

THE INCOME TAX APPELLATE TRIBUNAL
"H" Bench, Mumbai
Before Shri Shamim Yahya (AM) & Shri Ravish Sood (JM)

I.T.A. No. 2706/Mum/2018 (Assessment Year 2007-08)

Mr. Kalim Munir Khan A-701, Ghanshyam Bhawan, Plot No. 10 Sector 3, Ghansoli Navi Mumbai-400701. PAN : APSPK7646H (Appellant)	Vs.	ITO-22(3)(2) Mumbai. (Respondent)
---	-----	---

Assessee by	Shri Devendra H. Jain
Department by	Shri Manoj Kumar Singh
Date of Hearing	1.5.2019
Date of Pronouncement	3.5.2019

ORDER

Per Shamim Yahya (AM) :

This appeal by the assessee is directed against the order of learned CIT(A) dated 18.1.2018 and pertains to A.Y. 2007-08.

2. Grounds of appeal read as under :-

On the facts and the circumstances of the case and in law,

1. *The Ld. CIT(A) has erred in confirming the action of A.O of levying penalty of Rs. 2,04,8557- for not disclosing the compensation of Rs. 6,19,7507- received on cancellation of booking of flat in the original return.*

2. *The Ld. CIT(A) has erred in confirming the action of A.O of levying the above penalty of Rs. 2,04,8557- by reopening the assessment though the revised return disclosing the alleged undisclosed income was filed physically along with letter at the time when the assessment for A.Y 2010-11 was going on.*

3. *The Ld. CIT(A) has erred in confirming the action of A.O of levying the above penalty of Rs. 2,04,8557- though the assurance was given by the A.O to the appellant of not re-opening the assessment if the revised return is filed.*

4. *The Ld. CIT(A) has erred in confirming the action of A.O of levying the above penalty of Rs. 2,04,8557- without taking into consideration the appellant's dependence on his consultant for tax compliances as he himself is from financially unsound and uneducated family and studied only upto 3rd standard.*
3. Brief facts of the case leading to levy of penalty are as under :-
- The brief facts of the case are that during the course of assessment proceedings for AY 2010-11 in FY 2012-13 it was noticed by the AO and pointed out to the assessee that the compensation of Rs.6,19,750/- received on cancellation of booking of fiat on 23-09-2006 was not disclosed in AY 2007-08. The assessee has admitted this undisclosed receipt/income and had therefore paid tax and interest thereon at Rs.3,62,450/- on 8-03-2013 and had submitted a revised return along with letter dated 23-03-2013. Since the revised return was out of time notice u/s.148 of the I.T. Act 1961 was issued and served on the assessee on 18-03-2013. Vide letter dated 19-11-2013 the assessee had requested to treat the original return filed on 19-10-2007 as return having been filed in response to notice u/s. 148 of the Act issued and served on him. Accordingly order u/s. 143(3) r.w.s. 147 of the I.T. Act, 1961 was passed on 25-11-2013 on the total income of Rs.9,06,880/-which included undisclosed income i.e. short term capital gain of Rs.6,75,750/- as declared by the assessee. Since the undisclosed short term capital gain was detected and brought to the notice of the assessee by the AO during the course of assessment proceedings for AY 2010-11 which had necessitated the issue of notice u/s, 148 of the I.T.Act, 1961 and was not disclosed by the assessee himself within the stipulated time by filing a revised return u/s. 139(5), penalty proceedings u/s.271(1)(c) r.w.s. 274 were initiated by issue and service of relevant notice along with notice of demand. The assessee did not comply with the said notice. Thereafter, letter dated 30.05.2014 was issued in response to which the assessee made submissions vide letter dated 20.05.2014 which has been reproduced by the AO at page 3 of the penalty order The assessee's submission was considered by the AO but was not found acceptable. The AO observed that it was the AO who had detected and brought

to the notice of the assessee the undisclosed short term capital gain of A.Y. 2007-08 during the course of assessment proceedings for A.Y. 2010-11 and the assessee had never volunteered and paid tax thereon on his own accord. The AO accordingly levied penalty u/s 271(1)(c) of Rs 2,04,855/- being 100% of tax sought to be evaded.

4. Against the above order assessee appealed before learned CIT(A). Learned CIT(A) confirmed the action of the Assessing Officer.

5. Against the above order the assessee is in appeal before us.

6. We have heard both the counsel and perused the records. We find that in this case the issue was disclosure of gain upon compensation received upon cancellation of booking from the builder. In this regard learned Counsel of the assessee submitted that assessee has duly disclosed the amount by way of revised return before the issue of notice u/s. 148. The assessee has also paid the taxes. In these circumstances he pleaded that on the facts and circumstances of the case the assessee should not be visited with rigours of penalty u/s. 271(1)(c) of the Act.

7. Upon careful consideration, we note that the said section 271(1)(c) provides for levy of penalty for concealment and furnishing of inaccurate particulars of income. In the present case we note that the assessee has duly submitted the revised return before the issue of notice u/s. 148. That the assessee has also paid taxes accordingly. The assessment has been made on the basis of sums already declared by the assessee. In these circumstances in our considered opinion assessee cannot be said to have acted contumacious manner so as to warrant levy of penalty u/s. 271(1)(c) of the Act.

8. In this regard we also draw support from the Hon'ble Apex Court decision in the case of Hindustan Steel Ltd. Vs. State of Orissa 83 ITR 26, wherein a larger bench of Hon'ble Apex Court had expounded that the authority may not levy penalty if the conduct of the assessee has not been

found to be contumacious. Accordingly in the background of the aforesaid discussion and precedent, we set aside the orders of the authorities below and delete the levy of penalty.

9. In the result, appeal filed by the assessee stands allowed.

Order has been pronounced in the Court on 3.5.2019.

Sd/-
(RAVISH SOOD)
JUDICIAL MEMBER

Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER

Mumbai; Dated : 3/5/2019

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,

(Assistant Registrar)
ITAT, Mumbai

PS