

आयकर अपीलीय अधिकरण "बी" न्यायपीठ पुणे में ।  
IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH, PUNE

BEFORE SHRI ANIL CHATURVEDI, AM AND  
SHRI PARTHA SARATHI CHAUDHURY, JM

आयकर अपील सं. / ITA No.1837/PUN/2017

निर्धारण वर्ष / Assessment Year : 2013-14

Anand Subhash Bohora,  
Plot No.18, Welcome Nursery,  
Old Pandit Colony,  
Nashik-422 002  
PAN : ABRPB9679E

.....अपीलार्थी / Appellant

**बनाम / V/s.**

The Assistant Commissioner of Income Tax,  
Circle-1, Nashik

.....प्रत्यर्थी / Respondent

Assessee by : Written Submission

Revenue by : Shri Pankaj Garg

सुनवाई की तारीख / Date of Hearing : 17.12.2019

घोषणा की तारीख / Date of Pronouncement : 17.12.2019

**आदेश / ORDER**

**PER PARTHA SARATHI CHAUDHURY, JM :**

This appeal preferred by the assessee emanates from the order of the Ld.CIT(Appeal)-1, Nashik dated 11.05.2017 for the assessment year 2013-14 as per the grounds of appeal on record.

2. The crux of the grievance of the assessee is with regard to the confirmation of penalty by the Ld.CIT(Appeal) imposed u/s.271(1)(c) of the

Income Tax Act, 1961 (hereinafter referred to as 'the Act') by the Assessing Officer on the assessee.

3. At the time of hearing, neither the assessee nor his Authorized Representative had appeared. However, the assessee had filed written submissions before us. The submissions of the Ld. DR are taken on record and case of the assessee is heard on merits.

4. The relevant facts in this case are that the assessee is an individual and engaged in the business of coaching classes, LIC agent. The assessee had filed e-return of income declaring total income of Rs.56,97,296/- on 30.03.2014. During the course of assessment proceedings, the Assessing Officer observed that the assessee has debited rent of Rs.2,60,864/-. On verification, the Assessing Officer found that the assessee has wrongly claimed rent for residential premise of Rs.1,01,500/- and has also not added the difference of rent received and paid of Rs.38,500/-. The Assessing Officer made an addition of Rs.1,40,000/- (Rs.1,01,500/-+ Rs.38,500/-) and also initiated penalty proceedings u/s.271(1)(c) of the Act.

5. The Ld. CIT(Appeal) as per detailed reasoning given in his order had upheld this levy of penalty imposed by the Assessing Officer on the assessee.

6. The Ld. DR submitted that on these two amounts i.e. Rs.1,01,500/- and Rs.38,500/-, these were added to the total income of the assessee and assessee has paid taxes on the entire quantum addition. The assessee has not even preferred appeal before the Ld. CIT(Appeals) on such quantum addition and thereby accepting the addition amount. The Ld. DR further stated referring to the facts on records that before the Assessing Officer as

well as Ld. CIT(Appeal), the assessee had taken a consistent plea that the amount of Rs.1,01,500/- has been wrongly claimed as rent and that the amount of Rs.38,500/- has not been shown in the return of income due to mistake of the Accountant of the assessee. The assessee has always claimed that this mistake was bona-fide mistake and he has no intention to defraud the revenue or conceal his income. It is because of these reasons that the quantum has been accepted by the assessee and therefore, no appeal has been preferred by the assessee before the Ld. CIT(Appeal). The assessee also has paid taxes on the total addition, thus there is no loss to the revenue.

7. We have perused the case records, the written submissions of the assessee and heard the submissions of the Ld. DR. We have also given considerable thought to the facts and circumstances of this case. The Assessing Officer made addition of Rs.1,40,000/- (Rs.1,01,500/-+ Rs.38,500/-) and the assessee has paid taxes on the entire quantum addition. This fact has been accepted by the Ld. DR. That further we observe, the assessee has not preferred appeal before the Ld. CIT(Appeal) regarding the said quantum addition. That further, even in the written submissions filed before us, the plea of the assessee is consistent that it was an inadvertent mistake committed by the Accountant of the assessee and the assessee does not have any intention to conceal his income and defraud the revenue with regard to the non-paying of taxes. The assessee has relied on the following decisions:

