

आयकर अपीलीय अधिकरण, मुंबई न्यायपीठ "बी" मुंबई
IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH, MUMBAI

BEFORE SHRI MAHAVIR SINGH, JM AND SHRI RAJESH KUMAR, AM

आयकर अपील सं./ I.T.A. No 6187/Mum/2012

(निर्धारण वर्ष / Assessment Year : 2009-10)

Mukesh V Panjwani, 701, Silver Clophil, St. Paul, Road, Bandra (West), Mumbai-400050	बनाम/ Vs.	Asstt. Commissioner of Income Tax, 19(2), Piramal Chambers, Parel, Mumbai-400012
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Appellant	Respondent
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आयकर अपील सं./ I.T.A. No 6331/Mum/2012

(निर्धारण वर्ष / Assessment Year : 2009-10)

Asstt. Commissioner of Income Tax, 19(2), Piramal Chambers,Parel, Mumbai-400012	बनाम/ Vs.	Mukesh V Panjwani, 701, Silver Clophil, St. Paul, Road, Bandra (West), Mumbai-400050
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Appellant	Respondent
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अपीलार्थी की ओर से / Assessee by	:	Shri Prakash Jhunjunwala and Shri Rajkumar Jaju
प्रत्यर्थी की ओर से/Revenue by	:	Shri Suman Kumar

सुनवाई की तारीख /Date of Hearing	:	17.1.2017
घोषणा की तारीख /Date of Pronouncement	:	12.4.2017

आदेश / ORDER

PER RAJESH KUMAR, A. M:

These cross-appeals filed by the respective parties against the order dated 27.07.2013 passed by the Id.CIT(A)-30, for the assessment year 2009-10.

ITA No.6331/Mum/2012

2. At the outset, we have noticed that the tax effect in the appeal of the revenue is below Rs.10 lakhs, therefore, the same is not maintainable as per the CBDT Circular No.21/2015, dated 10th December, 2015. We found that as per the recent Circular No.21/2015, dated 10th December, 2015, issued by the CBDT, the monetary limit has been revised for filing of appeal before ITAT by the revenue fixing the tax effect limit of Rs.10 lakhs. In the instant case, the tax effect is below Rs.10 lakhs, therefore the same is not maintainable and liable to be dismissed in limine. This Circular is retrospective and applicable to the pending appeals also.

3. Considering the above CBDT Circular, we found that this appeal of the revenue is not maintainable as the tax effect in this appeal is below Rs.10 lakhs. Accordingly, we dismiss the appeal of the revenue.

4. Now we will take the appeal of the assessee.

ITA No.6187/Mum/2012

5. Grounds of appeal taken by the assessee are as under :

"Being aggrieved against the order of Commissioner of Income Tax(A), Mumbai, this appeal petition is being filed to consider the following Grounds of Appeal, which are independent and without prejudice to each other:

1. On the facts and circumstances of the case and in law the Learned CIT(A) erred confirming penalty u/s.271 (1)(c) of the Act of Rs.9,08,246/- though the appellant had voluntarily declared the income and therefore, provisions were not applicable.

2. On the facts and circumstances of the case and in law the Learned CIT(A) erred in confirming penalty u/s.271 (1)(c) of the Act and not appreciating the reasonable cause and without appreciating full facts of the case.

3. Without prejudice to above, it may be stated that all material facts were truly and fully disclosed and therefore there is no non-disclosure or untrue disclosure of the facts. In view these facts no penalty can be levied u/s. 271 (1)(c) of the act.

4. The appellant craves leave to add, amend, modify, substitute and / or cancel any of the ground of the appeal. "

6. The only issue raised by the assessee in all the grounds of appeal is against the confirmation of penalty of Rs.9,08,246/- as levied by the AO under section 271(1)(c) of the Income Tax Act, 1961 by ignoring the fact that the appellant voluntarily declared the income on its own.

