

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "G" MUMBAI**

**BEFORE SHRI S.RIFAUR REHMAN (ACCOUNTANT MEMBER) AND  
SHRI RAVISH SOOD (JUDICIAL MEMBER)**

**ITA No. 4721/MUM/2018  
(Assessment Year: 2007-08)**

Subhash Mishra  
R/O 52/1389,  
Adarsh Nagar, Prabhadevi,  
Mumbai – 400 025

Income Tax Officer, Ward-  
Vs. 18(1)(3)  
Mumbai

**PAN No. AAEPM5507C**

**Appellant**

**Respondent**

Assessee by : Shri Swapan Samdani.  
Revenue by : Shri V. Vinod Kumar, Sr.A.R

Date of Hearing : 26/11/2019  
Date of pronouncement : 29/11/2019

**ORDER**

**PER RAVISH SOOD, JM**

The present appeal filed by the assessee is directed against the order passed by the CIT(A)-33, Mumbai, dated 16.05.2018, which in turn arises from the order passed by the A.O under Sec. 271(1)(c) of the Income Tax Act, 1961 (for short 'Act'), dated 02.09.2013 for A.Y.2007-08. The assessee has assailed the impugned order on the following grounds of appeal before us :

- "1. Because, the Ld. Commissioner of Income Tax (Appeals) was not justified to pass an ex-party order U/s 250 of the income tax act and conform the demand of the assessee U/s 271(1)(c) of the income tax act an amount of Rs 526000.00.
2. Because, the Ld. Commissioner of Income Tax (Appeals) was not justified to pass an Ex-party order due to Lac on the part of the counsel the appellant had send notice to his counsel but on fortunately he was not appear before the commissioner of Income tax (Appeals). The appellant case is covered from the Judgment of Hon'ble Supreme court and appellant place reliance on the following Judgment:-
  - (A) Judgment of Hon'ble Supreme court in case of Rafiqu Vs Munshi Lal 1981 (AIR) SC 1400. The Hon ble Supreme court held that:

**“It is not proper that an innocent litigant, after doing everything in his power to effectively participate in his proceedings by entrusting his case to the Advocate, should be made to suffer for the inaction, deliberate omission or misdemeanor of his agent. For whatever reason the Advocate might have absented himself from the Court, the innocent litigant could not be allowed to suffer injustice for the fault of his Advocate. [511 B] The respondent's costs should be recovered from the Advocate who absented himself from Court. [511 D][The Court directed the appeal to be restored to its original position in the High Court and heard.”**

- (B) The appellant also placed reliance on the judgment of Allahabad High court in case of Subhash Malik Vs CIT and other 325 ITR. The Hon'ble court placed reliance on the judgment of Hon'ble Supreme Court in case of West Bengal Vs Administrator Hawara Municipalities (1972) SC 749. The Honble court hold that if a party had acted in a particular on wrong advise given by his local adviser he cannot be held guilty of negligence. So as to disentitle the party to plead sufficient cause u/s 5 of Limitation act, 1963. It also held that the word **“sufficient cause should received a liberal construction so as to advance substantial and no negligence or in action for want of bonafide in imputable to a party”**.
- (C) The Hon'ble ITAT Agra Bench Also realized on the aforesaid judgment and held the same view in case of Jhansi development Authority VS assessee ITA NO. 22/AGR/201 0.
- (D) The appellant also placed reliance on the judgment of Income Tax Appellate Tribunal Chennai vide ITA NO. 540 MDS/2015.
- (E) The appellant also placed reliance on the judgment of Hon'ble ITAT Agra Bench in case of Sevak ICE and Cold Storage Pvt Ltd. VS ASSESSEE ITA no. 457/2010 Whether the Hon'ble Bench Placed reliance on the judgment of Mahabri Prasad Vs CIT 172 ITR (331) (MP), Ram Lal & Sons Vs [TO 99 TTA (ASR) 63. Kripa Shankar Vs CWT 181 ITR 183 (Allid),Ganga Sahai Ram Swroop Vs ITAT 271 ITR 512 (Allid).
- (F) The assessee case is covered by the Judgment of Hon'ble Madhya Pridesh High court in case of Mahabir Prasad Jain172 ITR 331 whether the c1Jrt held that

"The failure for the counsel for the assessee to appear before Cf T (A) the assessee can not be penalized. And appeal can not be dismissed for default. Accordingly to the learned counsel the assessee can not be made to suffer for the negligence of his counsel."

3. Because, the Ld. Commissioner of Income Tax (Appeals) was not justified to conformed the penalty imposed by the Assessing officer @ 300% in place of 100% as usual imposed by the assessing officer, but the Ld. Assessing officer has imposed the penalty maximum penalty © 300 % and Ld. Commissioner (Appeal ) has not made proper justice and conformed the same which is highly unjustified unnatural against the interest of Justice.
4. Because, the Ld. Commissioner of Income Tax (Appeals) was not justified to imposition of penalty by the assessing officer whether the Hon'ble supreme court in case of Union of India Vs Dharmendra Textile Processors 2008, 166 Taxman red that penalty U/s 271(1)(c) is civil liabilities and for attracting such civil liabilities bill full concealment is not an essential ingredient as is case in matter of Prosecution U/s 276(6) (c).
5. Because, the appellant craves for a right to raise any additional ground during the course of hearing of the case.
6. Because the order passed by the Ld. Commissioner of Income Tax Appeal to confirm the action of the Assessing officer is erroneous, bad in law and on facts and is liable to be deleted.”

