

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

I.T.A. No. 3724/Mum/2018 (Assessment Year 2008-09)  
I.T.A. No. 3723/Mum/2018 (Assessment Year 2010-11)  
I.T.A. No. 3722/Mum/2018 (Assessment Year 2012-13)

Shri Krishanakant Sanoo Bobhate A/202, Building No. 83 Sindhu Society, Tilak Nagar Chember, Mumbai	Vs.	DCIT CC-1 Thane
PAN : AAIPB3766A (Appellant)		(Respondent)

Assessee by	None
Department by	Shri Manoj Kumar Singh
Date of Hearing	8.8.2019
Date of Pronouncement	1.10.2019

ORDER

Per Shamim Yahya (AM) :-

These are appeals by the assessee directed against the common order of learned CIT(A) dated 29.3.2018 and pertain to A.Y. 2008-09, 2010-11 & 2012-13.

2. The issue raised is levy of penalty u/s. 271(1)(c) of the Act as under :-

2008-09	Rs. 2,97,910/-
2010-11	Rs. 8,00,878/-
2012-13	Rs. 42,553/-

There was search action u/s. 132 of the I.T. Act in the case of the assessee and undisclosed income was admitted by the assessee. The assessee filed return of income in response to the notice issued u/s. 153A of the Act in which undisclosed income was offered to tax. Assessing Officer completed the assessment accepting the income returned. The Assessing Officer noted that the said undisclosed income was offered by the assessee pursuant to search

action and hence penalty was initiated for concealing income/furnishing inaccurate details.

3. In the penalty order Assessing Officer relied upon the decision of Hon'ble Supreme Court in the case of Mak Data P. Ltd. Vs. CIT (Civil Appeal No. 9772 OF 2013 dated 30.10.2013). Further the Assessing Officer noted that the assessee has failed to offer any satisfactory explanation therefore Explanation (1) to section 271(1)(c) was attracted. He held that the assessee has furnished inaccurate particulars of income.

4. Upon assessee's appeal learned CIT(A) confirmed the penalty by holding that the Assessing Officer has rightly invoked provisions of section 271(1)(c) of the Act relating to concealment of income.

5. Against this order, the assessee is in appeal before us.

6. We have heard learned Departmental Representative and perused the records. None appeared on behalf of the assessee despite notice. Learned Departmental Representative submitted that penalty in this case has been rightly levied in as much as Explanation 3 to section 271(1)(c) is applicable here. Hence, he submitted that penalty should be confirmed.

7. Upon careful consideration, we find that the Revenue in this case is not at all sure as to what is the case against the assessee. The assessee has disclosed the income in the return of income filed under section 153A. The same has been duly accepted by the Assessing Officer. The Assessing Officer has held that since the assessee has disclosed income pursuant to search under section 132 of the Act, the assessee has concealed/furnished inaccurate particulars of income. In the penalty order the Assessing Officer has levied penalty for furnishing inaccurate particulars of income in as much as Assessing Officer's opinion Explanation 1 to section 271(1)(c) of the Act is applicable. Learned CIT(A) confirmed the penalty by observing that the Assessing Officer has levied penalty for concealment of income. Now, the learned Departmental Representative is submitting that Explanation 3 to section 271(1)(c) is applicable here. We find that in this case there is no application of mind by the authorities below. The Assessing Officer is levying

penalty for concealment/furnishing of inaccurate particulars of income. The Assessing Officer in the penalty order is levying penalty for furnishing inaccurate particulars of income. Learned CIT(A) is confirming the penalty on the premise that the Assessing Officer has levied penalty for concealment of income.

8. Upon careful consideration, we are of the opinion that the penalty in this case is not leviable as there is lack of application of mind by the authorities below in as much as there is no finding as to what is the charge and which aspect of the provision of section 271(1)(c), the assessee is guilty of infraction. In this view of the matter in our considered opinion the assessee cannot be visited with the rigours of penalty u/s. 271(1)(c) of the Act. Hence, we direct that the penalty in this case should be deleted.

9. In the result, the appeals by the assessee are allowed.

Order has been pronounced in the Court on 1.10.2019.

Sd/-  
(PAWAN SINGH)  
JUDICIAL MEMBER

Sd/-  
(SHAMIM YAHYA)  
ACCOUNTANT MEMBER

Mumbai; Dated : 1/10/2019

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