

आयकर अपीलिय अधिकरण पुणे न्यायपीठ "ए" पुणे में  
**IN THE INCOME TAX APPELLATE TRIBUNAL  
PUNE BENCH "A", PUNE**

सुश्री सुषमा चावला, न्यायिक सदस्य एवं श्री अनिल चतुर्वेदी, लेखा सदस्य के समक्ष  
**BEFORE MS. SUSHMA CHOWLA, JM AND SHRI ANIL CHATURVEDI, AM**

**आयकर अपील सं. / ITA No.81/PUN/2016**

**निर्धारण वर्ष / Assessment Year : 2008-09**

Mukund Bajirao Kote (HUF),  
Pimpalwadi Road, Shirdi,

Dist - Ahmednagar

.... अपीलार्थी/Appellant

PAN: AAKHM3668L

Vs.

The Income Tax Officer,  
Ward – 1, Ahmednagar

.... प्रत्यर्थी / Respondent

अपीलार्थी की ओर से / Appellant by : Shri Kishore Phadke

प्रत्यर्थी की ओर से / Respondent by : Shri Achal Sharma

सुनवाई की तारीख / <b>Date of Hearing : 24.04.2018</b>	घोषणा की तारीख / <b>Date of Pronouncement: 27.04.2018</b>
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**आदेश / ORDER**

**PER SUSHMA CHOWLA, JM:**

The appeal filed by the assessee is against the order of CIT(A)-2, Pune, dated 26.10.2015 relating to assessment year 2008-09 against levy of penalty under section 271(1)(b) of the Income-tax Act, 1961 (in short 'the Act').

2. The assessee has raised the following grounds of appeal:-

1. *The learned CIT(A)-2, Pune erred in law and on facts in not condoning the non-intentional delay in filing the appeal which had crept in merely due to low educational background of the appellant, ignorance about formalities of tax laws and confusion due to multiple proceedings.*
2. *The learned CIT(A)-2, Pune erred in law and on facts in not appreciating the fact that, due to reasonable cause, the appellant could not make effective compliance before the then AO but subsequently had made all the relevant submissions.*

3. *Without prejudice to ground no.1 and 2 above, the learned CIT(A)-2, Pune erred in law and on facts in not restricting the penalty imposed to first default only upto Rs. 10,000/-*

3. The assessee is in appeal against levy of penalty under section 271(1)(b) of the Act at ₹ 40,000/-.

4. Briefly, in the facts of the case, the Assessing Officer received certain information that the assessee together with his two brothers had sold certain portion of land within jurisdiction of Shirdi Nagar Panchayat. The Assessing Officer thus, recorded reasons for reopening the assessment under section 147 of the Act and issued notice under section 148 of the Act. The assessee did not furnish any return of income. The assessee also did not respond to the notices of hearing initially issued by the Assessing Officer. Eventually, the assessee filed return of income on 12.12.2011 declaring Nil income. Simultaneously, the assessee requested the Assessing Officer to supply copy of reasons recorded for reopening the assessment. In the said letter itself, it was contended that it appeared to him that notice under section 148 of the Act was issued in respect of sale of land. However, the lands situated within Shirdi Nagar Panchayat limits were not capital assets within meaning of section 2(14) of the Act, since Nagar Panchayat was distinct from Municipality or Municipal Corporation, etc. The Assessing Officer issued order sheet containing reasons for issue of notice under section 148 of the Act to the assessee. Thereafter, again notice under section 143(2) and 142(1) of the Act were issued to the assessee. However, the assessee did not appear before the Assessing Officer. On a later date, the assessee contended that proceedings initiated against him be dropped. The Assessing Officer eventually completed assessment under

section 144 r.w.s. 147 of the Act *ex-parte* and computed income from long term capital gains on sale of land in the hands of assessee.

5. The Assessing Officer meanwhile initiated penalty proceedings under section 271(1)(b) of the Act against default of assessee in non-appearance in response to various notices issued under section 142(1) of the Act. The Assessing Officer held the assessee to be in default for not complying the notices issued under section 143(2) / 142(1) of the Act and levied penalty under section 271(1)(b) of the Act @ ₹ 10,000/- for each such failure. Hence, penalty of ₹ 40,000/- was levied under section 271(1)(b) of the Act.

