

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "SMC", MUMBAI
Before Shri Shamim Yahya (AM) & Shri Pawan Singh (JM)

ITA No. 6110/Mum/2018(AY : 2014-15)

M/s Sushma Nitin Patil C/o Adv. N.A. Kulkarni Wadal Building, 1 st Floor Near DNS Bank, Manpada Road, Dombivli (E), 421 201 PAN : CBEPP6515N	vs	ITO, Wd.1(4), Mohan Plaza, 1 st Floor Waylenagar, Kalyan (W)
APPELLANT		RESPONDEDNT

Appellant by	None
Respondent by	Shri Akhtar H Ansari
Date of hearing	27-11-2019
Date of pronouncement	27-11-2019

ORDER

PER PAWAN SINGH, JM :

1. This appeal filed by the assessee is directed against the order of CIT(A)-2, Thane dated 14th September, 2018, which, in turn arises against the penalty order u/s 271(1)(c) dated 19th May, 2017 for AY 2014-15.
2. Facts in brief as extracted from the orders of lower authorities are that during the assessment for the assessment year under consideration, the AO noted that in the bank account, there were total credit of Rs.23,49,721/-, whereas in the return of income, assessee declared net receipt of Rs.7,60,000/-. On show cause notice, the assessee stated that the credits were out of business of RCC work / construction work

carried out by assessee and accordingly declared net profit of Rs.4,07,270/- on presumptive basis u/s 44AD. The AO not accepted the contention of assessee and the AO disallowed 25% of difference of receipt (Rs.23,49,721 – Rs.7,60,000 = Rs.15,89,721) and added back to the income of assessee while passing the assessment order u/s 143(3) on 28-11-2016. The AO also initiated penalty for concealment of income. The AO issued show cause notice to the assessee under section 271(1)(c) rws 274 of the Act. The assessee contested the penalty proceedings. The AO recorded that the assessee failed to furnish submission against the show cause notice u/s 274 r.w.s. 271(1)(c). The AO levied penalty @100% of tax sought to be evaded, vide order dated 29-05-2017. On further appeal before CIT(A), the Ld.CIT(A) confirmed the penalty levied by AO. Further aggrieved by the order of Ld. CIT(A), assessee has filed present appeal before this Tribunal. The assessee has raised the following grounds of appeal:-

The Ld.CIT(A)-II has erred in partly confirming the orders of AO the penalty u/s 271(1)(c) which is not correct and bad before the eyes of law.”

3. None appeared on behalf of the assessee, when the appeal was taken up for hearing despite the service of notice through RPAD. Therefore, we are left with no option except to hear the Ld. DR and decide the appeal

on the basis of material available on record. The Ld. DR for the revenue submits that assessee failed to furnish sufficient cause in response to show cause notice of penalty proceedings. The AO made disallowance of receipts, which were found to have been deposited in the bank account and was not properly explained by the assessee. The Ld. DR prayed for confirming the penalty order.

4. We have considered the submission of Ld. DR for the revenue and perused the material available on record. We have noted that the AO while passing the assessment order made addition on estimate basis of the receipt/ bank deposits. We have further noted that the AO initiated penalty for concealment of income. While passing the penalty order, the AO also concluded that the assessee concealed her income. However, the Ld. CIT(A), while confirming the penalty held that assessee has filed inaccurate particulars of income and intentionally evaded the payment of tax. There is no dispute that the impugned penalty is based only on estimate addition. No other addition while passing the assessment order was made by AO. We are of the view that it is settled legal position that on estimates addition no penalty under section 271(1)(c) is leveable. Therefore, we do not find any

justification in levying the penalty. Hence, we direct the AO to delete the entire penalty order.

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

Order pronounced in the open court on 27-11-2019.

Sd/-

Sd/-

(Shamim Yahya)	(Pawan Singh)
ACCOUNTANT MEMBER	JUDICIALMEMBER

Mumbai, Dt : 27th November, 2019

Pk/-

Copy to :

1. Appellant
2. Respondent
3. CIT(A)
4. CIT
5. DR

/True copy/

By order

Asstt. Registrar, ITAT, Mumbai