

आयकर अपीलीय अधिकरण “एच” न्यायपीठ मुंबई में।
IN THE INCOME TAX APPELLATE TRIBUNAL “H” BENCH, MUMBAI
BEFORE SHRI SHAMIM YAHYA, AM AND SHRI RAVISH SOOD, JM

आयकर अपील सं./I.T.A. No.4441/Mum/2016

(निर्धारण वर्ष / Assessment Year: 2010-11)

Shujat Dilawar Sayed, Prop: S. R. Engineering Corporation, 14-C, Kurla Industrial Estate, Narayan Nagar, Off: LBS Marg, N. S. Road, Ghatkopar, Mumbai-400 086	बनाम/ Vs.	ITO-21(3)(2) & CIT(A)-38, Mumbai
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. AHZPS 4912 M		
(अपीलार्थी /Appellant)	:	(प्रत्यर्थी / Respondent)
अपीलार्थी की ओर से / Appellant by	:	None
प्रत्यर्थी की ओर से/Respondent by	:	Shri M. C. Omi Ningshen
सुनवाई की तारीख / Date of Hearing	:	04.04.2018
घोषणा की तारीख / Date of Pronouncement	:	09.04.2018

आदेश / ORDER

Per Shamim Yahya, A. M.:

This appeal by the assessee is directed against the order by the Commissioner of Income Tax (Appeals) confirming the levy of penalty amounting to Rs.32,200/- u/s. 271(1)(c) of the I. T. Act.

2. The brief facts of the case are that the assessee is in the business of fabrication/engineering works and dealing in iron and steel products. The assessee had filed the original return on 27.09.2010, declaring the income of Rs.37,810/-.

Subsequently, a revised return of income was filed by the assessee on 30.03.2002, declaring income of Rs.5,18,048/-. The assessee also submitted a revised audit report u/s. 44AB. In the revised report, the assessee incorporated entries of HDFC Bank account which was earlier not disclosed to the department. In the assessment order, the Assessing Officer accepted the return of income and made a adhoc disallowance of Rs.40,000/- for the expenses. The Assessing Officer also initiated penalty proceedings not with reference to any particular amount. For this, the Assessing Officer noted that while revising his return of income, the assessee has incorporated the transactions from the HDFC bank which was not disclosed in the original return. For this, the Assessing Officer opined that this tantamount to concealing the true particulars of his income which he would not have done, if the HDFC bank account was not detected by the Department during the assessment proceedings for assessment year 2009-10. In the penalty proceedings, the penalty was imposed based upon difference between the original return of income filed at Rs.37,080/- and the revised return of income at Rs.5,58,060/-. Accordingly, penalty of Rs.32,200/- was levied.

3. Upon the assessee's appeal, the Id. Commissioner of Income Tax (Appeals) confirmed the penalty.

4. Against this order, the assessee is in appeal before us.

5. We have heard the Id. Departmental Representative. None appeared on behalf of the assessee. Upon careful consideration, we find that the income filed in return of

income has been assessed by the Income Tax Officer. The return of income has been accepted by the Revenue and there is no case of levy of penalty. As in such case, the machinery provision for levy of penalty u/s. 271(1)(c) of the Act fails, as the penalty is to be levied with reference to the income sought to be evaded. Hence, when the revised return has been accepted and the income has been assessed as such, there is no case of levying of penalty with reference to any income sought to be evaded. Moreover, it is not the case that the return was revised upon any questionnaire or other aspect detected by the Assessing Officer. Hence, the conduct of the assessee was also not contumacious so as to warrant levy of penalty on the touchstone of exposition of a larger bench of Hon'ble Apex Court in the case of *Hindustan Steel Ltd. vs. State of Orissa* [1972] 83 ITR 26 (SC). In these circumstances, in our considered opinion, the penalty levied cannot be sustained. Accordingly, we set aside the order of the authorities below and delete the levy of penalty.

6. In the result, this appeal by the assessee stands allowed.
परिणामतः निर्धारिती की अपील स्वीकृत की जाती है ।

Order pronounced in the open court on 09.04.2018

Sd/-
(Ravish Sood)

न्यायिक सदस्य / Judicial Member

Sd/-
(Shamim Yahya)

लेखा सदस्य / Accountant Member

मुंबई Mumbai; दिनांक Dated : 09.04.2018

व.नि.स./Roshani, Sr. PS

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 - concerned
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard File

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)

आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai