

आयकर अपीलीय अधिकरण "बी" न्यायपीठ पुणे में ।
IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH, PUNE

BEFORE SHRI R.S. SYAL, VP AND
SHRI VIKAS AWASTHY, JM

आयकर अपील सं. / ITA No.2606/PUN/2016

निर्धारण वर्ष / Assessment Year : 2005-06

Sunita Devi Brijimohan Taparia,
Sarda House, Sarda Lane,
Ahmednagar-414 001
PAN : AAJPT1617R

.....अपीलार्थी / Appellant

बनाम / V/s.

The Income Tax Officer,
Ward-2, Ahmednagar.

.....प्रत्यर्थी / Respondent

Assessee by : Shri Pushpak B. Mundada

Revenue by : Shri Pankaj Garg

सुनवाई की तारीख / Date of Hearing : 29.10.2018

घोषणा की तारीख / Date of Pronouncement : 29.10.2018

आदेश / ORDER

PER VIKAS AWASTHY, JM

This appeal by the assessee is directed against the order of Commissioner of Income Tax (Appeals)-2, Pune dated 22.07.2016 for the assessment year 2005-06 against confirming the levy of penalty u/s. 271(1) (c) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act').

2. Shri Pushpak B. Mundada appearing on behalf of the assessee submitted at the outset that penalty u/s.271(1)(c) of the Act was levied in respect of addition of Rs.16,00,000/- on account of unexplained investment in re-assessment proceedings. The assessee challenged the validity of re-assessment proceedings along with additions on merit before the Commissioner of Income Tax (Appeals). However, the assessee was unsuccessful. The assessee carried the matter in appeal before the Tribunal in ITA No.308/PN/2015. The Tribunal vide order dated 05.08.2016 held the re-assessment order passed u/s.143(3) r.w.s.147 of the Act as invalid. Penalty vide order 26.03.2015 u/s.271(1)(c) of the Act was levied in respect of addition made in re-assessment proceedings. Now, that the re-assessment proceedings have been held to be bad in law by the Tribunal, hence, penalty is liable to be deleted. The ld. AR furnished a copy of order of the Tribunal in ITA No. 308/PN/2015 for assessment year 2005-06 decided on 05.08.2016.

3. Shri Pankaj Garg representing the Department fairly admitted that the Tribunal had set aside the assessment order passed u/s.143(3) r.w.s. 147 of the Act.

4. Both sides heard. Orders of the Authorities below perused. Penalty u/s. 271(1)(c) of the Act has been levied in respect of addition of Rs.16,00,000/- made during re-assessment proceedings. The Tribunal in assessee's appeal in ITA No.308/PN/2015(supra.) has held the reassessment order dated 22.12.2009 passed u/s.143(3) r.w.s. 147 of the Act as invalid. Since, the substratum for levy of penalty has been eroded;

penalty arising from the addition does not survive. Accordingly, impugned order is set aside and appeal of the assessee is allowed.

5. In the result, appeal of the assessee is allowed.

Order pronounced in open Court after hearing on Monday, the 29th day of October, 2018.

Sd/-
R. S. SYAL
VICE-PRESIDENT

Sd/-
VIKAS AWASTHY
JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 29th October, 2018

SB

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(Appeals)-2, Pune.
4. The Pr. CIT-1, Pune.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "बी" बेंच,
पुणे / DR, ITAT, "B" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

// True Copy //

आदेशानुसार / BY ORDER,

निजी सचिव / Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.