

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

**BEFORE SHRI R. C. SHARMA, AM &
SHRI SANDEEP GOSAIN, JM**

आयकरअपीलसं./ I.T.A. No. 2746/Mum/2016
(निर्धारणवर्ष / Assessment Year: 2010-11)

Shubha Shashi kanchan Mukund M. Chitalae (C/A) 2 nd floor, Kapur house, Paranjape B. Scheme Road no. 1, near Vile Parle Mahilasangh, Vile Parle(east), Mumbai-400057.	बनाम/ Vs.	ACIT 20(3), Mumbai Pin-
स्थायीलेखासं ./जीआइआरसं ./PAN/GIR No. AAHPK2878F		
(अपीलार्थी/Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थीकीओरसे/ Appellant by	:	Shri Vishwas V. Mehendale, AR
प्रत्यर्थीकीओरसे/Respondentby	:	Shri M. C. Omi Ningshen, DR

सुनवाईकीतारीख/ Date of Hearing	:	16/04/2018
घोषणाकीतारीख / Date of Pronouncement	:	09/05/2018

आदेश / ORDER

Per Sandeep Gosain, Judicial Member:

The present Appeal filed by the assesseeis against the order of Commissioner of Income Tax (Appeals)-37, Mumbai, dated 15.01.16 for AY 2010-11.

2. As per the facts of the present case, the assessee is an individual having house property, long term capital gain and income from other sources. The return of income for the year under consideration was filed on 04.08.10 declaring total income at Rs. 25,16,400/-. Subsequently, the case was selected for scrutiny and after serving statutory notice and seeking reply, order of assessment u/s 143(3) was passed by AO thereby making addition of Rs. 7,17,500 towards income from house. Further, the AO separately initiated penalty proceedings in respect of the aforementioned additions for furnishing inaccurate particulars and also for concealment of income. After completion of the same, the AO passed order of penalty thereby levying penalty u/s 271(1) (c) of the I.T. Act.

Aggrieved by the order of AO, assessee preferred appeal before Ld. CIT(A) and Ld. CIT(A) after considering the case of both the parties dismissed the appeal of the assessee.

Now before us, the assessee has preferred the appeal by raising the above grounds.

3. The solitary ground raised by the assessee relates to challenging the order of Ld. CIT(A) in not justifying the action of AO in levying Rs. 2,21,708/- as penalty u/s 271(1)(c) of I.T. Act..

4. At the very outset, Ld. AR submitted before us that the assessee received rent from the let out house property amounting to Rs. 7,17,500/- (less TDS Rs. 121,979) in FY 2009-10 and the assessee had inadvertently not included this amount in the return of income for AY 2010-11 with a genuine and bonafide belief that this income did not pertain to FY 2009-10 and therefore TDS of Rs. 121,979/- was also not claimed in the return of income.

However, during the course of assessment proceedings, it was realized that the said amount of income was inadvertently not offered to tax in the earlier years but the assessee willingly agreed to the inadvertent omission and duly accepted the additions to the income of the current year i.e. financial year 2009 – 10. It was further submitted by Ld. AR that all the above facts were placed before the AO and there was no malafide intention on the part of assessee and it was only an inadvertent

omission on the part of assessee therefore the levy of penalty was not warranted under the facts of the present case.

5. On the other hand, Ld. DR relied upon the orders passed by revenue authorities.

6. We have heard the counsels for both the parties and after having gone through the facts of the case, material placed on record as well as the orders passed by the revenue authorities, we noticed that Ld. CIT(A) although has discussed in detail the judgements cited by both the parties, but has not discussed the facts of the case in a detailed manner. The Ld. CIT(A) has concluded its finding in para number 5.9 of its order by holding that assessee failed to substantiate and prove that there was any bonafide mistake on the part of the assessee. From the facts of the present case, we gathered that the assessee has not claimed the benefit of TDS deducted at Rs. 7,17,500/-. It is an admitted fact that the additions of Rs. 7,17,500/- pertains to the earlier years and this amount of rent in respect of let-out house property do not pertain to financial year 2009-10. Had it been the

intention of the assessee to defraud the revenue, then in that eventuality, the assessee might have claimed the benefit of TDS deduction.

Therefore, we are of the considered view that since the assessee has not claimed TDS on the said amount, therefore it can safely be presumed that there was no malafide intention on the part of assessee to submit inaccurate particulars or information for defrauding the revenue. Hence, considering the facts and circumstances of the present case as discussed above, we **allow** this ground of appeal and **delete** the penalty.

7. In the net result, the appeal filed by the assessee stands **allowed**.

Order pronounced in the open court on 9th May, 2018.

Sd/-

Sd/-

(R.C. Sharma)

(Sandeep Gosain)

लेखासदस्य / Accountant Member न्यायिकसदस्य / Judicial Member

मुंबई Mumbai; दिनांक Dated : 09.05.2018

Sr.PS. Dhananjay

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT- concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

आदेशानुसार/ BY ORDER,

उप/सहायकपंजीकार

(Dy./Asstt.Registrar)

आयकरअपीलीयअधिकरण, मुंबई/ ITAT, Mumbai