

**IN THE INCOME TAX APPELLATE TRIBUNAL, “C” BENCH MUMBAI
BEFORE SHRI R.C. SHARMA, ACCOUNTANT MEMBER AND
SHRI PAWAN SINGH, JUDICIAL MEMBER**

ITA No. 2559/Mum/2018 for Assessment Years: 2006-2007

Inma Enterprises 202-A, Dheeraj Arcade, Pali Naka, Bandra (W), Mumbai-400050. PAN : AAAFI0365A	Vs	ITO- 23(1)(2), Matru Mandir, Tardeo, Mumbai-400007.
(Appellant)		(Respondent)

Appellant by :	None
Respondent by :	Shri Chaudhary Arunkumar Singh (DR)

**Date of Hearing : 26/08/2019
Date of Pronouncement : 30/08/2019**

Order under section 254(1) of Income Tax Act

PER PAWAN SINGH, JUDICIAL MEMBER:

1. This appeal by assessee is directed against the order of Id. Commissioner of Income Tax (Appeals)-32, [CIT(A)], Mumbai dated 22.12.2017, which in turn arises from the penalty order levied under section 271(1)(c) of the Act dated 25.03.2015 of Rs. 4,20,000/- for Assessment Year 2006-07.
2. Brief facts of the case are that the assessee is a firm engaged in the business of manufacturing of leather goods, filed its return of income declaring total income of Rs. 9,40,010/-. The return of income was selected for scrutiny. During the assessment, the Assessing Officer noted that the assessee has declared Net Profit (NP) of Rs. 9.0 lakhs from turnover of Rs. 6.21 crore. The Gross Profit (GP) is declared at Rs. 66.40 lakhs and purchase is shown

at Rs. 3.78 crore. From the financial result, the Assessing Officer took the view that the assessee has shown extreme low profit i.e. only 2.57% of total turnover, the GP shown by assessee is also at 10.68%. The Assessing Officer rejected the books of account by taking view that GP and the NP declared by the assessee is from low comparison with result declared by other entities involved in identical business on trading and export of leather goods. Other entities shown GP at 14.97% and NP at 5.03% for same Assessment Year, thereby the NP of assessee was determined at Rs. 37,27,764/- and income was assessed at Rs. 21,84,158/-. On appeal before the Id. CIT(A) in quantum assessment, no relief was granted to assessee. After receipt of order from First Appellate Authority (FAA). The Assessing Officer issued show-cause notice for levy of penalty under section 271(1)(c). The assessee filed its reply, wherein the assessee stated that they have already filed appeal before the Tribunal and penalty may be kept in abeyance. The Assessing Officer not accepted the contention of assessee and levied the penalty of Rs. 4,20,000/- in its order dated 25.03.2013. On further appeal before the FAA, the assessee raised specific ground of appeal that in quantum appeal the entire addition has been deleted by Tribunal in order dated 04.04.2014. However, the Id. CIT(A) confirmed the order of penalty by taking view that assessee has not attended the appellate proceeding before him. Further, aggrieved by the order of Id. CIT(A), the assessee has filed the present appeal before the Tribunal.

3. None appeared on behalf of assessee despite sending repeated notice of hearing through RPAD for more than one occasion. Therefore, we left no option except to decide the appeal on the basis of material available on record and after hearing the ld. DR for the revenue. The ld. DR for the revenue supported the order of lower authorities. The ld. DR submits that assessee's books of account were rejected and the income of assessee was reasonably estimated by Assessing Officer.
4. We have considered the submission of ld. DR for the revenue and perused the material available on record. There is no dispute that AO while passing the assessment order rejected the books of account of the assessee and estimated income on the basis of income shown by similar entities engaged in the business of trading and export of leather goods. We have further noted that before the ld. CIT(A), the assessee has specifically brought the fact on record that the entire addition has been deleted by Tribunal in quantum assessment appeal vide order dated 04.04.2014. The ld CIT(A) despite bringing this fact on record that the additions in the quantum assessment has been deleted, the ld CIT(A) instead of verifying the fact confirmed the penalty. In our view, once the addition in the quantum assessment is deleted, the penalty order has no leg to stand.
5. Even otherwise the addition in the quantum assessment was based on estimation. It is settled law that no penalty under section 271(1)(c) is

leviable on estimated addition, hence, we direct the AO to delete the entire penalty.

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

Order pronounced in the open court on this 30/08/2019.

Sd/-

Sd/-

(R.C. SHARMA)
ACCOUNTANT MEMBER

(PAWAN SINGH)
JUDICIAL MEMBER

Mumbai, Date: 30.08.2019

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Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

BY ORDER

Assistant Registrar
ITAT Mumbai