

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
MUMBAI BENCH "A", MUMBAI**

**BEFORE SHRI B.R. BASKARAN, ACCOUNTANT MEMBER AND  
SHRI SANJAY GARG, JUDICIAL MEMBER**

**ITA No.5960/M/2012  
Assessment Year: 2008-09**

Smt. Karishma M. Panjwani, 601, Silver Clophil, St. Paul Road, Bandra (West), Mumbai – 400 050 <b>PAN: APEPP 8894C</b>	Vs.	Asst. Commissioner of Income Tax – 19(2), Piramal Chambers, Parel, Mumbai - 400012
(Appellant)		(Respondent)

**ITA No.6329/M/2012  
Assessment Year: 2008-09**

Asst. Commissioner of Income Tax – 19(2), Room No.315, 3 <sup>rd</sup> Floor, Piramal Chambers, Lalbaug, Parel, Mumbai - 400012	Vs.	Karishma M. Panjwani, 601, Silver Clophil, St. Paul Road, Bandra (West), Mumbai – 400 050 <b>PAN: APEPP 8894C</b>
(Appellant)		(Respondent)

Assessee by : Shri Mukesh B. Advani, A.R.  
Revenue by : Shri Vikash Kumar Agarwal, D.R.

Date of Hearing : 25.08.2016  
Date of Pronouncement : 16.09.2016

**ORDER**

**Per B.R. Baskaran, Accountant Member:**

These cross appeals are directed against the order dated 27.07.2012 passed by Ld. Commissioner of Income Tax (Appeals) [(hereinafter referred to as the CIT(A)]-30, Mumbai against the penalty order passed by the Assessing Officer (hereinafter referred to as the AO) under section 271(1)(c) of the Act. Since the Ld. CIT(A) confirmed the penalty to the extent of Rs.8,85,107/- as against the penalty of Rs.15,00,000/- levied by the AO, both the parties are aggrieved by his order.

2. The facts relating to the case are stated in brief. The assessee filed her return of income for the year under consideration declaring a total income of Rs.36.50 lakhs. From the AIR information received, the AO noticed that the assessee has made cash deposits into a bank account entered with M/s. Rupee Co-operative Bank Ltd and the aggregated amount of cash deposits so made was Rs.25.02 lakhs. Hence the AO issued a show cause notice seeking explanation from the assessee with regard to the sources of deposits. In response thereto, the assessee agreed to offer the cash deposits of Rs.25.02 lakhs, cheque deposits of Rs.2.83 lakhs and interest of Rs.3,402/- all aggregating to Rs.27.85 lakhs as her income. Accordingly, the AO assessed the same as income of the assessee. Thereafter, the AO levied a penalty of Rs.15,00,000/- on the above said addition u/s 271(1)(c) of the Act.

3. In the appellate proceedings, the Ld. CIT(A) upheld the penalty proceedings. However, he noticed that the penalty of Rs.15,00,000/- worked out to 169% of the tax sought to be evaded. Accordingly, he restricted the penalty to 100% of the tax sought to be evaded. Accordingly, the penalty came to be sustained to the extent of Rs.8,85,107/- and the balance amount of Rs.6,49,893/- was deleted.

4. At the time of hearing, it was pointed out that the tax effect involved in the appeal filed by the Revenue is less than Rs.10 lakhs and hence the Revenue is precluded from pursuing this appeal as per the Circular No.21/2005 dated 10.12.2015 issued by CBDT.

5. With regard to the appeal filed by the assessee, the Ld. A.R. submitted that the assessee has voluntarily agreed to offer the entire amount of cash deposits as her income without availing telescoping benefit and also without asking for assessing peak amount of deposits. The Ld. A.R. submitted that the assessee has also surrendered the cheque deposits and interest income

voluntarily. The assessee has submitted that it was an inadvertent omission on her part and has agreed to offer the cash deposits as well as cheque deposits as her income in order to buy peace of the revenue. The assessee had admitted the mistake in not considering the bank account at the time of filing return of income. The assessee has furnished all the details available with her with regard to the bank account and hence the benefit of explanation 1 to section 271(1)(c) of the Act should be given to the assessee. The Ld A.R also urged certain legal issues with regard to the initiation of penalty proceedings.

6. We heard the parties and perused the record. The appeal filed by the Revenue is liable to be dismissed, since the tax effect involved therein is less than Rs.10.00 lakhs. Accordingly we dismiss the same.

7. With regard to the appeal filed by the assessee, we notice that the assessee did not disclose the deposits made in the above said bank account in the return of income filed and has agreed to offer the entire amount of deposits found in that account, i.e., cash deposits, cheque deposits and interest income, when the assessing officer issued a show cause notice. The assessee has submitted the same to be an inadvertent omission on her part. Even though the assessee has claimed before AO that she has agreed to surrender the deposit amounts as her income before receipt of show cause notice, we notice that the AO has shown the same as incorrect and against the facts available on record. Hence the said argument of the assessee fails.

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.

10. In view of the above, we set aside the order passed by Ld CIT(A) and direct the AO to delete the penalty levied u/s 271(1)(c) of the Act for the year under consideration.

11. The Ld A.R also raised many other legal contentions. Since we have deleted the penalty on merits, we do not find it necessary to adjudicate them.

12. In the result, the appeal filed by the assessee is treated as allowed and the appeal of the Revenue is dismissed.

**Order pronounced in the open court on 16.09.2016.**

Sd/-

(Sanjay Garg)

**JUDICIAL MEMBER**

Sd/-

(B.R. Baskaran)

**ACCOUNTANT MEMBER**

Mumbai, Dated: 16.09.2016.

\* Kishore, Sr. P.S.

Copy to: The Appellant  
The Respondent  
The CIT, Concerned, Mumbai  
The CIT (A) Concerned, Mumbai  
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.