



ITA No.4806/Mum/2018
Dr. Anita Mohan
Assessment Year-2012-13

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

माननीय श्री विकास अवस्थी, न्यायिक सदस्य एवं
माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।
BEFORE HON’BLE SHRI VIKAS AWASTHY, JM AND
HON’BLE SHRI MANOJ KUMAR AGGARWAL, AM

आयकर अपील सं./ I.T.A. No.4806/Mum/2018
(निर्धारणवर्ष / Assessment Year: 2012-13)

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| Dr. Anita Mohan Flat No. C/601, Abhijeet Apts. Sainath Co –op. Hsg. Soc. Ltd. Police Station Road Santacruz (East), Mumbai-400 055. | बनाम/ Vs. | DCIT- CC-1(1) Old CGO Building Next to Aaykar Bhavan Churchgate, Mumbai-400 007. |
| स्थायीलेखासं./जीआइआरसं./PAN/GIR No. ADHPM-7787-N | | |
| (अपीलार्थी/ Appellant) | : | (प्रत्यर्थी / Respondent) |
| अपीलार्थी की ओर से/ Appellant by | : | None |
| प्रत्यर्थीकीओरसे/Respondent by | : | Shri S. Michael Jerald- Ld. DR |
| सुनवाई की तारीख/ Date of Hearing | : | 17/12/2019 |
| घोषणा की तारीख / Date of Pronouncement | : | 17/12/2019 |

आदेश / O R D E R

Manoj Kumar Aggarwal (Accountant Member): -

1. In the aforesaid appeal for Assessment Year (AY) 2012-13, the assessee is aggrieved by confirmation of penalty of Rs.1.20 Lacs u/s 271(1)(c) by Ld. Commissioner of Income-Tax (Appeals)-47, Mumbai [in



short referred to as 'CIT(A)'] vide Appeal No. CIT(A)-47/191/2015-16 order dated 22/05/2018.

2. At the time of hearing, none appeared for assessee and no valid adjournment application was placed on record. Left with no option, the appeal was proceeded with ex-parte qua the assessee on the basis of material on record and after considering the submissions of Ld. DR, who justified imposition of penalty in the given circumstances.

3. Facts leading to imposition of penalty are that the assessee being resident individual stated to be engaged as *Consulting Doctor* was assessed for year under consideration u/s. 143(3) on 17/03/2015 wherein the expenditure of Rs.3.52 Lacs claimed by the assessee was disallowed in view of the fact that the assessee was not running any independent clinic but working on retainership basis as a medical consultant with M/s Fortis Hospitals Limited. The assessee reflected professional receipts of Rs.17.36 Lacs and claimed expenditure of Rs.6.54 Lacs. The disallowance of Rs.3.52 Lacs was on account of expenditure stated to be incurred under the heads salaries, travelling expenses, business promotion and various other petty expenditure, the details of which have already been extracted in the quantum assessment order as well as penalty order. It is evident from quantum assessment order that the disallowance was made for want of sufficient documentary evidences. The record would show that the assessee accepted the said disallowance and paid due taxes as per income assessed in scrutiny assessment.



4. Consequently, penalty proceedings were initiated u/s 271(1)(c) and the assessee was saddled with impugned penalty of Rs.1.20 Lacs vide penalty order dated 24/06/2015. During the course of penalty proceedings, the assessee submitted that the expenditure which was disallowed had direct relation with professional receipts. Nevertheless, there was no failure on the part of the assessee to disclose correct particulars of income and therefore, the assessee opposed the levy of penalty by relying upon the decision of Hon'ble Supreme Court rendered in **CIT V/s Reliance Petroproducts Private Ltd. (322 ITR 158)**. However, not convinced with assessee's arguments, Ld. AO imposed impugned penalty of Rs.1.20 Lacs for furnishing of inaccurate particulars of income.

5. The learned first appellate authority, holding that the assessee could not discharge the onus by offering sustainable explanation regarding additions made by Ld. AO and did not act in a bona fide manner, confirmed the penalty by relying upon the decision of Hon'ble Delhi High Court rendered in **CIT V/s Zoom Communications Private Ltd. (327 ITR 510)** wherein it was held that if assessee makes a claim which is not only incorrect in law but is wholly without any basis and the explanation offered by assessee was not found to be *bona-fide*, explanation-1 to Sec. 271 (1) (c) would come into play and the assessee would be liable for penalty. Aggrieved by aforesaid adjudication, the assessee is under further appeal before us.

6. Upon careful consideration of factual matrix, we find that the assessee was a consulting doctor with M/s Fortis Hospitals Limited and earned



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professional receipts of Rs.17.36 Lacs and claimed expenditure of Rs.6.54 Lacs which would work out to be approx. 38% of professional receipts. The Ld. AO has made partial disallowance to the extent of Rs.3.52 Lacs only but accepted the balance expenditure as claimed by the assessee. The aforesaid action on the part of Ld. AO would establish that the assessee was certainly required to incur expenses during the course of her profession. As per assessee's submissions, the assessee was required to incur certain costs like travelling expenses and employ an assistant in the hospital for maintaining diaries besides food costs for the staff in case of late sittings. Keeping in view assessee's profession, we are convinced with these arguments. Therefore, the mere fact that the assessee accepted disallowance of certain expenditure would not justify the levy of penalty merely on the ground that the assessee was not running an independent clinic but working as consulting doctor to a hospital. It is pertinent to note that receipts were in the nature of professional income which is evident from the fact that receipts were subjected to TDS u/s 194J. Further, these receipts were also accepted to be assessable under the head *Profit & gains of business / profession*. The assessee was certainly required to incur expenditure during the course of her profession and therefore, mere acceptance of certain disallowance, in our considered opinion, would not make assessee liable for impugned penalty, keeping in view her background. It is trite law that the imposition of penalty is not automatic and every addition would not necessarily result into imposition of penalty. Therefore, the facts and circumstances do not convince us to confirm the



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penalty against the assessee. By deleting the same, we allow assessee's appeal.

7. The appeal stands allowed.

Order pronounced in the open court on 17th December, 2019.

Sd/-

(Vikas Awasthy)

न्यायिक सदस्य / **Judicial Member**

मुंबई Mumbai; दिनांक Dated : 17/12/2019

Sr.PS:-Jaisy Varghese

आदेश की प्रतिलिपि □ ग्रेषित/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- concerned
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

Sd/-

(Manoj Kumar Aggarwal)

लेखा सदस्य / **Accountant Member**

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai.