



ITA No.4910/Mum/2018
Assessment Year :2007-08
Shri Bharat Dana Bera

आयकर अपीलीय अधिकरण “बी” न्यायपीठ मुंबई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
“B” BENCH, MUMBAI

माननीय श्री महावीर सिंह, न्यायिक सदस्य एवं
माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।
BEFORE HON’BLE SHRI MAHAVIR SINGH, JM AND
HON’BLE SHRI MANOJ KUMAR AGGARWAL, AM

आयकर अपील सं./ I.T.A. No.4910/Mum/2018
(निर्धारण वर्ष / Assessment Year: 2007-08)

Shri Bharat Dana Bera [Prop. of Naughty Girl] Jayesh Sanghrajka & Co. LLP (CA) Unit No. 405, Hind Rajasthan Centre D.S. Phalke Road, Dadar (E) Mumbai- 400 014.	बनाम/ Vs.	Income Tax Officer-19(1)(3) Mumbai- 400 020.
स्थायी लेखासं./जी आइ आर सं./PAN/GIR No. AKVPB-8714-H		
(आपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

Assessee by	:	Shri Margav Shukla-Ld. AR
Revenue by	:	Ms. Kavita P. Kaushik-Ld. DR

सुनवाई की तारीख/ Date of Hearing	:	28/11/2019
घोषणा की तारीख / Date of Pronouncement	:	29/11/2019

आदेश / ORDER

Manoj Kumar Aggarwal (Accountant Member)

1. Aforesaid appeal by assessee for Assessment Year [in short referred to as ‘AY’] 2007-08 contest the order of Ld. Commissioner of Income-Tax (Appeals)-34, Mumbai, [in short referred to as ‘CIT(A)’], Appeal No. CIT(A)-34/ITO-19(1)(3)/IT-76/2013-14 dated 26/05/2018 *qua*



confirmation of penalty u/s 271(1)(c). The grounds raised by the assessee read as under: -

1. On the given facts, circumstances, and judicial pronouncements Hon. CIT (Appeals) erred in upholding the order of Ld, AO of levying the penalty, such confirmation of penalty is bad in law and liable to be deleted.
2. On the given facts, circumstances, and judicial pronouncements Hon. CIT (Appeals) erred in upholding the order of Ld. AO of levying the penalty, even though there was no valid approval as required under provisions of section 274 and therefore such confirmation of penalty is bad in law and liable to be deleted.
3. On the given facts, circumstances, and judicial pronouncements Hon. CIT Appeals erred in confirming the penalty levied by Ld. AO on account of furnishing inaccurate particulars of income for addition made u/s 41(1) and ad-hoc expenses, even though there was reasonable cause within the provisions of section 273B and hence such penalty was liable to be deleted.
4. On the given facts, circumstances, and judicial pronouncements Hon. CIT Appeals erred in confirming the penalty levied by Ld. AO on account of furnishing inaccurate particulars of income for addition made on account of ad-hoc expenses, even though the same has been deleted by the Hon. ITAT and hence penalty levied on such addition is bad in law and is liable to be deleted.

2. Facts leading to imposition of penalty are that the assessee being resident individual stated to be engaged in garments business was assessed for year under consideration on *best judgment* basis u/s 144 on 11/12/2009 wherein the income of the assessee was determined at Rs.47.76 Lacs as against returned income of Rs.8.96 Lacs filed by the assessee on 29/10/2007. The assessee reflected net profit of Rs.3.15 Lacs on total sales of Rs.69.58 Lacs. In the course of assessment proceedings, the assessee was saddled with addition u/s 41(1) for Rs.35.13 Lacs against old sundry creditors standing in its books of account since it was concluded that the same were no more payable. In the absence of books of accounts, the net profit was estimated @10% of sales which resulted into enhancement of net profit to the extent of Rs.3.80 Lacs.



3. Before learned first appellate authority, remand proceedings were initiated against the assessee. On the basis of remand report, the addition u/s 41(1) was reduced to Rs.23.34 Lacs whereas the net profit was estimated @7% as against 10% estimated by Ld. AO. The Tribunal, vide ITA No.7537/Mum/2011 order dated 05/03/2015 confirmed the additions made u/s 41(1) as sustained by Ld. first appellate authority but provided partial relief against *ad hoc* disallowance of expenses.

4. In the meantime, penalty proceedings were initiated against the assessee u/s 271(1)(c) and the assessee was saddled with penalty of Rs.8.50 Lacs vide penalty order dated 26/03/2013. The same, upon confirmation by learned first appellate authority vide impugned order dated 26/05/2018, is under challenge before us.

5. We have carefully heard the rival submissions and perused relevant material on record including judicial pronouncements as cited before us. We have also noted the basic facts as enumerated in the preceding paragraphs. Upon due consideration, it transpires that the assessee has been saddled with additions u/s 41(1) for remission / cessation of trading liability in view of the fact that sundry creditors were long outstanding in the books of accounts and the assessee was unable to establish the existence of these liabilities by producing the parties. Nevertheless, the fact remains that these sundry creditors were reflected as outstanding in the books of accounts and they were shown in the financial statements also since long which were never doubted by the revenue. In fact, some of the sundry creditors were settled by the assessee in subsequent years. There could be multiple reasons for sundry creditors remaining outstanding since a long time. The mere fact



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that the assessee could not establish the existence of these liabilities during assessment proceedings, would not, *ipso-facto*, lead to a conclusion that there was concealment of income or furnishing of inaccurate particulars of income within the meaning of Section 271(1)(c) of the Act. Similarly, the additions on mere estimation basis, would not make it a fit case for imposition of penalty. Therefore, by deleting the penalty, we allow the appeal. Ground Nos. 3 & 4 stands allowed. Ground Nos. 1 is general in nature. Nothing has been argued against Ground No.2.

6. The appeal stands allowed in terms of our above order.

Order pronounced in the open court on 29th November, 2019.

Sd/-

(Mahavir Singh)

न्यायिक सदस्य / **Judicial Member**

Sd/-

(Manoj Kumar Aggarwal)

लेखा सदस्य / **Accountant Member**

मुंबई Mumbai; दिनांक Dated : 29/11/2019
Sr.PS, Jaisy Varghese

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT– concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकरअपीलीयअधिकरण, मुंबई / ITAT, Mumbai.