

आयकर अपीलीय अधिकरण "बी" न्यायपीठ पुणे में ।
IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH, 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. 960/PUN/2015

निर्धारण वर्ष / Assessment Year : 2012-13

The Deputy Commissioner of Income Tax,
Central Circle, Kolhapur.

.....अपीलार्थी / Appellant

बनाम / V/s.

D.M. Corporation Pvt. Ltd.
240/B, Mohite House, Gen.
Thorat Marg., Tarabai Park,
Kolhapur-416 003.
PAN : AADCM6281H

.....प्रत्यर्थी / Respondent

Appellant by : Shri Ajay Modi

Respondent by : Shri Nikhil Pathak

सुनवाई की तारीख / Date of Hearing : 31.05.2018	घोषणा की तारीख / Date of Pronouncement : 31.05.2018
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आदेश / ORDER

PER SUSHMA CHOWLA, JM

The appeal filed by the Revenue is against the order of the Commissioner of Income Tax (Appeals)-1 & 2, Kolhapur dated 16.03.2015 relating to assessment year 2012-13 against order passed under section 221 (1) r.w.s. 140A(3) of the Income Tax Act, 1961 (in short 'the Act').

2. The Revenue has raised following grounds of appeal:

“1. On the facts and the circumstances of the case, the Ld.CIT(A) was not justified in deleting the penalty levied by the AO u/s. 221(1) of the Act. The Ld.CIT(A) failed to appreciate the fact that there was no revised return on the date on which penalty u/s. 221(1) of the Act was levied.

2. On the facts and the circumstances of the case, the Ld. CIT(A) wrongly deleted the penalty u/s. 221(1) of the Act by not appreciating the fact that the date on which penalty was levied, there was unpaid demand and hence, under the circumstances, the benefit of revised return cannot be given.

3. The order of Ld.CIT(A) may be vacated and that of the Assessing Officer be restored.

4. The appellant craves leave to add, alter, amend and modify any of the above grounds of appeal.”

3. The issue raised in present appeal is against the deletion of penalty levied under section 221(1) of the Act.

4. Briefly in the facts of the case, assessee had filed return of income after claiming deduction under section 80IA(4) of the Act at Nil. However, deduction under section 80IA(4) of the Act was denied by the Assessing Officer and additions were also made on account of unrecorded bills at total income of Rs.41,28,62,610/-. Consequent to the assessment order passed, the Assessing Officer noted that assessee had filed return of income declaring income as per MAT provision and had not paid any assessment tax. The Assessing Officer held assessee to be liable for penalty under section 221(1) r.w.s 140A(3) of the Act and penalty of Rs.58,57,974/- was levied. The CIT(A) deleted the penalty levied under section 221(1) of the Act, since the assessment tax payable was Nil after filing revised return of income.

5. The Revenue is in appeal against the order of CIT(A).

6. The Ld. AR for the assessee pointed out that income in the hands of assessee has been assessed at Nil as per order giving effect to the order of CIT(A), Kolhapur. He further pointed out that the Tribunal dismissed the quantum appeal of the Revenue in ITA No.1811/PUN/2014 relating to assessment year 2012-13 with

lead order in ITA No.1805 to 1811/PUN/2014 relating to assessment years 2006-07 to 2012-13, order dated 23.03.2018.

7. The Ld. DR for the Revenue fairly admitted that the Tribunal had deleted the addition in the hands of assessee.

8. We have heard rival contentions and perused the record. The issue arising in the present appeal is deletion of penalty under section 221(1) of the Act. The said penalty was levied on the income declared by the assessee as per MAT provision. However, the assessee had filed revised return of income under MAT provision at Nil which was not considered by the Assessing Officer. The CIT(A) gave certain directions and after direction of CIT(A), the total income was determined at Nil by the Assessing Officer while giving effect to the order of CIT(A) dated 04.08.2014. The copy of said order is available on record. The Tribunal consequently upheld the order of CIT(A). Further, CIT(A) while deleting penalty levied under section 221(1) of the Act, had noted the fact that assessee in the revised return of income had declared Nil income as per MAT provision and deleted penalty. In the totality of the above facts and circumstances, since no tax payable in the hands of the assessee, no penalty is leviable under section 221(1) of the Act. According, we uphold the order of CIT(A) in this regard.

9. In the result, appeal of the Revenue is dismissed.

Order pronounced in the open Court on this 31st day of May, 2018.

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

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

पुणे / Pune; दिनांक / Dated : 31st May , 2018

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आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(Appeals) -1 & 2, Kolhapur.
4. The CIT (central), Kolhapur.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "बी" बेंच,
पुणे / DR, ITAT, "B" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

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आदेशानुसार / BY ORDER,

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