(i) CIT Vs. Somany Evergreen Knits Ltd. (2013) 352 ITR 0592

(ii) Asstt. CIT Vs. Spl. Industries Ltd. (2016) 047 ITR (Trib) 0204

8. In the case of **CIT Vs. Somany Evergreen Knits Ltd. (supra.)**, the Hon'ble Bombay High Court has held that the bona-fideness of the assessee is established from the fact that the assessee accepted the mistake and did not prefer any appeal against the order of the Assessing Officer. The relevant portion of the said judgment reads as under:

*"Held, bonafide and inadvertent mistake of a CA while filing a return of income will not amount to furnishing of inaccurate particulars of income-- As far as loss on sale of machineries was concerned, P&L Account filed by assessee along with return clearly described loss as loss on sale of garment unit assets--It was this loss which was added to net loss as per P&L Account in computation of total income-- Chartered Accountant of assessee did not advise assessee as to correct legal position & return was filed on above lines--When this was pointed out in course of assessment proceedings assessee accepted addition made by AO-- It was held that fixed assets of garment division clearly showed that assets sold were depreciable assets, thus there was enough evidence available in documents filed along with return to show that claim made by assessee were not in accordance with law--**Thus, plea of assessee that claim for deduction was made on account of a bonafide mistake had to be accepted--It was held that when all facts were available on record it cannot be said that assessee attempted to furnish inaccurate particulars of income particulars--With regard to excess depreciation, it was held that it was clearly a mistake on part of CA of Assessee--** When assets comprised in block of assets were sold sale value of assets sold had to be reduced from block of assets and no other adjustment was required--In contrary, assessee worked out excess depreciation on assets of garment unit sold during PY--It was clearly a case of incorrect claim--It was held that bonafide act of assessee was established from facts that assessee accepted mistake and did not prefer any appeal against order of AO-- Non--furnishing of revised return did not mean that bonafide mistake in making a wrong claim should be visited with imposition of penalty--Moreover, time for filing a revised return had already been expired--Penalty imposed cancelled."*

9. Further, it is settled legal proposition that it is duty of the Assessing Officer to guide the assessee and allow the deduction wherever and whenever it is applicable or to correct a bona-fide assessee making a wrong claim in his return of income depending on facts and circumstances of each case. The Income Tax laws are welfare in nature and the very purpose of welfare legislation is that there should not be any cohesive action by the quasi-judicial Authority. Thus, duty of the Revenue Authority is to communicate

with the assessee and provide them required relief or deduction for which he is legally eligible. In that way, there will be continuity of justice and fair-play and the principles of natural justice shall be upheld for its true purpose and applicability.

10. In view of the above facts and circumstances and judicial pronouncements placed before us, we set aside the order of Ld.CIT(Appeals) and direct the Assessing Officer to delete the penalty from the hands of the assessee. Accordingly, the grounds of appeal raised by the assessee are allowed.

11. In the result, **appeal of the assessee is allowed.**

Order pronounced on 17<sup>th</sup> day of December, 2019.

Sd/-  
**ANIL CHATURVEDI**  
**ACCOUNTANT MEMBER**

Sd/-  
**PARTHA SARATHI CHAUDHURY**  
**JUDICIAL MEMBER**

पुणे / Pune; दिनांक / Dated : 17<sup>th</sup> December, 2019.

SB

**आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(Appeal)-1, Nashik.
4. The Pr. CIT-1, Nashik.
5. विभागीय प्रतिनिधि , आयकर अपीलीय अधिकरण, "बी" बेंच,  
पुणे / DR, ITAT, "B" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

निजी सचिव / Private Secretary  
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.

		Date	
1	Draft dictated on	17.12.2019	Sr.PS/PS
2	Draft placed before author	17.12.2019	Sr.PS/PS
3	Draft proposed and placed before the second Member		JM/AM
4	Draft discussed/approved by second Member		AM/JM
5	Approved draft comes to the Sr. PS/PS		Sr.PS/PS
6	Kept for pronouncement on		Sr.PS/PS
7	Date of uploading of order		Sr.PS/PS
8	File sent to Bench Clerk		Sr.PS/PS
9	Date on which the file goes to the Head Clerk		
10	Date on which file goes to the A.R		
11	Date of dispatch of order		