

**IN THE INCOME TAX APPELLATE TRIBUNAL, BENCH "E", MUMBAI**  
**BEFORE SHRI G.S. PANNU, ACCOUNTANT MEMBER AND**  
**SHRI PAWAN SINGH, JUDICIAL MEMBER**  
**ITA No.1169/Mum/2017 (Assessment Year- 2012-13)**

Smt. Smita Narendra Panani 701, Parshwa Kunj, Malviya Road, Vile Parle (East), Mumbai-40057. <b>PAN: AAOPP2321B</b>	<b>Vs.</b>	ACIT 25-3, Mumbai.
(Appellant)		(Respondent)

Assessee by : Shri Praful H. Jain with  
Divesh P. Jain (AR)

Revenue by : Shri V. Justin (DR)

Date of hearing : 23.08.2017

Date of Pronouncement : 29.09.2017

**Order Under Section 254(1) of Income Tax Act**

**PER PAWAN SINGH, JUDICIAL MEMBER:**

1. This appeal by assessee under section 253 of the Income-tax Act (the Act) is directed against the order of Id. CIT(A)-37, Mumbai dated 22.12.2016 for the Assessment Year (AY) 2012-13. The assessee has raised the following grounds of appeal.

**Ground No 1:**

On the facts and circumstances of the case and in law the learned CIT(A) erred in confirming order of the Assistant Commissioner of Income Tax - 25(3) ('AO') which was passed against the principle of natural justice.

**Ground No 1:**

On the facts and in the circumstances of the case and in law, the learned CIT(A) erred in confirming penalty of Rs 1,77,405 levied under section 271(1)(c) of the Income-tax Act, 1961 (Act) by the AO on addition on account of interest on income tax refund.

2. Brief facts of the case are that the return of income was filed for relevant AY on 31.08.2012 declaring total income at Rs. 3,40,21,132/-. The assessment was completed on 31.03.2015 under section 143(3) of the Act determining the assessed income at Rs. 3,45,95,260/-. The Assessing Officer (AO) while passing the assessment order made the addition of Rs. 5,47,128/- on the basis of AIR information, as the assessee has not offered the Interest Receipt in the return of income. The AO initiated the penalty for furnishing the inaccurate particulars of income. The AO issued notice under section 274 r.w.s. 271(1)(c) dated 31.03.2005, which followed similar notice dated 30.08.2015. The assessee filed her reply dated 16.04.2015 on 15.05.2015. In the reply, assessee contended that assessee furnished full disclosure while filing the return of income. The assessee has not furnished any inaccurate particular nor concealed any income. The contention of the assessee was not accepted by the AO. The AO levied the penalty @ 100% of the tax sought to be evaded. Thus, the AO levied the penalty of Rs. 1,77,405/-. On appeal before the Id. CIT(A), the order of penalty was confirmed. Thus, further aggrieved by the order of Id. CIT(A), the present appeal is filed before us.
3. We have heard the Id. Authorized Representative (AR) for the assessee and Id. Departmental Representative (DR) for the Revenue and perused the material available on record. The Id. AR of the assessee argued that the assessee has not furnished any inaccurate particulars of income nor concealed the income while filing return of income. The Interest Receipt

was inadvertently left including the income of Receipt while filing return of income. The assessee offered the same when it was brought in the notice of assessee. There was bonafide human error while filing return of income. The Revenue has already taxed the said Interest Receipt. On the other hand, the Id. DR for the Revenue supported the order of authorities below. It was argued that the income was not selected for scrutiny. The Interest Income would have escaped the assessment. Thus, the assessee furnished inaccurate particular of income and concealed the said income. In support of his submission, the Id. DR for the Revenue relied upon the decision of Hon'ble Delhi High Court in CIT vs. Zoom Communication in ITA No. 07/2010 dated 24.05.2010.

4. We have considered the rival submission of the parties and have gone through the orders of authorities below. We have seen that while framing the assessment order, the AO concluded that assessee furnished inaccurate particulars of income. In reply to the notice under section 274 r.w.s. 271(1)(c) of the Act, the assessee contended that assessee has not furnished any inaccurate particular or concealed any income. Full disclosure was made in the return of income. During the First Appellate Stage, the assessee further explained that assessee came to know about the Income tax refund (which consists of Interest Receipt) after assessee received AIR information from AO. The assessee contended that after receipt of information of refund revise computation of income was furnished to the AO. It was further

contended that the assessee has offered huge amount of income of Rs.3,40,21,132/- to tax. Therefore, there is no question of hiding interest income of interest tax refund intentionally. In our view, the assessee has sufficiently explained the fact. Further, there is no dispute that the Interest Income was added in the income of assessee and was taxed. In our considered view, the assessee has sufficiently explained and offered the Interest Income and thus, there was no concealment of income or occasion for assessee for furnishing inaccurate particular. Keeping in view the totality of the facts of the present case, the assessee has sufficiently explained the facts about not offering the interest receipt while filing the return of income. The ration of case law in Zoom Communication (supra) relied by Id DR is not applicable on the facts of the present case. The factual matrix of the present case is different. In Zoom Communication (supra) the assessee has not explained either before lower authority or before Tribunal in which circumstances and on whose mistake, the deduction claimed were not added, while computing the income. However, in the present case the assessee has offered the interest income immediately, when it was reported to the assessee by filing revise return. Moreover, the interest income was part of refund by income tax department. The explanation submitted by assessee is otherwise plausible one.

5. In our view, it was a bonafide mistake. Keeping in view, the assessee has offered the substantial amount of income for tax and the assessee would not

have concealed the income of Rs. 5,74,128/- intentionally. As we already observed that the reply and explanation of the assessee was bonafide. In such circumstances, no penalty order was warranted which we delete.

6. In the result, appeal filed by the assessee is allowed.

Order pronounced in the open court on 29<sup>th</sup> day of September 2017.

Sd/-

Sd/-

**(G.S. PANNU)**

**(PAWAN SINGH)**

**ACCOUNTANT MEMBER**

**JUDICIAL MEMBER**

Mumbai; Dated 29/09/2017

S.K.PS

**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

BY ORDER,

(Asstt.Registrar)  
**ITAT, Mumbai**