

IN THE INCOME TAX APPELLATE TRIBUNAL
"SMC" Bench, Mumbai
Before Shri B.R. Baskaran (AM)

I.T.A. No. 3499/Mum/2015
(Assessment Year 2009-10)

Shri Bipinkumar Amritlal Jain 74, Umar Mansion Building Jacob Circle Sat Rasta, Mahalaxmi (E) Mumbai-400 011.	Vs.	ITO 14(1)(4) Mumbai.
(Appellant)		(Respondent)

PAN No.ADPPJ6525R

Assessee by	Shri Bipinkumar A. Jain
Department by	Shri Ajay
Date of Hearing	4.7.2016
Date of Pronouncement	4.7.2016

ORDER

The appeal filed by the assessee is directed against the order dated 11.3.2015 passed by learned CIT(A)-29, Mumbai and it relates to A.Y. 2009-10.

2. The assessee is aggrieved by the decision of learned CIT(A) in confirming the penalty of ₹ 6,28,282/- levied by the Assessing Officer u/s. 271(1)(c) of the Act.

3. The assessee appeared in person. I heard the assessee and also learned Departmental Representative. Facts relating to the issues are discussed in brief. From the AIR information the Assessing Officer came to know that the assessee has deposited cash into his bank account aggregating to ₹ 20,18,500/-. The assessee submitted that the same represents proceeds of textile business carried on by him. However, the Assessing Officer noticed that the assessee has not declared bank account before the Income Tax authorities

and the bank account also did not find place in the books account. Further, the assessee had declared net profit at the rate of 2.56% in his books of account and submitted that he is agreeing to offer 5% of the deposits as his income. The Assessing Officer did not agree with the said offer also and took the view that the entire cash deposits are assessable as income of the assessee u/s. 69 of the Act. Accordingly he assessed the above said amount of ₹ 20,18,500/- as income of the assessee. Subsequently, the Assessing Officer levied penalty u/s. 271(1)(c) of the Act on the above said addition and the same was also confirmed by learned CIT(A).

4. The assessee appearing before me submitted that he has challenged the order passed by learned CIT(A) in the quantum proceedings by filing the appeal before the Tribunal and the Tribunal, vide its order dated 3.7.2015 passed in ITA No. 6514/Mum/2012 has restored the matter to the file of the Assessing Officer with the direction to quantify the peak amount of the deposits and assess the same. The assessee further submitted that the impugned penalty order is liable to be set aside since the matter has been restored back to the file of the Assessing Officer.

5. Having heard the rival submissions I find that there is merit in the submissions made by the assessee. Since the addition on which the impugned penalty has been levied, have been modified by the Tribunal and the matter has been restored back to the file of the Assessing Officer, the impugned orders of the tax authorities relating to penalty are liable to be set aside. Accordingly I set aside the penalty order passed by both the authorities. I may make it clear that the Assessing Officer may initiate penalty proceedings u/s. 271(1)(c) of the Act in the set aside proceedings, if so advised.

6. In the result, appeal filed by the assessee is treated as allowed for statistical purposes.

Order has been pronounced in the Court on 4.7.2016

Sd/-
(B.R.BASKARAN)
ACCOUNTANT MEMBER

Mumbai; Dated : 4/7/2016

Copy of the Order forwarded to :

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

//True Copy//

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai

PS