

IN THE INCOME TAX APPELLATE TRIBUNAL "E" BENCH, MUMBAI
**BEFORE SHRI D. KARUNAKARA RAO, ACCOUNTANT MEMBER AND
SHRI SANDEEP GOSAIN, JUDICIAL MEMBER**

I.T.A. No.732/M/2015 (Assessment Year: **2007-2008**)

DCIT-23(3), R.No.104, Matru Mandir, Tardeo Road, Grant Road, Mumbai – 400007.	बनाम/ Vs.	Shri Thomas Marks Almeda, 301/302, Neelam Apartments, Plot No.34A, TPS-IV, Junction of 8 th and 9 th Road, Bandra (W), Mumbai-50.
स्थायी लेखा सं./PAN : AGZPA6535B		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी की ओर से / Appellant by	:	Ms. Arju Garodia, DR
प्रत्यर्थी की ओर से/ Respondent by	:	Shri Ashok Patil

सुनवाई की तारीख /Date of Hearing : 08.03.2017

घोषणा की तारीख /Date of Pronouncement : 31.03.2017

आदेश / O R D E R

PER D. KARUNAKARA RAO, AM:

This appeal filed by the Revenue against the order of the CIT (A)-34, Mumbai dated 28.11.2014.

2. The solitary issue raised by the Revenue in this appeal relates to the CIT (A)'s decision in deleting the penalty of Rs. 13,30,800/- levied by the AO u/s 271(1)(c) of the Act in respect of addition of interest on Savings Bank of Rs. 2,36,696/- and capital gain of Rs. 55,75,228/-.

3. Briefly stated relevant facts of the case are that the AO levied penalty for a couple of additions in the assessment made u/s 143(3) of the Act. In the assessment AO noticed that the assessee concealed interest income of Rs. 2,36,696/-. Further, AO also made addition on account of capital gains and the computation was made considering the cost of acquisition based on the DVO / registered valuer's report of the assessee.

4. Before us, Ld Counsel for the assessee relied heavily on the of the order of the CIT (A) who deleted the entire penalty.

5. On the other hand, Ld DR for the Revenue demonstrated that the interest income was discovered by the AO. Bringing our attention to page 4, item no.3 of

the paper book relating to the "*evidences regarding various incomes shown by you*", Ld Counsel for the assessee submitted that the same constitutes general query and therefore, the discovery, if any is not attributable to the AO's investigation. Further, mentioning that the assessee's reply at item no.18 to the said notice u/s 142(1) reflects the assessee's voluntary offer of the said interest income earned from the savings account in the bank.

6. After hearing both the parties and on perusal of the orders of the Revenue Authorities as well as the relevant material placed before us, we find, pages 1 to 4 of the paper book, with regard to the interest income in general and for the show cause notice dated 27.2.2009 (page 4 of the PB) in particular helped the AO in discovery of the concealed interest income. The assessee would not have offered the said interest income amounting to Rs. 2,36,696/- during the assessment proceedings but for the said AO's letter to assessee. Therefore, the argument of the Ld Counsel for the assessee that the same constitutes voluntary offer of income stands dismissed. Therefore, we are of the opinion the penalty levied by the AO on this part of the addition is sustainable. AO is directed accordingly.

7. Regarding the penalty attributable to the capital gains, it is an admitted position but for the DVO report / registered valuer's report regarding the cost of acquisition of the assets, the addition would not have been made by the AO. In our opinion, the said reports constitute a concealed income. It is a settled legal position in the matter by virtue of the judgment of the Hon'ble Apex Court in the case of Dilip N Shroff vs. JCIT [2007] 292 ITR 519 (SC) that the penalties levied on the basis of the report of the DVO are not sustainable in law. Therefore, in our view, the decision taken by the CIT (A) on this part of the penalty is fair and reasonable and it does not call for any interference. We affirm the decision of the CIT (A) on this issue.

8. In the result, appeal of the Revenue is partly allowed.

Order pronounced in the open court on 31st March, 2017.

Sd/-

(SANDEEP GOSAIN)
JUDICIAL MEMBER

मुंबई Mumbai; दिनांक 31.03.2017

Sd/-

(D. KARUNAKARA RAO)
ACCOUNTANT MEMBER

व.नि.स./ OKK, 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
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**