

IN THE INCOME TAX APPELLATE TRIBUNAL "D" BENCH, MUMBAI
BEFORE SHRI D. KARUNAKARA RAO, ACCOUNTANT MEMBER
AND SHRI RAM LAL NEGI, JUDICIAL MEMBER
I.T.A. No. 5409/M/2013 (AY: 2005-2006)

ACIT, CC-38, R.No.32(1), Ground Floor, Aayakar Bhavan, M.K. Road, Mumbai – 400 020.	बनाम/ Vs.	M/s. R.C.C. (Sales) Pvt Ltd, Malhotra House, 4 th Floor, Opp. GPO, Fort, Mumbai – 400 001.
स्थायी लेखा सं./PAN : AAACR9675D		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी की ओर से / Appellant by :	Shri Prakash L. Pathak
प्रत्यर्थी की ओर से/ Respondent by :	Shri Prateek Jha & Dr. Prayag Jha

सुनवाई की तारीख / Date of Hearing : 03.11.2015

घोषणा की तारीख /Date of Pronouncement : 03.11.2015

आदेश / O R D E R

PER D. KARUNAKARA RAO, AM:

This appeal filed by the revenue on 7.8.2013 is against the order of the CIT (A)-41, Mumbai dated 31.5.2013 for the assessment year 2005-2006. In this appeal, Revenue raised the following grounds which read as under:

- “1. Whether on the facts and in the circumstances of the case and in law, the Ld CIT (A) is justified in deleting the penalty levied while the assessee did not furnish the true picture of his income in his return of income and neither he himself disclosed the income on which additions were made during the assessment proceedings before the enquiring of the Assessing Officer was started.
2. Whether on the facts and in the circumstances of the case and in law, the Ld CIT (A) is justified in deleting the penalty levied on the disallowance u/s 35AB of Rs. 57,50,000/-, while the assessee was eligible for such claim till AY 2002-2003 only and he benefited himself by making such claim in AY 2005-2006 also, which shows that the intention of the assessee is not bonafide.
3. Whether on the facts and in the circumstances of the case and in law, the Ld CIT (A) is justified in deleting the penalty levied on account of excess claim of depreciation of Rs. 82,144/- on plant and machinery (ie accessories attached to computers viz printers etc) while the assessee has given inaccurate particulars of income ie claimed assets to be a part of block of assets to which it actually does not belong.”

2. Before us, at the outset, Ld Counsel for the assessee submitted that the Assessing Officer passed the penalty order u/s 271(1)(c) of the Act when there is no satisfaction recorded by the AO while making additions in assessment made on 31.12.2010. In this regard, bringing our attention to all the paragraphs of the

assessment order in general and para 9 in particular, Ld Counsel for the assessee submitted that there is no reference to the necessity of initiating the penalty u/s 271(1)(c) of the Act. On perusal of the said para 9, we find it relevant to extract the same which reads as under:

"9. Assessed accordingly. Given credit for taxes paid after due verification. Issued Demand Notice (DN) and challan / RO."

3. From the above, it is self-explanatory. There is no reference to the AO's satisfaction for issue of notice u/s 271(1)(c) of the Act for levy of penalty under the said section. In effect, the penalty order passed on 30.3.2012 is without any satisfaction on the 'concealment of income'. In the absence of the same, it is not known as to why the penalty is levied ie whether it is for 'concealment of income' or furnishing of 'inaccurate particulars of income'. Thus, there is an ambiguity in the mind of the officers on the allegation of concealment made out by the AO in the penalty order. Such allegation should not be made when there is no satisfaction about the same recorded during the assessment proceedings. Further, we have perused the judgment of the Bombay High Court in the case of CIT vs. Dajibhai Kanjibhai [1991] 189 ITR 41 (Bom.) which is in support of the assessee. The said judgment of the jurisdiction High Court (supra) is relevant for the legal proposition that *penal provisions u/s 271(1)(c) are not attracted when there is no evidence to show that ITO / AO was satisfied about the concealment of income in the course of assessment proceedings.* In such circumstances, imposing penalty is not in accordance with law and deserves to be quashed. Without going to the other aspects of the arguments and the counter arguments, we are of the opinion that the order of the CIT (A) is fair and reasonable and it does not call for any interference on these technical grounds. Accordingly, grounds raised by the Revenue are dismissed.

4. In the result, appeal of the Revenue is **dismissed**.

Order pronounced in the open court on 3rd November, 2015.

Sd/-
(RAM LAL NEGI)
JUDICIAL MEMBER

मुंबई Mumbai; दिनांक 3.11.2015
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**