

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

श्री डी. करुणाकरा राव, लेखा सदस्य, एवं श्री विकास अवस्थी, न्यायिक सदस्य के समक्ष ।
BEFORE SHRI D. KARUNAKARA RAO, AM AND SHRI VIKAS AWASTHY, JM

आयकर अपील सं. / ITA No.249/PUN/2017

निर्धारण वर्ष / Assessment Year : 2011-12

Smt. Nazmalzharul Hasan Shah,
D-45, MIDC, Mirjole, Ratnagiri

PAN : APZPS1356K

.....अपीलार्थी / Appellant

बनाम / V/s.

The Income Tax Officer,
Ward - 2, Ratnagiri

.....प्रत्यर्थी / Respondent

Assessee by : Shri M.K. Kulkarni
Revenue by : Shri M.K. Verma

सुनवाई की तारीख / Date of Hearing : 15-04-2019

घोषणा की तारीख / Date of Pronouncement : 22-04-2019

आदेश / ORDER

PER VIKAS AWASTHY, JM :

This appeal by the assessee is directed against the order of Commissioner of Income Tax (Appeals)-2, Kolhapur dated 30-11-2016 for the assessment year 2011-12 confirming levy of penalty u/s. 271(1)(c) of the Income Tax Act, 1961 (hereinafter referred to as "the Act").

2. The appeal is time barred by two days. The assessee has filed an application seeking condonation of delay in filing of the appeal. After

perusal of the same, we are satisfied that the delay in filing of the appeal is not intentional or deliberate but has been caused due to bonafide reasons as stated in the application. The delay in filing of appeal is condoned and the appeal is admitted to be heard and disposed of on merits.

3. Shri M.K. Kulkarni appearing on behalf of the assessee submitted that the penalty has been levied in respect of two additions made by the Assessing Officer i.e. addition of Rs.58,72,000/- on account of peak cash credits u/s. 69 of the Act and addition of Rs.77,515/- on account of interest income on bonds and bank deposits. The assessee had challenged the additions before the Tribunal in ITA No. 246/PUN/2015. The Tribunal vide order dated 21-02-2018 deleted the addition of Rs.58,72,000/-. However, the addition of Rs.77,515/- on account of interest income was confirmed. A copy of Tribunal order in ITA No. 246/PUN/2015 (supra) is at pages 55 to 61 of the paper book.

4. Shri M.K. Verma representing the Department vehemently defended the impugned order. The ld. DR submitted that during the period relevant to the assessment year under appeal there were cash deposits aggregating to Rs.1,79,86,007/- in various banks accounts of the assessee. The Assessing Officer had made addition u/s. 68 of the Act of Rs.58,72,000/- on the basis of peak cash credits. The penalty u/s. 271(1)(c) was rightly levied for concealment of income.

5. Both sides heard. Orders of authorities below perused. The penalty u/s. 271(1)(c) for concealment of income has been levied in respect of two additions.

- i. Unexplained cash credits (peak cash) in the bank account of assessee Rs.58,72,000/-.

ii. Undisclosed interest income Rs.77,515/-.

6. We find that the Co-ordinate Bench of Tribunal in an appeal by the assessee in ITA No. 246/PUN/2015 (supra) has deleted the addition of Rs.58,72,000/- on account of peak cash deposits. Once, the addition has been struck off, the penalty levied on such addition is unsustainable. Accordingly, penalty on Rs.58,72,000/- is set aside.

7. The other addition on which the penalty has been levied is undisclosed interest income of Rs.77,515/-. The assessee had earned interest income on bonds and cash deposits aggregating to Rs.77,515/- and the same was not disclosed by the assessee in the return of income. The said addition was upheld by the Co-ordinate Bench of Tribunal. The ld. Counsel for the assessee has failed to show any reason to strike down the penalty. Hence, the penalty on the addition of Rs.77,515/- is upheld.

8. In the result, the appeal of assessee is partly allowed in the terms aforesaid.

Order pronounced on Monday, the 22nd day of April, 2019.

Sd/-
(डी. करुणाकरा राव/D. Karunakara Rao)
लेखा सदस्य / ACCOUNTANT MEMBER

Sd/-
(विकास अवस्थी / Vikas Awasthy)
न्यायिक सदस्य / JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 22nd April, 2019.

RK

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)-2, Kolhapur
4. The Pr. Commissioner of Income Tax-2, Kolhapur
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "बी" बेंच, पुणे / DR, ITAT, "B" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

//सत्यापित प्रति // True Copy//

आदेशानुसार / BY ORDER,

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