



IN THE INCOME TAX APPELLATE TRIBUNAL "E", BENCH MUMBAI

BEFORE SHRI R.C.SHARMA, AM

&

SHRI PAWAN SINGH, JM

ITA No.24/Mum/2016

(Assessment Year: 2009-10)

M/s. Tribhovandas Bhimji Zaveri (Delhi) Pvt. Ltd., Ground Floor Somnath Apartments, Ram Mandir R.D.Vile Parle (E) Mumbai – 400 057	Vs.	DCIT CEN CIR 9 R.No.806, Old CGO Annex Building, M.K.Road, Mumbai – 400 020
PAN/GIR No.AABCT0165H		
Appellant)	..	Respondent)

Assessee by	Shri Subhash Chhajed
Revenue by	Shri Ram Tiwari
Date of Hearing	26/12/2017
Date of Pronouncement	09/02/2018

आदेश / O R D E R

PER R.C.SHARMA (A.M):

This is an appeal filed by the assessee against the order of CIT(A)-48, Mumbai dated 28/11/2015 for A.Y.2009-10 in the matter of confirmation of penalty of Rs.1,68,000/- u/s.271(1)(c) of the IT Act.

2. Rival contentions have been heard and record perused.
3. In this case addition of Rs.62,21,950/- was made by the AO on the basis of documents collected during the course of search. Assessee approached to the Tribunal and Tribunal vide its order dated 04/11/2015 reduced the addition by estimating profit at 9% of Rs.62,21,950/-. Accordingly, addition of Rs.5,60,000/- was upheld. The AO also levied

penalty with regard to the additions so made, the CIT(A) has reduced the same and penalty was restricted only to the extent of estimated profit upheld by the Tribunal amounting to Rs.5,60,000/-. Accordingly, penalty of Rs.1,68,000/- was upheld by the CIT(A).

4. It was argued by learned AR that provisions of Section 271(1)(c) are not attracted to the case where the income of an assessee is assessed on estimation basis and additions have been made therein. For this purpose, reliance was placed on the following judicial pronouncements:-

- a. C.IT.Vs. Sangrur Vanaspati Mill Ltd. 303 ITR 53 (P & H)*
- b. C.IT. Vs. RavaitSingh&Co. 254ITR191(P&H)*
- c. CIT Vs. Krishi Tyre Retreading & Rubber Ind.[2014] 360 ITR 580 (Raj.)*
- d. DCIT Vs. Kalindi Rail Nirman Engg. Ltd. [2012]52 SOT 91 (Delhi)*
- e. Sunil Kumar Singhania Vs. ACIT [2012] 52 SOT 137 (Hyderabad)*

5. On the other hand, it was contended by learned DR that the Tribunal itself has observed in para 36 that assessee might not have accounted for this transaction in the books of accounts, therefore, to the extent addition has been upheld by the Tribunal, the CIT(A) was justified to restrict the penalty to that extent.

6. We have considered rival contentions and carefully gone through the orders of the authorities below and found that quantum addition so made by the AO to the extent of Rs.62,21,950/- was reduced by the Tribunal by estimating profit at 9% thereon which amounts to Rs.5,60,000/-. Thus, on estimation basis, profit out of the transaction was worked out at Rs.5,60,000/-.

7. Hon'ble Rajasthan High Court in the case of Mahendra Singh Khedla 71 DTR 189 held that penalty u/s.171(1)(c) cannot be levied on the addition made on estimate basis. Similar view has been taken by the Madras High Court in case of Smt.K. Meenakshi Kutty 258 ITR 494. Furthermore, applying proposition of law laid down in the judicial pronouncements cited by learned AR, it is not a fit case for levy of penalty u/s.271(1)(c) of IT Act. Accordingly, we direct the AO to delete the penalty so imposed on the income estimated by the Tribunal. We direct accordingly.

8. In the result, appeal of the assessee is allowed.

Order pronounced in the open court on this 09/02/2018

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

Sd/-
(R.C.SHARMA)
ACCOUNTANT MEMBER

Mumbai; Dated 09/02/2018

Karuna Sr.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,

सत्यापित प्रति //True Copy//

(Asstt. Registrar)
ITAT, Mumbai