

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES "D", MUMBAI**

BEFORE SHRI B.R.BASKARAN (AM) AND SHRI RAM LAL NEGI (JM)

**ITA No 1107/MUM/2013
Assessment Year: 2005-06**

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| Dinesh Jaymatram Vaidya, 405, Surya Darshan, Carter Road No. 2, Borivali (East) Mumbai- 400066. PAN:- AABPV0961G | Vs. | The ITO 25(1)(4), Room No. 23,B Wing, Mittal Court, Nariman Point. Mumbai- 400 021. |
| (Appellant) | | (Respondent) |

Appellant by : None.
Respondent by : Shri. B.S.Bist.

Date of Hearing: 20/07/2016
Date of Pronouncement: 29/07/2016

ORDER

PER RAM LAL NEGI, JM

This appeal has been filed by the appellant/assessee against order dated 19/12/2012 passed by the Ld. CIT(Appeals)-11 Mumbai for the Asst. Year 2005-06, whereby the Ld. CIT(A) confirmed the penalty imposed by the A.O. u/s 271(1)(c) of the Income Tax Act, 1961 (in short 'the Act').

2. The assessee has raised the following grounds of appeal:-

"1) My Lord, The Appellant CIT(A)-11/Cir.25 while passing the order did not give the chance of hearing on the fixed date of 17/12/2012, as the CIT(A)-11/Cir/25 was not in office nor his staff and after waiting for him for two hours, since we have to attend other Income Tax Case, we left the office for attending the same and on 19/12/2012 the case was decided ex-parte basis.

2) My Lord, the learned officer has treated Rs. 3,00,000/- as undisclosed income which is actually unsecured loan from different lonee and passed the order giving the circumstances as below which is not at all applicable to our client.

- a) fails of offer an explanation to
- b) offers an explanation which is fond by the Assessing Officer to be false or
- c) offers explanation which is not able to substantiate or
- d) fails to prove that such explanation is bonafide and
- e) fails to prove that all the facts & materials to the computation of income have been disclosed by him.

3) My Lord, the said learned officer passed the order before we could submit the proof of payment from the lonee and raised the demand of Rs. 92,294/- and penalized our client with 100% penalty u/s 271(1)(c).

4) My Lord, the only fault of our client was that he could not attend on that particular date on which the leaned officer has asked to produce the said loan confirmation, due to some unavoidable circumstances and hence the learned officer considered Rs. 3,00,000/- as undisclosed income and passed the order with 100% penalty.

5) My Lord, we are herewith enclosing bank statement received from Mr. H.N.Tokhar. Mr. Mahendra J.Vaidya and Mr. Harvadan N. Jouharan towards unsecured loan received Rs. 50,000/- each having PAN - ABSPJ3012G, AABPV0961G & APOPJ3802G respectively confirming the lone taken by our client. (Enclosed Copy of Bank Statement).

In view of the above, we on behalf of our client request your honor to kindly consider the above amount for which bank statement attached towards confirmation of unsecured loan.”

3. The case was called for hearing, however, none appeared on behalf of the assessee. Perusal of record would reveal that the notice was served to the

assessee on 16.03.2016. Despite service of notice assessee did not appear in person or through authorized representative. Even no application, for adjournment was received. From the conduct of the assessee it appears that the assessee is not interested in pursuing the present appeal. Accordingly we decided to dispose of the appeal on merit after hearing the Ld. departmental representative (DR).

4. The Ld. DR submitted that the Ld. CIT(A) has rightly confirmed the penalty imposed by the A O. The assessee has failed to discharge the onus of establishing the identity of the alleged lenders, their creditworthiness and genuineness of transactions, despite the sufficient opportunity given by the A.O during assessment proceeding as well as by the CIT(A), during appellate proceedings. Therefore, there is no merit in the appeal of the assessee.

5. We have perused the documents on record. The Ld. CIT(A) has upheld the finding of the A.O. and confirmed the penalty levied u/s 271(1)(c) of the Act holding that the assessee has failed to establishing the identity of the alleged lenders, their creditworthiness and genuineness of transactions, despite the sufficient opportunity given by the A.O during assessment proceeding. The appellant/assessee even failed to discharge the onus during the appellate proceedings.

6. The only grievance of the assessee is that the Ld. CIT has wrongly confirmed the penalty levied by the A.O. u/s 271(1)(c) of the Income Tax Act. The assessee has taken the plea that the assessee could not produce documentary evidence in support of its contention on the date fixed before the Ld. CIT(A) due to unavoidable circumstances. The assessee has also placed on record statement of Bank account of Mr. H.N. Tokhar, Mr. Mehandra J Vaidya and Mr. Harvadan N Jouhraran to substantiate its contention. Penalty proceedings are different from assessment proceedings and since the said documents have not been

seen during the penalty proceedings and appellate proceedings, we are of the considered view that the assessee should get an opportunity to prove the documents submitted before the Tribunal. We, therefore, set aside this only ground of appeal to the file of the Ld. CIT(A) for adjudicating the issue afresh after affording opportunity of being heard to the assessee. We also direct the assessee not to seek adjournments on frivolous grounds.

6. In the result, appeal filed by the assessee for the A.Y. 2005-06 is allowed for statistical purposes.

Order pronounced in the open court on 29th July, 2016

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| Sd/- (B.R.BASKARAN) ACCOUNTANT MEMBER | Sd/- (RAM LAL NEGI) JUDICIAL MEMBER |
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मुंबई Mumbai; दिनांक Dated:29/07/2016

आदेश 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.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

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

Pramila