7. Brief facts of the case are that the return of income was filed by the assessee on 30.9.2008 declaring a total income of Rs.1,30,22,679/-. Thereafter the assessment was framed under section 143(3) of the Act vide order dated 20.12.2010 assessing the total income at Rs.1,58,69,410/-. The AO on the basis of AIR information received found that the assessee has deposited a cash of Rs.25,32,000/- with Rupee Co-op Bank Ltd and accordingly issued show cause notice dated 30.11.2010 calling upon the assessee to show cause as to why the same should not be added to the total income of the assessee as unexplained cash credit. Thereafter and amount of Rs.28,42,098/- was added to the total income of the assessee on account of cash deposit and Rs.40,005/-

on account of saving bank interest and vide order dated 20.12.2012 passed order under section 143(3) of the Act. Thereafter the penalty was levied on the amount of Rs.16 lakhs u/s 271(1)(c) vide order dated 23.6.2011 passed under section 271(1)(c) of the Act. In the appellate proceedings, the Id.CIT(A) upheld the penalty imposed by the AO. However, he noticed that the an amount of Rs.16 lakhs penalty worked out to be 176% of the tax sought to be evaded and he accordingly restricted the penalty to Rs.9,08,246/- being 100% of the tax sought to be evaded and thus, the penalty was sustained to the extent of Rs.9,08,246/- and the balance of Rs.6,91,417/- was deleted.

8. At the outset, the Id.Counsel of the assessee submitted before us that the issue is now squarely covered in favour of the assessee and against the revenue by the decision of Co-ordinate Bench of the Tribunal in the case of assessee's wife Smt.Karishmna M Panjwani V/s ACIT in ITA No.5960/Mum/2012 (AY-2008-09) dated 16.9.2016 under identical facts. The Id. AR prayed that in view of the above said decision of the Tribunal the appeal of the assessee be allowed and the penalty levied by the AO and also confirmed by the Id. CIT(A) be deleted.

9. On the other hand, the Id.DR very fairly agreed to the submissions of the Id.AR.

10. We have heard both the parties, perused the material placed before us and the case law relied upon by the Id.AR. On perusal of the decision

of the Co-ordinate Bench of the Tribunal in assessee's wife case, we find that the facts and circumstances of the case in hand and relied upon by the assessee are same, for the sake of clarity we reproduce the operative part of the tribunal order as under :

"8. However, we find merit in the contentions of the assessee that the assessee has agreed to offer entire deposits as her income in order to buy peace from the revenue. We notice that the assessee has offered income from house property to the tune of Rs.36.91 lakhs. The assessee did not put forth a claim for telescoping the deposits with the income declared by her in the current year and in the earlier years and also with the withdrawals made from the bank account. This action of the assessee shows the bonafides of the assessee that it was an inadvertent mistake and the offer was made to buy peace from the revenue. It is well settled proposition of law that all receipts shall not constitute income.

9. We notice that the Ld CIT(A) has confirmed the penalty only on the reasoning that the offer was not voluntary, but the offer was made only after issuing show cause notice. We have held that the bonafides of the assessee cannot be doubted with upon considering the conduct of the assessee. We also notice that the explanation of the assessee has not been found to be false and at the same time, the assessee has furnished all facts relating to the bank account and material to the computation of his income, when called for by the AO. Even though the triggering point for offering the income may be the show cause notice issued by the AO, yet we are of the view that under Explanation 1 to sec. 271(1)(c) of the Act, the assessee cannot be deemed to have concealed the particulars of income."

11. We find that the facts of the assessee's case are same as in the case of his wife and therefore, we respectfully following the order of the Co-ordinate Bench of the Tribunal are inclined to set aside the order of Id. CIT(A) and direct the AO to delete the penalty.

12. In the result, the appeal of the assessee is allowed and that of revenue is dismissed.

Order pronounced in the open court on 12th April, 2017

Sd

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(Mahavir Singh)

(Rajesh Kumar)

न्यायिक सदस्य / Judicial Member

लेखा सदस्य / Accountant Member

मुंबई Mumbai; दिनांक Dated : 12.4.2017
SRL,Sr.PS

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

आदेशानुसार/ BY ORDER,

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