

IN THE INCOME-TAX APPELLATE TRIBUNAL "B" BENCH MUMBAI
BEFORE SH PAWAN SINGH, JUDICIAL MEMBER AND
SH RAJESH KUMAR, ACCOUNTANT MEMBER
ITA No.3225/Mum/2015 (Assessment Year 2003-04)

IN THE MATTER OF

Mrs. Nazneen Farooq Sarang
302, Shabnam Apartments,
33, S.V. Road, Andheri (W)
(PAN: BEJPS 5270J)

----- Assessee/ Appellant

Versus

Deputy Commissioner of Income Tax,
Central Circle -36,
Mumbai-400058

----- Revenue/ Respondent

Assessee represented by Sh. Piyush Chhajed -_(AR)
Revenue represented by Sh. Suman Kumar Sr. DR

Appeal heard on 23rd May 2018
Order announced on 23rd May 2018

Per Pawan Singh Judicial Member;

1. This appeal by assessee under section 253 of Income-tax Act is directed against the order of Commissioner (Appeals)-35, Mumbai dated 20 March 2015 for assessment year 2003-04. The learned Commissioner (Appeals) confirmed the penalty levied under section 271(1)(c) dated 22nd of March 2013. The assessee has raised following grounds of appeal;

- (i) *On the facts and circumstances of the case, Commissioner of income tax (Appeals) erred in confirming the penalty under section 271(1)(c) without appreciating that the notice under section 274 read with section 271 of income tax Act does not bring out as whether the concealment of income or furnishing of inaccurate particulars and therefore the same being bad in law, there could have been no imposition of penalty*
- (ii) *On the facts and circumstances of the case, the Commissioner appeals erred in confirming the penalty of Rs. 1,80,705/- on addition of Rs.5,85,600/- under section 68 of the Income tax Act towards cash deposit without appreciating that there was no concealment of*

furnishing of inaccurate particulars as required under section 271(1)(c) of the Income tax Act.

2. We have heard learned AR of the assessee and learned DR for the revenue and perused the material available on record. At the outset of the hearing the learned AR of the assessee submits that the grounds of appeal raised by assessee are covered by the order of Tribunal in appeal for quantum assessment. The learned AR of the assessee filed copy of the order of Tribunal in assessee's appeal for assessment year 2003-04 in ITA No. 5198/M/2013 dated 9th October 2017. On going through the order of Tribunal the learned DR of the revenue fairly conceded that the ground of appeal raised by the assessee is covered in favour of assessee.
3. We have considered the rival submission of the parties and have gone through the order of authorities below. We have noted that the assessing officer levied penalty on disallowance under section 68 for Rs. 5,85,600/- treating it as unexplained cash credit. The assessing officer levied the penalty @100% of tax sought to be evaded in its order dated 22 March 2013. We have noted that the addition of Rs. 5,85,600/- under section 68 of the Act has been deleted by the Tribunal in appeal for quantum assessment proceeding in ITA No.5198 /M/2013 dated 9th October 2017. Considering the fact that the addition on the basis of which the penalty was levied by assessing officer, has already been deleted by the coordinate bench of this Tribunal, therefore, the penalty levied by

assessing officer under section 271(1)(c) would not survive. In the result ground of appeal raised by assessee is allowed

4. In the result appeal of the assessee is allowed.

Order announced in the open court on 23rd May 2018 in open court.

Sd/-

**RAJESH KUMAR
ACCOUNTANT MEMBER**

Sd/-

**PAWAN SINGH
JUDICIAL MEMBER**

Mumbai, Date: 23.05.2018

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Copy of the Order forwarded to :

1. Assessee
3. The concerned CIT(A)
5. DR "A" Bench, ITAT, Mumbai
6. Guard File

2. Respondent
4. The concerned CIT

**BY ORDER,
Dy./Asst. Registrar
ITAT, Mumbai**