

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

श्री राजेन्द्र, लेखक सदस्य, एवं श्री अमरजीत सिंह, न्यायिक सदस्य, के समक्ष
BEFORE SHRI RAJENDRA, AM AND SHRI AMARJIT SINGH, JM

आयकर अपील सं/ I.T.A. No.7061/Mum/2013
(निर्धारण वर्ष / Assessment Year: 2004-05)

M/s. Nova Digital Services Shop No.13, Kausthubha Society, Baji Prabhu Deshpande Road, Vishnu Nagar Thane (W) - 600602	बनाम/ Vs.	Income Tax Officer Ward 3(1) Thane
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAEFN8755B		
(पीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

Assessee by:	None
Revenue by:	Shri Rajguru M. V.

सुनवाई की तारीख / Date of Hearing: 24.03.2017
घोषणा की तारीख /Date of Pronouncement: 29.03.2017

आदेश / ORDER

PER AMARJIT SINGH, JM:

The assessee has filed the present appeal against the order dated 27.08.2013 passed by the Commissioner of Income Tax (Appeals)-I, Mumbai [hereinafter referred to as the "CIT(A)"] relevant to the A.Y.2004-05 in which penalty levied by the Assessing Officer to the tune of Rs.73,130/- has been upheld.

2. The assessee has raised the following grounds:-

- “1. *On the facts and circumstances of the case and in Law, the Ld. CIT(A) – 1 erred in confirming the penalty levied u/s.271(1)(c) of the Act, 1961 of Rs.73,130/-*
2. *On the facts and circumstances of the case and in Law, the Ld. CIT(A) – 1 erred in not appreciating the details submitted towards explanation of difference in the sale figure.*
3. *On the facts and circumstances of the case and in law, the Ld. CIT(A)-1 erred in confirming the penalty on the ground that the details furnished were incorrect.*
4. *The appellant craves leave to add to alter and / or amend any of the grounds of appeal mentioned hereinabove.”*

3. The brief facts of the case are that the assessee filed its return of income for the A.Y.2004-05 declaring total income as Rs. Nil on 12.10.2004. The return was processed u/s.143(1) of the Income Tax Act, 1961 (in short “the Act”). The case was selected for scrutiny, therefore notice u/s.143(2) of the Act was issued on 26.08.2005 which was duly served upon the assessee. Further notice u/s.143(2) of the Act was issued on 13.09.2006 which was duly served upon the assessee on 19.09.2006. Since assessee was not responsive, therefore final notice u/s.143(2) of the Act was issued on 27.11.2006 along with certain requirements and show cause notice u/s.271(1)(b) of the Act for non compliance to the notice u/s.143(2) of the Act was also issued. The said notice was served upon the assessee on 28.11.2006. The assessee was in the business of sales and service of the computer systems and peripherals, sale of multi function devices, printers and scanners etc. On verification of the manufacturing account submitted by the assessee, it was found that the assessee shown sales amounting to Rs.34,76,379/- for the A.Y.2003-04. However, as per

the details of the partywise sales above Rs.10,000/- submitted by the assessee the total sales comes to Rs.36,68,404/-. However, the assessee explained about the inclusion of the service charges but failed to explain the difference of sale to the tune of Rs.1,92,025/-. The assessee also filed an application u/s.154 of the Act on 18.01.2007 and the revised difference was filed to the tune of Rs.1,53,270/- which was not explained, therefore notice u/s.271(1)(c) of the Act was issued and after getting reply the penalty to the tune of Rs.73,130/- was levied. Feeling aggrieved the appeal was filed before the CIT(A) who confirmed the order of the Assessing Officer, therefore the assessee has filed the present appeal before us.

ISSUE NO. 1 TO 3:-

4. Under the above said issues the assessee has challenged the confirmation of the penalty to the tune of rs.73,130/- by the CIT(A) u/s.271(1)(c) of the Act. The contention of the learned representative of the assessee is that there was a totaling mistake in the accounts which was unintentional, therefore, in the said circumstances the penalty is not leviable in view of the law settled in CIT Vs. Pitambardas Dulichand [2004] 194 CTR (MP) 43. It was also contended that there is nothing on record to which it can be assumed that the assessee has concealed the income or furnished the inaccurate particulars of income, therefore, in the said circumstances no penalty is leviable in view of the law settled in Anita Builders, Jodhpur Vs. ACIT [2001] 20 DTC 156. However, the learned representative of the department has placed reliance upon the order passed by the CIT(A)

in question. On appraisal of the order passed by the CIT(A) it is observed that there was initially difference of Rs.1,92,025/- in the figure of sale as shown by the appellant in the account and as worked out on the basis of partywise details. No doubt, subsequently, the assessee filed an application u/s.154 of the Act in which the explanation with regard to the amount of Rs.38,755/- was found correct as service charges was included in the figure of the sale of material. But so far as the sale to the tune of Rs.1,53,270/- is concerned the same has not been explained by the assessee before the Assessing Officer as well as CIT(A) and before us also. There is no tangible material on the file to which it can be assumed that the addition to the tune of Rs.1,53,270/- is in connection with the totaling mistake in the accounts. The figure is no doubt effecting the taxation. It is the duty of the assessee to bring out the bona-fide explanation with regard to the incorrect particulars mentioned in the return. The mistake can be clarified by adducing the sufficient material before the authority below as well as before us also. Since there is nothing on record to which it can be assumed that the sale to the tune of Rs.1,53,270/- is the mistake in the accounts, therefore we are of the view that the CIT(A) has rightly confirmed the order passed by the Assessing Officer which nowhere require any interference of the Tribunal. Hence the appeal filed by the assessee is hereby dismissed.

5. In the result, the appeal filed by the assessee is hereby ordered to be Dismissed.

Order pronounced in the open court on 29th March, 2017.

Sd/-
(RAJENDRA)

लेखा सदस्य / ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated : 29th मार्च, 2017
MP

Sd/-

(AMARJIT SINGH)

न्यायिक सदस्य/JUDICIAL MEMBER

आदेश की प्रतिलिपि □ त्रेषित/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, Mumbai