

आयकर अपीलीय अधिकरण, इन्दौर न्यायपीठ, इन्दौर

**IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE**

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER
AND
SHRI MANISH BORAD, ACCOUNTANT MEMBER**

**ITA No.768/Ind/2016
Assessment Year: 2008-09**

Anil Kumar Lila (HUF), 83-A, Lila Niwas, Malviya Nagar, Bhopal	बनाम/ Vs.	ACIT -1(2), Bhopal
(Appellant)		(Revenue)
P.A. No.AACHA9047H		

Appellant by	None (Written Submission)
Revenue by	Shri K.G. Goyal, Sr. DR
Date of Hearing:	30.01.2018
Date of Pronouncement:	31.01.2018

आदेश / O R D E R

PER MANISH BORAD, A.M:

This appeal filed by Assessee is directed against the order of Ld. Commissioner of Income Tax(Appeals)-31, New Delhi, Camp Bhopal dated 21.03.2016 which is arising out of the order u/s 271(1)(c) of the Income Tax Act (hereinafter called as 'the Act') dated 27.09.2013 framed by ACIT Circle 1(2).

2. Solitary grievance of the assessee is against the order of Ld. CIT(A) confirming penalty of Rs.45,000/- imposed u/s 271(1)(c) of the Act for furnishing of inaccurate particulars of income.

3. Briefly stated facts as culled out on the records are that the assessee is a Hindu Undivided Family and is member of Lilasons group of Bhopal which is engaged in the business of manufacture and sale of beer. The search was conducted u/s 132 of the Act. Subsequent notices u/s 153A of the Act were issued to the assessee to file the returns of income for A.Ys. 2005-06 to 2010-11. Return duly submitted notice issued for initiating assessment proceedings. During the course of assessment proceedings for A.Y. 2008-09.Ld. Assessing Officer (in short 'AO) while examining the detail of short term capital gain observed that some of the transactions have been done without demat account. He accordingly treated the brokers note as bogus and assessed the short term capital gain as income from other sources. Income shown in the return by the assessee was accepted as assessed income and no other addition was made.

4. Subsequently, penalty proceedings u/s 271(1)(c) initiated for furnishing of inaccurate particulars of income. The Ld. AO taking similar view as taken in the course of assessment imposed penalty of Rs.45,000/- on the alleged short term capital gain of Rs.1,36,280/- being assessed as income from other sources. The assessee's appeal before the Ld. CIT(A) brought no relief and the penalty was confirmed.

5. Now the assessee is in appeal before the tribunal. None appeared on behalf of the assessee during the course of hearing. However,

written submissions were placed on record in the paper book running from page 1 to 38. Ld. DR supported the order of the Ld. CIT(A).

6. We have heard the Ld. DR and perused the written submission and documents filed by the assessee. Question before us is whether both the lower authorities were justified in imposing/confirming the penalty of Rs. 45,000/- u/s 271(1)(c) of the Act for furnishing of inaccurate particulars of income.

7. We find that the assessee has shown long term and short term capital gain in various assessment years from A.Ys. 2005-06 to 2008-09. For the A.Y. 2008-09, short term capital gain of Rs.1,36,280/- was shown in the original return as well as in the return filed in compliance to notice u/s 153A of the Act. There was no variation of income disclosed in both the returns. During the assessment proceedings Ld. AO while examining alleged transactions of sale of equity shares observed that few transactions were not routed through demat account and the transactions took place in physical form. Based on this observation the ld. AO concluded that the assessee has taken bogus brokers note for sale of shares.

8. It is also pertinent to note that there is no specific finding by the AO as to whether any efforts were taken on his part to enquire about genuineness of the brokers note and the alleged transactions which took place through recognized stock exchange. Only because the transaction of sale of equity shares took place in physical form

cannot give rise to a belief that the alleged transactions are bogus or the assessee has furnished inaccurate particulars of income.

9. We, therefore, in the given facts and circumstances of the case or the considered opinion the information provided by the assessee were not challenged by the AO except treating them as bogus without having any basis. Such conclusion cannot lead to prove that the assessee has furnished inaccurate particulars of income. In such situation the AO was not justified to imposing the penalty of Rs.45,000/- u/s 271(1)(c) of the Act. We, therefore, set aside the findings of Ld. CIT(A) and deleted the penalty of Rs.45,000/-, imposed u/s 271(1)(c) of the Act.

10. In the result, the appeal of the Assessee is allowed.

Order was pronounced in the open court on 31.01.2018.

Sd/-
(KUL BHARAT)
JUDICIALMEMBER

Sd/-
(MANISH BORAD)
ACCOUNTANTMEMBER

Indore; दिनांक Dated : 31 / 01/2018

Patel, P.S./नि.स.

Copy to: Assessee/AO/Pr. CIT/ CIT (A)/ITAT (DR)/Guard file.

By order
Private Secretary/DDO, Indore