



IN THE INCOME TAX APPELLATE TRIBUNAL
"C" BENCH, MUMBAI
BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER AND
SHRI G. MANJUNATHA, ACCOUNTANT MEMBER

ITA no.4267/Mum./2013
(Assessment Year : 2005-06)

Shri Chetan M. Joshi
9/10, Alka Building
Jamnadas Adukia Road
Kandivali (West)
Mumbai 400 067
PAN - AABPJ8129N

..... Appellant

v/s

Income Tax Officer
Ward-25(3)(1), Mumbai

..... Respondent

Assessee by : Ms. Mamta Parmar
Revenue by : Shri Rajat Mittal

Date of Hearing - 09.11.2017

Date of Order - 23.11.2017

ORDER

PER SAKTIJIT DEY, J.M.

This is an appeal by the assessee against the order dated 28th March 2013, passed by the learned Commissioner (Appeals)-11, Mumbai, confirming penalty imposed of ₹ 1,62,006 under section 271(1)(c) of the Act for the assessment year 2005-06.

2. Brief facts are, the assessee an individual is carrying on business through his proprietary concern Copernicus. For the assessment year

under dispute, the assessee filed his return of income on 31st October 2005, declaring total income of ₹ 2,51,280. The Assessing Officer after verifying the books of account and other relevant details completed the assessment under section 143(3) of the Act vide order dated 20th December 2007, determining the total income at ₹ 9,00,490, after making a number of additions / disallowances. On the basis of additions made by the Assessing Officer proceeding for imposition of penalty under section 271(1)(c) was initiated and ultimately the Assessing Officer passed an order imposing penalty of ₹ 1,62,006 under section 271(1)(c) of the Act.

3. The assessee challenged the penalty order by filing an appeal before the learned Commissioner (Appeals). As it appears, the first appellate authority disposed off assessee's appeal ex-parte by confirming the penalty imposed.

4. Learned Authorised Representative submitted before us, due to unavoidable circumstances, the assessee was unable to appear and represent his case before the first appellate authority. She submitted, assessee may be granted an opportunity to represent his case before the learned Commissioner (Appeals).

5. Learned Departmental Representative has not opposed the aforesaid contention of the assessee.

6. Having considered the rival submissions, we are of the view that the assessee deserves one more opportunity to represent his case before the first appellate authority. Accordingly, we set aside the impugned order of the learned Commissioner (Appeals) and restore the issue back to him for fresh adjudication after due opportunity of being heard to the assessee. At the same time, we direct the assessee to respond to the notice of hearing to be issued by the learned Commissioner (Appeals) and co-operate in finalization of proceedings.

7. In the result, assessee's appeal is allowed for statistical purposes.

Order pronounced in the open Court on 23.11.2017

Sd/-
G. MANJUNATHA
ACCOUNTANT MEMBER

Sd/-
SAKTIJIT DEY
JUDICIAL MEMBER

MUMBAI, DATED: 23.11.2017

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The CIT(A);
- (4) The CIT, Mumbai City concerned;
- (5) The DR, ITAT, Mumbai;
- (6) Guard file.

Pradeep J. Chowdhury
Sr. Private Secretary

True Copy
By Order

(Dy./Asstt. Registrar)
ITAT, Mumbai