

**IN THE INCOME TAX APPELLATE TRIBUNAL****MUMBAI BENCHES "E", MUMBAI****BEFORE SHRI R.C. SHARMA (AM) AND SHRI RAM LAL NEGI (JM)****ITA No. 3579/MUM/2016****Assessment Year: 2005-2006**

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| Mrs. Anita J. Lalwani,<br>J-301, Vardhaman Nagar,<br>Junction of R.P. Road &<br>M.G. Road, Mulund (W),<br>Mumbai – 400080<br><br>PAN: AAAPL4171F | <b>Vs.</b> | The ITO 23 (2)(1),<br>I.T. Offices, C-10,<br>Pratyakshakar Bhavan<br>(2 <sup>nd</sup> Floor), Bandra Kurla<br>Complex, Bandra (E),<br>Mumbai - 400051 |
| <b>(Appellant)</b>   |            | <b>(Respondent)</b>   |

Assessee by :

None

Revenue by :

Shri V. Justin (DR)

Date of Hearing: 07/11/2017

Date of Pronouncement: 08/12/2017

**ORDER****PER RAM LAL NEGI, JM**

This appeal has been filed by assessee Mrs. Anita J. Lalwani against order dated 02/02/2016 passed by the Ld. Commissioner of Income Tax (Appeals)-40, Mumbai, for the assessment year 2005-06, whereby the Ld. CIT (A) has confirmed the penalty of Rs. 3,40,103/- imposed by the AO u/s 271 (1) (c) of the Income Tax Act, 1961 (for short 'the Act').

2. Brief facts of the case are that assessee had claimed exemption u/s 10 on account of long term capital gain from sale of shares of M/s Talent Infoway Lt. for Rs. 10,09,592/-. During the assessment proceedings, Mr. Mukesh Chauksi, MD of M/s Mahasagar Securities Ltd. admitted that bogus bills/accommodation entries said pertaining to the said shares were arranged by his company. The assessee was accordingly asked to produce evidence to prove the genuineness of transaction in question. Since, the

assessee failed to do so, the AO holding the transaction bogus treated the amount Rs. 10,09,592/- as unexplained cash credit u/s 68 of the Act and added the said amount to the income of the assessee and passed the assessment order u/s 143(3) of the Act. In appeal, the Ld. CIT (A) confirmed the addition. Accordingly, penalty order u/s 271 (1) (c) was passed by the AO. In first appeal, the Ld. CIT (A) confirmed the penalty levied by AO u/s 271 (1)(c). Against the said order, the assessee is in appeal before the Tribunal.

3. The assessee has raised the following effective grounds of appeal against the impugned order passed by the Ld. CIT (A):-

1. *“On the facts and in the circumstances of the case and in law, the penalty order passed u/s 271 (1)(c) of the I.T. Act is invalid and bad in law.*
2. *On the facts and in the circumstances of the case and in law, the learned C.I.T. (A) erred in confirming the penalty levied of Rs. 3,40,103/- u/s 271 (1)(c) of the I.T. Act and that too without giving full and proper opportunity of being heard in the matter.*
3. *On the facts and in the circumstances of the case and in law, the learned C.I.T. (A) erred in confirming the penalty levied of Rs. 3,40,103/- u/s 271 (1)(c) of the I.T. Act and that too without appreciating fully and properly the facts of the case.*
4. *On the facts and in the circumstances of the case and in law, the learned C.I.T. (A) erred in confirming the penalty levied of Rs. 3,40,103/- u/s 271 (1)(c) of the I.T. Act although there has been neither any concealment of income nor furnishing of inaccurate particulars of income.”*

4. This case was fixed for hearing on 07/11/2017. On the said date, when the case was called for hearing, none appeared on behalf of the assessee nor any application for adjournment was received. We noticed that

this case was fixed for hearing for the first time on 02/04/2017. Thereafter, the case was posted for 03/03/2017, 13/04/2017, 21/04/2017 and 02/11/2017 for hearing, however, the assessee did not appear on any of the said dates. We further observed that notice sent through registered post has received back with the remark of the Postal Department that the party has left the place. From the conduct of the appellant/assessee, we are satisfied that the assessee is not interested in pursuing the present appeal. We accordingly decide to dispose of the appeal on the basis of material on record after hearing the Departmental Representative (DR).

5. Before us, the Ld. DR relying on the order passed by the Ld. CIT (A) submitted that quantum appeal the Ld CIT(A) has confirmed the addition in question. Therefore, there is no merit in the assessee's appeal and the same is liable to be dismissed.

6. We have carefully gone through the material on record. The only grievance of the assessee is that the Ld. CIT(A) has wrongly confirmed the penalty levied by the AO u/s 271(1)(c) of the Act. We notice that the department had conducted search and seizure operation on M/s Mahasagar Securities Pvt. Ltd. and its related group of 34 companies including M/s Goldstar Finvest Pvt. Ltd. run by Mr. Mukesh Chauksi and it was found that the appellant had obtained accommodation entries in the scrip of M/s Talent Infoways and Mr. Mukesh Chauksi in his statement admitted that these companies provide purchase bills for long term capital gain and further confirmed that both the sales and purchase bills issued are bogus. We further notice that the SEBI has confirmed that no trades for client code through the member's names appearing in the contract note were found executed. The Ld. CIT (A) has confirmed the penalty order inter alia holding as under :-

*".....In this case, the assessee has furnished an explanation regarding this cash credit which was found to be false, therefore, A.O. has rightly treated it as income of the assessee. Hence, in the present case, the appellant offers an explanation which he is not able to substantiate and fails to prove that such explanation is bona fide. Therefore,*

*explanation 1 to Section 271(1)(c) comes into play. The provisions of Section 271(1)(c) not only covers the cases in which assessee has concealed the income or has furnished inaccurate particulars of income, in certain situations, even without there being anything to indicate noteworthy, deeming fiction for concealment of income comes to play and it covers the cases where the assessee does not offer any explanation for any material concerning the computation of total income under the provision of the Act. The judicial pronouncements relied upon by the appellant also don't help the case of appellant as principles laid down in those decisions are not applicable to the facts of the case of the appellant. In the present case, the appellant had offered explanation before the AO which was found to be false and he had failed to offer an explanation for the cash credit before the Ld. CIT (A) during appellate proceedings in respect of quantum additions. Therefore, the case of the assessee is squarely hit by the provisions of Explanation 1 to Section 271(1)(c) of the Act."*

7. In our considered opinion the findings of the Ld. CIT(A) is based on the evidence and in accordance with the established principles of the law. Since, the assessee has failed to offer any plausible explanation as to why penalty u/s 271(1)(c) of the Act should not be imposed, the Ld. CIT(A) has rightly confirmed the penalty in question. Hence, we do not find any infirmity in the order of the Ld. CIT(A) to interfere with the same. Accordingly, we uphold the findings of the Ld. CIT(A) and dismiss all the grounds of appeal of the assessee.

In the result, appeal filed by the assessee for assessment year 2005-06 is dismissed.

Order pronounced in the open court on 8<sup>th</sup>.December, 2017.

Sd/-

Sd/-

(R.C. SHARMA)

(RAM LAL NEGI)

ACCOUNTANT MEMBER

JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated: 08/12/2017

Alindra PS

**आदेश 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.

**आदेशानुसार/ BY ORDER,**  
सत्यापित प्रति //True Copy//  
**उप/सहायक पंजीकार (Dy./Asstt. Registrar)**  
**आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai**