

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "D", MUMBAI**

**BEFORE SHRI G.S. PANNU, ACCOUNTANT MEMBER AND
SHRI C.N. PRASAD, JUDICIAL MEMBER**

ITA NO. 4209/MUM/2016 : (A.Y : 2010-11)

Habib Umer Khan
Flat No. 302, C-23, Gold Corner CHS
Ltd., Yamuna Nagar, Lokhandwala
Complex, Versova, Andheri (W),
Mumbai 400 053. (Appellant)
PAN : AGVPH9504C

Vs. ACIT, Circle-1, Kalyan
(Respondent)

Appellant by : Shri Ajeet Manwani

Respondents by : Shri Saurabh Deshpande

Date of Hearing : 06/04/2018

Date of Pronouncement : 18/04/2018

ORDER

PER G.S. PANNU, AM :

The captioned appeal by the assessee is directed against the order of CIT(A)-2, Thane dated 22.04.2016 pertaining to the Assessment Year 2010-11, which in turn has arisen from the order passed by the Assessing Officer, Mumbai dated 28.08.2013 imposing penalty u/s 271(1)(c) of the Income Tax Act, 1961 (in short 'the Act').

2. In this appeal, the solitary dispute relates to the penalty of Rs.2,22,579/- imposed u/s 271(1)(c) of the Act.

3. The relevant facts are that assessee is engaged in construction activity and was undertaking various projects. In the course of assessment proceedings, the Assessing Officer noted that assessee was not able to furnish the requisite details regarding an amount of Rs.7,20,319/-, which was part of advances 'Others' of Rs.13,40,000/- shown in the Balance-sheet. Therefore, the sum of Rs.7,20,319/- was treated as unexplained credit and added to the total income. Subsequently, the Assessing Officer has levied penalty on such income u/s 271(1)(c) of the Act equivalent to 100% of the tax sought to be evaded on such income, which amounted to Rs.2,22,579/-. The appeal filed by the assessee before the CIT(A) was delayed by 4 months and 27 days and assessee sought condonation of delay by explaining the reasons for the delay and also assailed the imposition of penalty. The CIT(A) has not only refused to condone the delay and treated the appeal as not maintainable, but also dealt with the merits of the issue and upheld the levy of penalty. Against such a decision of the CIT(A), assessee is in appeal before us.

4. Before us, the learned representative for the assessee pointed out that the delay has been unjustly not condoned by the CIT(A) inasmuch the delay was caused because of *bona fide* reasons. It has been explained that assessee is not a qualified person and is carrying on construction activity based on his past experience and that over the years he has undertaken various projects and offered incomes therefrom. For different projects, separate books of account were being maintained, which involved a lot of

paper work and in some confusion filing of appeal before the CIT(A) in time escaped the attention of the assessee. It is pointed out that the delay is for a *bona fide* reason and ought to have been condoned. Even otherwise on merit, it is pointed out that the advances 'Others' shown in the Balance-sheet of Rs.20,60,319/- were part of the total advances of Rs.16,84,36,137/- reflected in the Balance-sheet and no other infirmity was found in the details furnished by the assessee. According to the appellant, the non-substantiation of the credit to the extent of Rs.7,20,319/- was a miniscule figure compared to the total advances shown and there was no intention of any concealment or furnishing of inaccurate particulars of income. The learned representative pointed out that almost for last 15 years, assessee had paid his taxes regularly and properly and has never been found guilty of concealment and even no search or survey action has ever taken place. The impugned dispute was too small considering the level of activities and, therefore, it should not invite levy of penalty u/s 271(1)(c) of the Act.

5. On the other hand, the Id. DR appearing for the Revenue reiterated the stand of the lower authorities and pointed out that in the absence of the requisite details, the amount was justifiably treated as unexplained credit and, therefore, it would attract levy of penalty u/s 271(1)(c) of the Act.

6. We have carefully considered the rival submissions. Ostensibly, the approach of CIT(A) in dismissing the appeal as non-maintainable on account of it being belated and simultaneously also deciding the issue on merit is not justified in view of the ratio of the decision of the Hon'ble Bombay High Court in the case of *CIT vs Mysore Iron & Steel Works, 17 ITR 478 (Bom.)*. In fact, we find that the *bona fides* of the reasons explained by the assessee for

the delay have not been found to be lacking and, therefore, in our view, the CIT(A) erred in not condoning the delay, keeping in mind the principles laid down by the Hon'ble Supreme Court in the case of *Collector, Land Acquisition vs Mst. Katiji & Ors., 167 ITR 471 (SC)*. Be that as it may, in the normal circumstances we would have remanded the matter back to the file of the CIT(A), but considering the smallness of the matter, both the Counsels were heard on the merits of the levy of penalty. We find that it is a case where assessee's explanation did not sufficiently substantiate the credit of Rs.7,20,319/- found in the Balance-sheet; it is certainly not a case where the credit of Rs.7,20,319/- shown in the Balance-sheet is found to be false or otherwise bogus. A mere non-substantiation of a credit would not *ipso facto* lead to levy of penalty u/s 271(1)(c) of the Act unless any falsity is proved therein. Therefore, in our view, the levy of penalty u/s 271(1)(c) of the Act of Rs.2,22,579/- in this case is not merited and is hereby directed to be deleted.

7. In the result, appeal of the assessee is allowed, as above.

Order pronounced in the open court on 18th April, 2018.

Sd/-
(C.N. PRASAD)
JUDICIAL MEMBER

Sd/-
(G.S. PANNU)
ACCOUNTANT MEMBER

Mumbai, Date : 18th April, 2018

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Copy to :

- 1) The Appellant
- 2) The Respondent
- 3) The CIT(A) concerned
- 4) The CIT concerned
- 5) The D.R, "D" Bench, Mumbai
- 6) Guard file

By Order

Dy./Asstt. Registrar
I.T.A.T, Mumbai