



IN THE INCOME TAX APPELLATE TRIBUNAL
"D" BENCH, MUMBAI

BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER AND
SHRI N.K. PRADHAN, ACCOUNTANT MEMBER

ITA no.3028/Mum./2018
(Assessment Year : 2010-11)

Income Tax Officer
Ward-18(1)(4), Mumbai

..... Appellant

v/s

Shri Dilip Hariprasad Sarawgi
10, Oval Vadi, Vithal Vadi
Matka Gali, Kalbadevi Road
Mumbai 400 002
PAN – AFXPS8926B

..... Respondent

Revenue by : Shri D.G. Pansari
Assessee by : Shri Anuj Kisnadwala

Date of Hearing – 08.07.2019

Date of Order – 12.07.2019

ORDER

PER SAKTIJIT DEY. J.M.

The Revenue has filed the present appeal challenging the order dated 28th February 2018, passed by the learned Commissioner (Appeals)-29, Mumbai, deleting the penalty imposed of ₹ 2,08,40,258, under section 271(1)(c) of the Income-tax Act, 1961 (for short "*the Act*") for the assessment year 2010-11.

2. Brief facts are, the assessee, an individual, filed his return of income for the impugned assessment year on 31st July 2010 declaring total income of ₹ 9,99,540. While completing the assessment the Assessing Officer disbelieved the loan aggregating to ₹ 6,77,65,330, claimed to have been availed from three parties and treated them as unexplained cash credit under section 68 of the Act. Accordingly, he added it back to the income of the assessee. As a result, the total income was determined at ₹ 6,99,50,080. The assessee challenged the aforesaid addition before learned Commissioner (Appeals) and thereafter before the Tribunal. During the pendency of assessee's appeal against the addition made by the Assessing Officer, penalty proceedings under section 271(1)(c) of the Act was initiated on the basis of additions made and ultimately an order was passed by the Assessing Officer on 30th March 2016, imposing penalty of ₹ 2,08,40,258, under section 271(1)(c) of the Act. The assessee challenged the imposition of penalty before the first appellate authority.

3. In the course of hearing of appeal before the first appellate authority, it was brought to his notice that the addition made by the Assessing Officer on the basis of which penalty under section 271(1)(c) of the Act has been imposed, in the meanwhile, has been deleted by the Tribunal while deciding assessee's quantum appeal.

Taking note of the decision of the Tribunal deleting the addition, learned Commissioner (Appeals) held that the penalty imposed under section 271(1)(c) of the Act cannot be sustained. Accordingly, he allowed assessee's appeal.

4. We have considered rival submissions and perused material on record. Learned Counsels appearing for the parties have submitted before us that the addition on the basis of which penalty under section 271(1)(c) of the Act was imposed by the Assessing Officer, in the meanwhile, has been deleted by the Tribunal while deciding the quantum appeal of the assessee. In view of the undisputed factual position, as stated above, we do not find any infirmity in the order passed by the learned Commissioner (Appeals) in deleting the penalty imposed under section 271(1)(c) of the Act. Grounds raised are dismissed.

5. In the result, appeal is dismissed.

Order pronounced in the open Court on 12.07.2019

Sd/-
N.K. PRADHAN
ACCOUNTANT MEMBER

Sd/-
SAKTIJIT DEY
JUDICIAL MEMBER

MUMBAI, DATED: 12.07.2019

Copy of the order forwarded to:

- (1) The Assessee;*
- (2) The Revenue;*
- (3) The CIT(A);*
- (4) The CIT, Mumbai City concerned;*
- (5) The DR, ITAT, Mumbai;*
- (6) Guard file.*

*Pradeep J. Chowdhury
Sr. Private Secretary*

True Copy
By Order

Assistant Registrar
ITAT, Mumbai