

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

I.T.A. No.4828/M/2014 (Assessment Year: **2008-2009**)

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|---|--------------|---------------------------|
| Hush India Private Limited, 46, Saki Vihar Road, Andheri East, Mumbai-400072. | बनाम/ Vs. | ITO 8(2)-1, Mumbai-20. |
| स्थायी लेखा सं./PAN : AAACP6815F | | |
| (अपीलार्थी /Appellant) | .. | (प्रत्यर्थी / Respondent) |

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| अपीलार्थी की ओर से / Appellant by | : | Shri Rakesh Milwani, AR |
| प्रत्यर्थी की ओर से/ Respondent by | : | Shri Rajendra Chandekar, DR |

सुनवाई की तारीख / Date of Hearing : 28.04.2016
घोषणा की तारीख /Date of Pronouncement : 20.07.2016

आदेश / O R D E R

PER D. KARUNAKARA RAO, AM:

This appeal filed by the assessee on 21.7.2014 is against the order of the CIT (A)-17, Mumbai dated 12.5.2014 in connection with confirming of the penalty of Rs. 1,79,430/- u/s 271(1)(c) of the Act.

2. Briefly stated relevant facts of the case are that the assessee is engaged in the business of trading in pillows, waddings, mattress and filling fabrics and commission agents. During the year under consideration, assessee supplied pillows, mattress to M/s. Ennoble Hotel. There was a search and seizure action u/s 132 / 133A of the Act on Shri G. Janarthan Reddy Group of cases and on the said Ennoble Hotel. A diary was seized wherein a entry was found showing the transaction of payment of cash amounting to Rs. 5,80,960/- to the assessee-company. During the assessment proceedings, AO made addition of the same being unaccounted cash. CIT (A) confirmed the same and ITAT also affirmed the decision of the CIT (A) / AO on merits. During penalty proceedings, on completion of the procedural part granted an opportunity of being heard to the assessee as required under the statute and levied the minimum penalty of Rs. 1,79,430/-. CIT (A) confirmed the same despite the denial of the assessee that it ever received any cash from M/s. Ennoble Hotel. Aggrieved, assessee filed the present appeal before the Tribunal.

3. During the proceedings before us, Ld Counsel for the assessee mentioned that the said Hotel paid all the amount to the assessee-company and the same are reflected in the books of accounts and the alleged transaction was not a real one for attracting the penal provisions of 'concealment of income'. Apart from other arguments, Ld Counsel for the assessee mentioned that this case is required to be remanded to the file of the AO for completion of the procedural formalities relating to the entries on the diary. Mentioning that the diary belongs to M/s. Obulapuram Mining Co. Pvt Ltd, which is source diary for the above addition of Rs. 5,80,690/- / Rs. 5,68,690/- (there are two figures appearing in CIT (A)'s order, AO is required to bring clarity on these figures), Ld Counsel for the assessee mentioned that the Assessing Officer, who levied the penalty u/s 271(1)(c) of the Act, has not granted an opportunity of being heard to the assessee for cross examination of Shri G. Bhaskar Reddy, employee of M/s. Obulapuram Mining Co. Pvt Ltd. Ld Counsel for the assessee also mentioned that the penalty proceedings are entire different from that of the quantum additions. AO should have granted the facility of cross-examination of Shri G. Bhaskar Reddy before completion of the penalty proceedings.

4. On hearing both the parties, we find, it is a settled legal proposition of the law that penalty proceedings have to be dealt with by the officers not in a casual manner on the basis of concepts of prosecution. AO should have granted the opportunity of cross-examination of Shri G. Bhaskar Reddy without any demand from the assessee. Therefore, we are of the opinion that the request of the assessee should be considered and the matter is required to be remanded to the file of the AO for fresh adjudication of the issue after affording a reasonable opportunity of being heard to the assessee as per the set principles of natural justice. We order accordingly. Thus, the ground raised by the assessee is allowed for statistical purposes.

5. In the result, appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 20th July, 2016.

Sd/-

(AMARJIT SINGH)
JUDICIAL MEMBER

मुंबई Mumbai; दिनांक 20.07.2016

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**