6. The CIT(A) upheld the levy of penalty under section 271(1)(b) of the Act, against which the assessee is in appeal.

7. The learned Authorized Representative for the assessee at the outset pointed out that assessment made in the hands of assessee i.e. in the status of HUF was deleted by the Tribunal. He thus, pleaded that there was no merit in initiating penalty proceedings against the assessee, which was the case of assessee before authorities below. In view of confusion of assessment to be made in the hands of assessee or not, there was non-compliance before the Assessing Officer. He further stated that once it has been held that no assessment is to be made in the hands of assessee, there is no validity in the penalty order passed under section 271(1)(b) of the Act. The learned Authorized Representative for the assessee also pointed out that notice under section 148 of the Act has been issued to Mukund Bajirao Kote in his individual capacity, copy of which is filed on record.

8. The learned Departmental Representative for the Revenue placed reliance on the orders of authorities below.

9. We have heard the rival contentions and perused the record. The assessment in the case was reopened under section 147 of the Act on the ground that the assessee along with his two brothers had sold the plot of land in Shirdi area. The Assessing Officer issued various notices for hearing to the assessee. The assessee in response to notice issued under section 147 of the Act had filed the return of income declaring Nil income and had pointed out that no income from capital gains was assessable in its hands. However, the Assessing Officer did not accept the stand of assessee and computed the income from long term capital gains in the hands of assessee i.e. in the status of HUF. The said addition made by the Assessing Officer was confirmed by the CIT(A). The assessee filed an appeal before the Tribunal. The Tribunal in ITA No.899/PN/2013, relating to assessment year 2008-09, order dated 27.07.2016 deleted the addition of long term capital gains arising from sale of ancestral land in the hands of assessee. It may be pointed out that addition was made in the status of HUF. The Tribunal remitted the matter back to the file of Assessing Officer to make addition on account of long term capital gains in the hands of right person in accordance with law.

10. The issue which arises in the present appeal before us is levy of penalty under section 271(1)(b) of the Act, which was levied by the Assessing Officer for default in appearance before the Assessing Officer in response to notices issued under section 143(2) / 142(1) of the Act. The case of assessee on the

other hand, before the Assessing Officer was that no income was assessable in its hands and even in response to notice issued under section 147 of the Act, it had filed Nil return of income. The question which arises is that once it is held that the assessee is not liable to pay any taxes in the status of HUF, which stand of assessee before the authorities below, has been accepted by the Tribunal vide its order dated 27.07.2016, then the consequent plea of assessee that it could not be held to be default for non-appearance before the Assessing Officer making it liable for levy of penalty under section 271(1)(b) of the Act needs to be upheld. Accordingly, we hold so. Once the assessee has been held to be not assessable to tax, then the consequent fall out of the same that penalty proceedings initiated under section 271(1)(b) of the Act do not survive. In any case, the assessee had reasonable cause for the said non-appearance. Accordingly, we direct the Assessing Officer to delete penalty levied under section 271(1)(b) of the Act. Thus, the grounds of appeal raised by the assessee are allowed.

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

Order pronounced on this 27<sup>th</sup> day of April, 2018.

**Sd/-**  
**(ANIL CHATURVEDI)**  
लेखा सदस्य / **ACCOUNTANT MEMBER**

**Sd/-**  
**(SUSHMA CHOWLA)**  
न्यायिक सदस्य / **JUDICIAL MEMBER**

पुणे / Pune; दिनांक Dated : 27<sup>th</sup> April, 2018.

GCVSR

**आदेश की प्रतिलिपि अद्येषित/Copy of the Order is forwarded to :**

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent;
3. आयकर आयुक्त(अपील) / The CIT(A)-2, Pune;
4. The Pr.CIT-1, Pune;
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, पुणे "ए" / DR  
'A', ITAT, Pune;
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

वरिष्ठ निजी सचिव / Sr. Private Secretary  
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune