

THE INCOME TAX APPELLATE TRIBUNAL  
"C" Bench, Mumbai  
Before Shri B.R. Baskaran (AM) & Shri Ramlal Negi (JM)

I.T.A. No. 24/Mum/2017 (Assessment Year 2002-03)

|   |     |  |
|---|-----|--|
| Late Smt. Pannadevi Agarwal<br>Through legal heir Shri<br>Madhav Prasad Aggarwal<br>C/o. Shankarlal Jain &<br>Associates LLP<br>12, Engineer Building, 265<br>Princess Street, Mumbai-02<br><br>PAN : AABPA6142N<br><br>(Appellant) | Vs. | ACIT Range-<br>18(2)<br>Piramal<br>Chambers<br>Lalbaug<br>Mumbai-12.<br><br><br><br>(Respondent) |
|---|-----|--|

|                       |                   |
|-----------------------|-------------------|
| Assessee by           | Shri S.L. Jain    |
| Department by         | Shri M.V. Rajguru |
| Date of Hearing       | 28.8.2018         |
| Date of Pronouncement | 28.8.2018         |

ORDER

Per B.R. Baskaran (AM) :

The appeal filed by the assessee is directed against the order dated 8.10.2016 passed by the learned CIT(A)-33, Mumbai and it relates to A.Y. 2002-03.

2. The assessee is contesting the decision of the learned CIT(A) in confirming the penalty of ₹ 5.89 lakhs levied by the Assessing Officer u/s. 271(1)(c) of the Act.

3. Learned AR submitted that the penalty was levied by the Assessing Officer on the disallowance of short term capital loss claimed by the assessee. Learned AR submitted that the assessee has challenged the said disallowance in quantum appellate proceedings before the ITAT and the Tribunal, vide its order passed in ITA No. 338/Mum/2016 dated 29.11.2007 has restored the matter to the file of the learned CIT(A) for adjudicating the same afresh. He

further submitted that the assessee has also raised a legal issue by way of additional ground in this penalty appeal.

4. We have heard learned DR and perused the record. Since the quantum on which penalty has been levied u/s. 271(1)(c) of the Act has been restored to the file of the learned CIT(A), we deem it proper to restore grounds urged in this appeal including additional ground urged by the assessee to the file of the learned CIT(A) for examining it afresh. Accordingly, we set aside the order passed by the learned CIT(A) and restore all the issue including additional ground to the file of the learned CIT(A) for adjudicating them afresh, after affording adequate opportunity of being heard to the assessee.

5. In the result, appeal filed by the assessee is treated as allowed for statistical purposes.

Order has been pronounced in the Court on 28.8.2018.

Sd/-  
(RAMLAL NEGI)  
JUDICIAL MEMBER

Sd/-  
(B.R.BASKARAN)  
ACCOUNTANT MEMBER

Mumbai; Dated : 28/8/2018

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai
6. Guard File.

//True Copy//

BY ORDER,

(Senior Private Secretary)  
ITAT, Mumbai

PS