

**IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH, MUMBAI  
BEFORE SHRI G.S.PANNU, AM AND SHRI RAVISH SOOD, JM**

ITA No. 5677/Mum/2015

(निर्धारण वर्ष / Assessment Year:2005-06)

Mrs. Rajkumari G. Jain 11, Jay Mayurasan CHS Ltd., Haji Bapu Road, Malad (E), Mumbai- 400 097	<b>बनाम/ Vs.</b>	ITO-24(2)(3) C-13, 6 <sup>th</sup> Floor, R. No. 603 Pratyashakar Bhavan, Bandra Kurla Complex, Bandra (E), Mumbai- 400 051
स्थायी लेखा सं./जीआइआर सं./PAN No.		ADYPJ0674Q
(अपीलार्थी / <b>Appellant</b> )	:	(प्रत्यर्थी / <b>Respondent</b> )

अपीलार्थी की ओर से / <b>Appellant by</b>	:	None
प्रत्यर्थी की ओर से / <b>Respondent by</b>	:	Shri T.A. Khan, Sr. A.R

सुनवाई की तारीख / <b>Date of Hearing</b>	:	22.11.2017
घोषणा की तारीख / <b>Date of Pronouncement</b>	:	30.11.2017

**आदेश / O R D E R**

**PER RAVISH SOOD, JUDICIAL MEMBER:**

The present appeal is directed against the order passed by the CIT(A)-41, Mumbai, dated 13.10.2015, which in itself arises from the order passed by the A.O under Sec. 271(1)(c) of the Income tax Act, 1961 (for short 'Act'), dated 26.06.2012. The assessee assailing the order of the CIT(A) had raised before us the following grounds of appeal:-

**“1. NATURAL JUSTICE**

- 1.1 *The Learned Commissioner of Income - tax (Appeals) - 41, Mumbai, [“Ld. CIT (A)”] erred in passing the appellate order in breach of the principles of natural justice as much as:*
- (i) *Not proper, effective and fair opportunity has been granted to the Appellant;*
  - (ii) *There was no application of mind to the facts and circumstances of the case of the Appellant.*
- 1.2 *It is submitted that, in the facts and the circumstances of the case, and in law, the order is held to be bad in law.*

**WITHOUT PREJUDICE TO THE ABOVE**

- 2.1 *The Ld. CIT(A) erred in confirming the penalty levied by the A.O. u/s. 271(1) (c) of the Act.*
- 2.2 *The Ld. CIT (A) failed to appreciate that the order passed by the A.O. and/or the penalty levied was bad and illegal as the necessary conditions for initiating the penalty proceedings and the completion thereof were not fulfilled.*
- 2.3 *While doing so, the Ld. CIT (A) erred in:*
- (i) *Basing his decision solely upon the assessment order; and*
  - (ii) *Not independently evaluating the case in by taking into account the material as well as facts of the case brought on record by the Appellant.*
- 2.4 *It is submitted that in the facts and the circumstances of the case, and in law, no such penalty was leviable.*

**WITHOUT FURTHER PREJUDICE TO THE ABOVE**

- 3.1 *The Ld. CIT (A) erred in confirming the action of the A.O. in levying penalty of Rs.3,26,650/- u/s. 271(1)(c) of the Act on the allegation of concealment of income and furnishing inaccurate particulars of income by the Appellant.*
- 3.2 *It is submitted that in the facts and the circumstances of the case, and in law, no such penalty was leviable.*
4. *The Appellant craves leave to add, alter, delete or modify all or any the above ground at the time of hearing.”*

2. Briefly stated, the facts of the case are that the assessee had filed her return of income for AY 2005-06 on 30.05.2005, declaring total income at Rs.1 lac. That the A.O was in receipt of information

from the investigation wing of the department that the assessee as a beneficiary had taken a bogus entry of capital gain of Rs.10,21,395/-. On the basis of the aforesaid information the A.O reopened the case of the assessee for the year under consideration. That during the course of the assessment proceedings the assessee failed to substantiate the genuineness and veracity of the long term capital gain (for short 'LTCG') on sale of shares, as a result whereof the A.O assessed the amount of Rs.10,21,395/- which was claimed by the assessee as being the sale proceeds of shares, as the income of the assessee from other sources. The appeal of the assessee before the CIT(A) was dismissed. The A.O after the culmination of the assessment proceedings called upon the assessee to show cause as to why the penalty under Sec. 271(1)(c) may not be imposed on her in respect of the aforesaid amount of Rs.10,21,295/-. That as the assessee failed to come forth with any explanation, therefore, the A.O imposed penalty under Sec. 271(1)(c) of Rs.3,26,650/-. The penalty imposed by the A.O was thereafter upheld by the CIT(A).

3. The assessee assailing the upholding by the CIT(A) of the penalty imposed by the A.O under Sec. 271(1)(c), had therein carried the matter in appeal before us. We find that despite the fact that the assessee appellant was duly informed about the date of hearing of the appeal, however, neither any appearance was put forth on her behalf, nor any application seeking an adjournment was filed before us. We thus, in the backdrop of the aforesaid facts, being left with no other alternative proceed with as per Rule 24 of the Appellate Tribunal Rules, 1963, and dispose of the appeal after hearing the respondent and perusing the orders of the lower authorities.

4. We have heard the Id. Departmental Representative (for short 'D.R'), perused the orders of the lower authorities and the material available on record. We have given a thoughtful consideration to the facts of the case and find that the A.O had imposed penalty under Sec. 271(1)(c) on the ground that the assessee had taken a bogus entry of capital gain of Rs.10,21,395/-. We find that the aforesaid order of the A.O was thereafter affirmed by the CIT(A), who after deliberating on the facts of the case, therein being persuaded to be in agreement with the view taken by the A.O had upheld the penalty imposed under Sec.271(1)(c). We have perused the orders of the lower authorities and find that they had concluded that the assessee as a beneficiary had taken a bogus entry of capital gain. We are of the considered view that the order of the CIT(A) passed in the quantum appeal of the assessee appears to have attained finality, as there is nothing available before us to hold otherwise. We are of the considered view that in the absence of any material before us which could persuade us to conclude that the observations of the lower authorities suffer from any infirmity or are perverse, therefore, find no reason to take a different view, and thus finding ourselves as being in agreement with the view taken by the CIT(A) by way of a well reasoned order, thus, uphold his order and confirm the penalty of Rs.3,26,650/- imposed by the A.O under Sec. 271(1)(c).

5. The appeal of the assessee is dismissed.

Order pronounced in the open court on 30.11.2017

Sd/-

(G.S. Pannu)

ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक 30.11.2017

Ps. Rohit Kumar

Sd/-

(Ravish Sood)

JUDICIAL MEMBER

**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**