

IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH, MUMBAI

BEFORE SHRI R. C. SHARMA, AM AND SHRI AMARJIT SINGH, JM

आयकर अपील सं/ I.T.A. No.5612/Mum/2015

(निर्धारण वर्ष / Assessment Year: 2009-10)

The ACIT Central Circle- 5(4) (Erstwhile ACIT CC- 37), Room No.11, Aayakar Bhavan, M.K. Marg, Mumbai-400020.	बनाम/ Vs.	M/s. Man Equipment Co. Pvt. Ltd., Fat No.2/3, Bldg, No. B-10, Shiva Palm Beach CHS Ltd., Sector-4, Nerul, Navi Mumbai-400760.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAACM9716E		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)
Revenue by:	Shri Suman Kumar (DR)	
Assessee by:	None	

सुनवाई की तारीख / Date of Hearing: 10.07.2018

घोषणा की तारीख /Date of Pronouncement: 29.08.2018

आदेश / ORDER

PER AMARJIT SINGH, JM:

The revenue has filed the present appeal against the order dated 31.08.2015 passed by the Commissioner of Income Tax (Appeals) -53, Mumbai [hereinafter referred to as the "CIT(A)"] relevant to the A.Y.2009-10 in which the penalty levied by the AO has been ordered to be deleted.

2. The revenue has raised the following grounds: -

1. "Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) was justified in deleting the penalty of Rs.1,22,36,400/- imposed, u/s 271(1){ c} of the Act, by holding that Explanation 5A to Section 271(1){ c} was not, at all, attracted in the present case and the Assessing Officer had not invoked the correct provisions of law for imposing the penalty?"

2. *"Whether on the facts and circumstances of the case and in law, the Ld CIT(A) was justified in getting drawn into the technicalities as to the correct section or sub-action under which penalty could be initiated by the AO and not rebutting the false claim of the assessee before the CIT (A) that the manner in which undisclosed income had been earned had been disclosed in the statement which in the face of records available clearly found untrue as admittedly in. assessee's letter dated 11.03.2013 the disclosure had been made to avoid penalty and litigation and buy peace of which are not the criteria for non-imposition of penalty?"*

3. *"Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) was justified in mistaking the intention of the assessee which lied in buying peace from the department rather than the requirement of admitting undisclosed income and specifying the manner in which such income had been derived?"*

4- *"Whether on the facts and in the circumstances of the case and in law the view of the Ld- CIT (A) that the penalty proceedings are not legally sustainable in terms of Explanation 5A to Section 271(l)(c) and whether such views are in conformity with the provisions of section 292B read with those of section 292BB, the assessee, not having at all raised the issue before the AO during the proceedings.?"*

5 *"Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) was justified in cancelling the penalty even though his statutory role is coterminous with that of the AO?"*

3. The brief facts of the case are that the search and seizure action in the case of Rangara Group of cases was carried out on 13.02.2009 including following assessee's (i) M/s. Rangara Industries Pvt. Ltd, (ii) M/s. Man Equipment Co. Pvt. Ltd, (iii) M/s. Leo Traders Prop. Mr. Nizar N. Rangara (iv) M/s. Virgo Traders Prop. Mr. Amin N. Rangara (v) Mr. Harshad C. Doshi. The assessee filed its return of income for the A.Y. 2009-10 on 26.11.2009 declaring total income to the tune of Rs.3,19,78,890/-. The assessment was completed u/s 153A r.w.s. 143(3) of the Act on 29.12.2010 assessing total income to the tune of Rs.3,78,44,290/-. The assessee included the undisclosed income to the tune of Rs.3,60,00,000/-. The assessee claimed the interest expenses to the tune of Rs.1,17,30,796/- but the Assessing Officer disallowed the 50% of the interest expenses to the tune of Rs.58,65,398/- being the same was not

pertaining to the business. Since the assessee included the undisclosed income of Rs.3,60,00,000/- in the return income for the A.Y. 2009-10, therefore, the penalty proceeding was initiated. After giving the notice, the penalty to the tune of Rs.1,22,36,400/- was levied. The assessee filed an appeal before the CIT(A) who deleted the penalty, therefore, the revenue has filed the present appeal before us.

