



आयकर अपीलीय अधिकरण “जे” न्यायपीठ मुंबई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
“J” BENCH, MUMBAI

जोगिन्दर सिंह, न्यायिक सदस्य एवं
श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।
BEFORE SHRI JOGINDER SINGH, JM AND
SHRI MANOJ KUMAR AGGARWAL, AM

आयकर अपील सं./I.T.A. No. 2251/Mum/2017
(निर्धारण वर्ष / Assessment Year: 2009-10)

Shailesh S.Mody A/903 Prathamesh Residency Near Bhavans College Andheri (West) Mumbai – 400 069	बनाम/ Vs.	Assistant Commissioner of Income Tax-25(1) Mumbai
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. AAGPM-4487-M		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

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आयकर अपील सं./I.T.A. No. 2250/Mum/2017
(निर्धारण वर्ष / Assessment Year: 2010-11)

Shailesh S.Mody A/903 Prathamesh Residency Near Bhavans College Andheri (West) Mumbai – 400 069	बनाम/ Vs.	Assistant Commissioner of Income Tax-25(1) Mumbai
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. AAGPM-4487-M		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

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आयकर अपील सं./I.T.A. No. 2254/Mum/2017
(निर्धारण वर्ष / Assessment Year: 2012-13)

Shailesh S.Mody A/903 Prathamesh Residency Near Bhavans College Andheri (West) Mumbai – 400 069	बनाम/ Vs.	Assistant Commissioner of Income Tax-25(1) Mumbai
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. AAGPM-4487-M		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

Assessee by	:	Deepak Tikeker, Ld. AR
Revenue by	:	V.K.Chaturvedi, Ld. Sr. DR



सुनवाई की तारीख/ Date of Hearing	:	16/08/2018
घोषणा की तारीख / Date of Pronouncement	:	07/09/2018

आदेश / O R D E R

Per Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid appeal by assessee for Assessment Years [AY] 2009-10, 2010-11 & 2012-13 contest separate orders of Ld. first appellate authority *qua* confirmation of penalty u/s 271(1)(c). Since, issues are common, we dispose-off the same by way of this common order for the sake of convenience & brevity.

ITA No. 2251/Mum/2017, AY 2009-10

2. The assessee, being *resident individual* engaged in *interior works* was reassessed u/s 143(3) *read with Section 147* on 29/01/2015 wherein it was noted that the assessee owned five immovable properties and therefore, after considering the one property as self-occupied property, the other properties were deemed to be let out and taxable in terms of the provisions of Section 23(1)(a). The Ld. AO estimated *notional income* of the said properties as Rs.10.13 Lacs and added the same to the income of the assessee. The assessee suffered another addition of *alleged bogus purchases* of Rs.6.81 Lacs pursuant to receipt of certain information from *Sales Tax Department, Maharashtra* that the assessee stood benefitted by *bogus purchases* stated to be made from 4 suspicious parties. Notices issued u/s 133(6) as well as inspector's report revealed that none of the parties were existing at the given addresses. Resultantly, these purchases were disallowed and added to the income of the assessee. It has been submitted before us that the



assessment has attained finality since the assessee has not preferred any appeal against the same.

3. As against quantum additions of Rs.16.95 Lacs as above, the assessee has been saddled with impugned penalty of Rs.5.76 Lacs vide order dated 21/07/2015, which, upon confirmation by first appellate authority, is being agitated before us.

4. The Ld. Authorized Representative for assessee [AR], drawing our attention to the fact that penalty has been levied against notional income which was not fair & justified. Reliance has been placed on several judicial pronouncements. Regarding addition of *alleged bogus purchases*, it has been submitted that the assessee was in possession of primary purchase documents and the payments were through banking channels and the claim was *bona fide*. Therefore, merely because the supplier did not respond to the notices u/s 133(6), the imposition of penalty was not justified. Our attention is drawn to the fact that the assessee was saddled with similar additions in AY 2011-12 but finding strength in the argument of the assessee, penalty has been dropped by Ld. AO himself. Per *Contra, Ld. DR, Shri V.K.Chaturvedi*, submitted that none of the supplier was existing at the given address and therefore, the claim was not genuine and therefore, the penalty was justified.

5. We have carefully heard the rival contentions and perused relevant material on record. The undisputed fact is that the income from house property as assessed by Ld. AO was a *notional income* from certain properties deemed to be let out. The additions have been made in terms of deeming fiction created by law. However, nothing on record suggest that the assessee furnished inaccurate particulars of income or concealed its income or any of the property was undisclosed property.



This being the case, the imposition of penalty was not justified. Our view is fortified by the judgment of Hon'ble Madras High Court rendered in *CIT Vs. Smt. B.Saroja Devi [236 ITR 203]* wherein Hon'ble court, on identical factual matrix, has held as under:-

We have heard both the learned standing counsel for the Department as well as learned counsel for the respondent assessee.

The first item relates to a sum of Rs. 2,153 estimated as income from self-occupation of the property as Sadasivanagar, Bangalore. It was let out, only during the subsequent year it had been vacated by the previous tenant by the end of January, 1971, and it was the assessee's case that it was vacant thereafter. However, the assessee's husband mentioned that he was in occupation of the building from January 1, 1973. The property itself was under the scrutiny of the Income-tax Officer. There is no firm basis to controvert that the property was occupied only in April 1971, notwithstanding her husband's letter, which was written two years later. It was a matter of fact that the construction went on till the end of February 1973, and the assessee had another house during the period. The income from the property was assessed on the basis of notional income. It was not established by the Department that there was any evasion of income from this property. Under such circumstances, the Tribunal came to the conclusion that levy of penalty of Rs. 2,153, under section 271(1)(c) of the Act is not warranted. The facts on record would go to show that there was no concealment of income or furnishing of incorrect particulars in the matter of notional income derived from the property at Sadasivanagar, Bangalore. Therefore, we consider that there is no infirmity in the order passed by the Tribunal in deleting the penalty of Rs. 2,153.

Similar analogy has been drawn by Hon'ble Punjab & Haryana High Court in the decision of *Harigopal Singh Vs CIT [258 ITR 85]*. No contrary judgment has been placed on record. Therefore, the penalty against *notional income* addition could not be sustained and hence deleted.

6. So far as the penalty on account of addition against *alleged bogus purchases* is concerned, we find that the undisputed facts are that assessee was in possession of primary purchase documents including delivery challans and the payments to the suppliers were through banking channels. The additions were made since those suppliers did not respond to notices u/s 133(6). Nevertheless, the circumstances under which additions have been made, do not justify imposition of



penalty. Therefore, by deleting the same, we allow the assessee's appeal.

ITA Nos. 2250 & 2254 /Mum/2017, AY 2010-11 & 2012-13

7. The assessee, under similar factual matrix has been saddled with penalty of Rs.5.21 Lacs in AY 2010-11 & Rs.4.68 Lacs in AY 2012-13 against *notional rental income* from House Property. The facts and circumstance being the same, taking the same view, we delete the impugned penalties and allow the appeals.

Conclusion

8. All the three appeals stand allowed in terms of our above order.

Order pronounced in the open court on 07th September, 2018

Sd/-

(Joginder Singh)

न्यायिकसदस्य / **Judicial Member**

Sd/-

(Manoj Kumar Aggarwal)

लेखासदस्य / **Accountant Member**

मुंबई Mumbai; दिनांक Dated : 07.09.2018

Sr.PS:-Thirumalesh

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