

**आयकर अपीलीय अधिकरण, मुंबई न्यायपीठ, 'बी', मुंबई।**

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCHES "B", MUMBAI**

श्री जोगिन्दर सिंह, न्यायिक सदस्य एवं  
श्री एन. के. प्रधान, लेखा सदस्य, के समक्ष  
**Before Shri Joginder Singh, Judicial Member, and  
Shri N.K. Pradhan, Accountant Member**

**ITA NO.464 & 465/Mum/2017  
Assessment Years: 2004-05 & 2005-06**

Smt. Bhanwaribai Chandanmal Jain, 9, Parekh Building, N. G. Acharya Marg, Chembur Station Road, Mumbai-400071	<b>बनाम/</b> Vs.	DCIT-22(2), Tower No.6, 4 <sup>th</sup> Floor, Railway Comm. Complex, Vashi, Navi Mumbai-400703
(निर्धारिती / Assessee)		(राजस्व / Revenue)
<b>P.A. No.AAJPJ7284L</b>		

निर्धारिती की ओर से / Assessee by	Shri Kirit Seth
राजस्व की ओर से / Revenue by	Shri Neil Philip-DR

सुनवाई की तारीख / <b>Date of Hearing :</b>	<b>10/09/2018</b>
घोषणा की तारीख/ <b>Date of Pronouncement</b>	<b>10/09/2018</b>

**आदेश / O R D E R**

Per Joginder Singh (Judicial Member)

These two appeals are by the assessee against the impugned order dated 01/12/2016 of the Ld. First Appellate Authority, Mumbai, challenging the imposition /sustenance of penalty levied under section 271(1)(c) of the Income Tax Act, 1961 (hereinafter the Act).

2. During hearing, the ld. counsel for the assessee, Shri Kirit Seth, claimed that the Tribunal on quantum addition, vide order dated 17/05/2017, sent the issue to the file of the Ld. Commissioner of Income Tax (Appeal) for fresh adjudication. The Ld. Counsel filed the copy of the order of the Tribunal (ITA No.4817 & 4818/Mum/2012), order dated 17/05/2017. This factual matrix was not controverted by Shri Neil Philip, Ld. DR.

2.1. We have considered the rival submissions and perused the material available on record. In view of the above, we are reproducing hereunder the relevant portion of the aforesaid order dated 17/05/2017 for ready reference and analysis:-

“These appeals are filed by the Assessee against the orders of the Ld. CIT (Appeals)-33, Mumbai dated 30.5.2012 for the assessment years 2004-05 and 2005-06 arising out of the order passed u/s 143(3) r.w.s 147 of the Act by the Assessing Officer.

2. The Assessee in both these appeals challenged the order of the Ld. CIT (Appeals) on several grounds both validity as well as on merits. The Assessee challenged the order of the Ld. CIT (Appeals) in upholding the validity of notice issued u/s 148 and consequent assessment u/s 143(3) r.w.s. 147 of the Act. We find from the order sheet notings of the Tribunal that the Bench directed the Ld. DR to produce the case records to verify the notice issued and the approval given by the authorities in issuing the notice u/s 148 as the Assessee is contending that 148 notice was issued without valid prior approval/sanction of the jurisdictional Joint Commissioner of Income Tax as required u/s 151(2) of the Act and to that contention additional ground was filed by the Assessee before us. The additional ground filed before us was not part of the grounds before the Ld. CIT(Appeals) nor it was agitated before the Assessing Officer. Since the additional ground is going to the very jurisdiction of the passing the assessment order and is purely a legal ground, we are of the considered view that this ground is to be decided by the Ld.CIT (Appeals) by calling the records from the concerned Assessing Officer. Therefore, we are of the view that matter should be restored back to the Ld.CIT (Appeals) for adjudication afresh on all the contentions of the Assessee.

3. The Ld. DR has no serious objection in restoring the matter back to the Ld. CIT (Appeals).

4. In the circumstances, we restore all the grounds in both these appeals to the file of the Ld.CIT (Appeals) for fresh adjudication on all the technical grounds as well as on merits. The Ld. CIT (Appeals) should dispose off the appeals including the additional ground after providing sufficient opportunity to the Assessee.

5. In the result, both the appeals of Assessee are allowed for statistical purpose.”

We find that in the aforesaid order the Tribunal, restored all the grounds for fresh adjudication on technical

ground as well as on merit, including additional grounds with a direction to provide sufficient opportunity to the assessee. In view of this factual matrix, we are of the view that the penalty which is borne out of quantum addition, needs to be sent back to the file of the Ld. Commissioner of Income Tax (Appeal) for fresh adjudication as the penalty will be dependent upon the outcome of the quantum appeal, which has already been set-aside to the file of the Ld. First Appellate Authority. The assessee be given opportunity of being heard, thus, both these appeals are allowed for statistical purposes.

Finally, both these appeals are allowed for statistical purposes.

This Order was pronounced in the open court in the presence of ld. representatives from both sides at the conclusion of the hearing on 10/09/2018.

**Sd/-**

(N.K. Pradhan)

लेखा सदस्य / ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated : 10/09/2018

*Shekhar, P.S./नि.स.,*

**Sd/-**

(Joginder Singh)

न्यायिक सदस्य / JUDICIAL MEMBER

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

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

**आदेशानुसार/ BY ORDER,**

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