ISSUE Nos. 1 to 5:-

5. All the issues are in connection with the deletion of penalty by CIT(A). The Ld. Representative of the Department has argued that the CIT(A) has wrongly deleted the penalty, therefore, the finding of the CIT(A) is wrong against law and facts and is liable to be set aside. Before going further, we deemed it necessary to advert the finding of the CIT(A) on record.:-

4.3.1. I have considered the submissions of the appellant and perused the materials available on record including copies of judicial decisions relied upon by the appellant. The issue for adjudication is whether the A.O. was Justified In levying penalty of Rs,1 ,22,36,4007- on the appellant u/s.271(l)(c) of the Act in respect of undisclosed income of Rs.3.60 crores admitted by it/ its Director in the statement u/s. 13214) recorded during the course of search, in this connection, It deserves to be noted that search action in case of the appellant was initiated on 13.02-2009 and therefore, the previous year relevant to the A.Y. under consideration is one in which the search was conducted. It is noticed that while imposing the penalty u/s. 271(1)(c) of the Act, the A.O. has invoked the provisions of Explanation 5A and held that in search cases, the penalty has to be levied even if the assessee honours the disclosure in the return of Income filed. Upon perusal of the relevant provision, it is found dial the view taken by the A.O. is not based on correct appreciation of Explanation 5A to Section 271(1)(c). It deserves to be noted that

Explanation 5A gets triggered and the assessee is deemed to have concealed the particulars of his income or furnished inaccurate particulars of such income under the following circumstances: -

- *In the course of a search initiated u/s. 132 on or after 01.06.2007. The assessee is found to be the owner of any undisclosed assets or undisclosed income based on entries in books of accounts etc. and the assessee claims that such assets have been acquired by utilizing his Income for any previous year or that such entries in books of accounts etc. represent his Income for any previous year which has ended before the date of search and*
- *The return of income for such previous year has been furnished before the date of search but such income has not been disclosed therein or the due date for filing the return of income for such previous year has expired but the assessee has not filed the return.*

In such event, the deeming fiction of explanation 5A comes into play notwithstanding that such income is declared by the assessee in any return furnished on or after the date of search.

4.3.2 In the present case, it is a matter of record that the appellant has been found to be the owner of undisclosed income to the tune of Rs.3.60 crores based on entries in its books of account etc. and the same has been offered as undisclosed income of the appellant for the previous year 2008-09 which has ended after the date of search carried out on 13.02.2009. It is also observed that the return for such previous year relevant to the A.Y. under appeal has been furnished on 30.09.2009 after the date of search and the undisclosed income of Rs.3.60 crores admitted by the appellant / its Director in the statement recorded u/s.132(4) has been reflected therein. In these circumstances, there is no hesitation in holding that Explanation 5A to Section 271(1)(c) is not at all attracted in the present case and the A.O. has not invoked the correct provisions of law for imposing the penalty. On the peculiar facts of the instant case as brought out above, no penalty u/s.271(1)(c) r.w. Explanation

5A can be levied, because the requisite conditions or circumstances mentioned above for attracting the legal fiction of Explanation 5A are conspicuous by their absence. Therefore, in view of the above discussion, it is held that the action of the A.O. in imposing penalty of Rs.1,22,36,400/- on the appellant u/s.271(1)(c) r.w..s. Explanation 5A is legally unsustainable and the penalty so levied by the A.O. is directed to be cancelled. Grounds bearing Nos. 1 to 7 taken up by the appellant are allowed.”

6. On appraisal of the above said finding, we noticed that the CIT(A) has deleted the penalty on the ground of that the assessee’s case does not fall within the provision of Section 271(1)(c) of the Act r.w. Explanation 5A of the Act because there is no concealment of income or furnishing the inaccurate particulars in the return of income filed by the assessee. The search and seizure action was conducted on 13.02.2009 and thereafter the return was filed on 13.02.2009 in which all the necessary income even disclosed during search has been declared. There is no concealment of income or furnishing the inaccurate particulars in the return of income filed by the assessee. In view of the said circumstances, we are of the view that the CIT(A) has decided the matter of controversy judiciously and correctly which is not liable to be interfere with at this appellate stage. Accordingly, these issues are being decided in favour of the assessee against the revenue.

7. In the result, the appeal filed by the **revenue is hereby ordered to be dismissed.**

Order pronounced in the open court on 29.08.2018.

Sd/-

(R. C. SHARMA)

लेखा सदस्य / ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated : 29.08.2018.

Sd/-

(AMARJIT SINGH)

न्यायिक सदस्य/JUDICIAL MEMBER

vijay

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

**उप/सहायक पंजीकार / (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai**