penalty of Rs. 91,330/-. i.e. 200% of the income sought to be evaded by the assessee. In appeal the Ld. CIT(A) confirmed the penalty.

3. Still Aggrieved, the assessee is in appeal before the Tribunal on the following effective grounds of appeal:-

1. On the facts and in the circumstances of the case and in law, the learned CIT (A) has erred in dismissing the appeal.

2. On the facts and in the circumstances of the case and in law, the learned CIT (A) erred in dismissing the appeal without appreciating the evidences as put forth.

3. "On the facts and in the circumstances of the case, the learned CIT (A) grossly erred in confirming the gifts as non genuine inspite of all the evidences put forth providing the identity and capability of the donor and that no ground of rejection of evidence being cited.

4. Without going to the merits of the case, the Ld. Counsel for the assessee submitted that the assessee is a senior citizen and the penalty @ 200% may be reduced to 100% of the income evaded by the assessee.

5. On the other hand the Ld. DR relying on the concurrent findings of the authorities below submitted that there is no scope for further interference in the order of the Ld. CIT(A).

6. We have heard the rival submissions and also gone through the material placed on record in the light of the facts and circumstances of the case. As per the provisions of section 271(1)(c)(iii) the assessee may be directed to pay by way of penalty a sum which shall not be less than the amount but shall not exceed three times of tax sought to be evaded by concealment income or by furnishing inaccurate particulars thereof. Hence, the AO has discretion to impose penalty from 100% to 300% of the amount of tax sought to be evaded by the assessee. However, keeping in view the submissions made by the Ld. counsel and old age of the assessee, we are of the considered view that 100% penalty on the amount evaded is reasonable to meet the ends of justice. We therefore, modify the impugned order passed by the Ld. CIT(A) and reduce the penalty of 200% confirmed by the Ld. CIT(A) to 100% in the interest of justice. The appeal is disposed of accordingly.

7. In the result, appeal filed by the assessee for assessment year 2005-2006 is partly allowed.

Order pronounced in the open court 31st January, 2017.

Sd/-
(R.C.SHARMA)

ACCOUNTANT MEMBER

Sd/-
(RAM LAL NEGI)
JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated: 31/01/2017

आदेश 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.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

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