2. Briefly stated, the assessee had filed his return of income for A.Y. 2007-08 on 21.04.2008, declaring his total income at Rs.9,71,692/-. Subsequently, the case of the assessee was selected for scrutiny assessment under Sec. 143(2) of the Act.

3. During the course of the assessment proceedings it was observed by the A.O that the assessee had made cash deposits of Rs.15,84,900/-. Observing, that the assessee had failed to fully explain the source of the cash deposits, therefore, the A.O after applying peak method made an addition of Rs.5,26,000/-.

4. Aggrieved, the assessee assailed the assessment before the CIT(A). However, the CIT(A) not finding favour with the contentions advanced by the assessee upheld the addition made by the A.O.

5. A.O after receiving the order of the CIT(A), dated 09.10.2017, therein called upon the assessee to explain as to why penalty under Sec.271(1)(c) in respect of the addition of Rs.5,26,000/- which was sustained by the CIT(A), may not be imposed on him. As the assessee despite sufficient opportunity failed to furnish any reply, therefore, the A.O vide his order dated 02.09.2013 imposed a penalty under Sec. 271(1)(c) amounting to Rs.5,31,156/- i.e @ 300% of the amount of the tax that was sought to be evaded on the aforesaid addition of Rs.5,26,000/- made in his case.

6. Aggrieved, the assessee assailed the penalty imposed by the AO under Sec. 271(1)(c) in appeal before the CIT(A). However, as the assessee failed to put up an appearance in the course of the proceedings before the first appellate authority, therefore, the latter proceeded with the appeal on an ex-parte basis. Observing, that the assessee had neither complied with any of the notices issued to him nor had stated as to how the penalty imposed on him was unjustified, therefore, the CIT(A) backed by his aforesaid observation confirmed the penalty of Rs.5,31,156/- imposed by the A.O under Sec.271(1)(c) of the Act.

7. The assessee being aggrieved with the order of the CIT(A) has carried the matter in appeal before us. Admittedly, the CIT(A) on account of the failure on the part of the assessee to comply with the notices which were issued to him had dismissed the appeal by way of an ex-parte order. As observed by us hereinabove, the CIT(A) had confirmed the penalty imposed by the A.O under Sec. 271(1)(c), for the reason, that neither the assessee had complied with the

notices issued to him, nor any submissions in respect of his claim that no penalty under Sec. 271(1)(c) was liable to be imposed were furnished. Also, it was observed by the CIT(A), that the assessee had not stated as to how the imposition of penalty under Sec. 271(1)(c) was unjustified. In sum and substance, observing that the assessee had failed to comply with the notices which were issued to him, and had also not furnished any submissions to justify his claim that no penalty under Sec.271(1)(c) was liable to be imposed on him, the CIT(A) had sustained the penalty imposed by the A.O under Sec.271(1)(c).

8. In order to properly appreciate the view taken by the CIT(A), it would be relevant to cull out the observations that were recorded by him while dismissing the appeal of the assessee, which reads as under:

“I have carefully considered the assessment order and the submissions made by the appellant. The appellant has neither complied with any of the notices issued nor has he filed any submissions in response to the same. Even in the statement of facts, nothing has been mentioned about the impugned penalty and how imposition of the same is unjustified. Hence, I have no option but to confirm the penalty of Rs.5,31,156/- imposed by the A.O. Thus, the various grounds of appeal are rejected.”

We have given a thoughtful consideration and are unable to persuade ourselves to subscribe to the view taken by the CIT(A). In our considered view the CIT(A) had wrongly observed that the assessee had failed to demonstrate in the statement of facts as to how the impugned penalty imposed upon him was found to be unjustified. On a perusal of the ‘grounds’ raised by the assessee before the CIT(A), we find, that the assessee had specifically assailed the imposition of penalty of Rs. 5,31,156/- by the A.O at the maximum rate of 300%. Apart therefrom, it was also claimed by the assessee that the A.O had failed to prove that the assessee had furnished inaccurate particulars of income or concealed his income. In fact, the assessee had specifically challenged the levy of penalty at the rate of 300% in place of 100% as was usually imposed by the revenue. On the basis of our aforesaid observations, we are of a strong conviction that the CIT(A) had wrongly stated that the assessee had not even mentioned in his appeal as to how the penalty imposed on him under Sec. 271(1)(c) was unjustified. In our considered view, the CIT(A) has failed to dispose off the appeal of the assessee against the penalty imposed under Sec.271(1)(c) by way of a speaking order. Accordingly, we are of the considered view, that in all fairness the matter requires to be restored to the file of the CIT(A), with a direction to re-adjudicate the same after affording a reasonable opportunity of being heard to the assessee.

Needless to say, the CIT(A) shall in the course of the 'set aside' proceedings re-adjudicate the matter after affording a sufficient opportunity of being heard to the assessee, who shall remain at a liberty to substantiate his claim that no penalty under Sec.271(1)(c) was liable to be imposed on him.

9. Resultantly, the appeal filed by the assessee is allowed for statistical purposes in terms of our aforesaid observations.

Order pronounced in the open court on 29.11.2019

Sd/-  
(S. Rifaur Rehman)  
ACCOUNTANT MEMBER  
मुंबई Mumbai; दिनांक 29.11.2019  
PS. Rohit

Sd/-  
(Ravish Sood)  
JUDICIAL MEMBER

**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)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT,  
Mumbai
6. गार्ड फाईल / Guard file.

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आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai