

**IN THE INCOME TAX APPELLATE TRIBUNAL "A", BENCH
MUMBAI**

**BEFORE SHRI MAHAVIR SINGH, JM
&
SHRI M.BALAGANESH, AM**

**ITA No.5861/Mum/2018
(Assessment Year : 2005-06)**

M/s. Adcon Technologies Ltd 125, Nigos Building Cama Industrial Estate Goregaon (E) Mumbai – 400 063	Vs.	ITO – 9(1)(1) / 12(1)(1) Room No.226, 2 nd Floor Aayakar Bhavan, M.K.Road Mumbai – 400 020
PAN/GIR No. AACCA1228P		
(Appellant)	..	(Respondent)

Assessee by	Shri Kalpesh Turalkar
Revenue by	Shri Michael Jerald
Date of Hearing	07/01/2020
Date of Pronouncement	15/01/2020

आदेश / O R D E R

PER M. BALAGANESH (A.M.):

This appeal in ITA No.5861/Mum/2018 for A.Y.2005-06 arises out of the order by the Id. Commissioner of Income Tax (Appeals)-20, Mumbai in appeal No.CIT(A)-20/ITO-9(1)/IT-10077/13-14 dated 29/06/2018 (Id. CIT(A) in short) in the matter of imposition of penalty u/s.271(1)(c) of the Income Tax Act, 1961 (hereinafter referred to as the 'Act').

2. The only effective issue to be decided in this appeal is as to whether the Id. CIT(A) was justified in upholding the levy of penalty of Rs.3,65,925/- u/s.271(1)(c) of the Act in the facts and circumstances of the case.

3. We have heard the rival submissions. We find that assessee is a company engaged in the business of manufacturing and trading in lift parts. It had filed its return of income for the A.Y.2005-06 on 29/10/2005 declaring total income of Rs.4,99,760/-. The assessment was originally completed u/s.143(3) of the Act on 05/11/2007 determining total income at Rs.5,47,260. Later, based on an information received from ACIT, Central Circle-13, Mumbai wherein it was mentioned that Shri Narendra Shah, alongwith certain persons were facilitating artificial / bogus share application money and assessee company had also received certain share application money amounting to Rs.5 lakhs from M/s. Tribhuwan Housing Ltd. during the year under consideration. Accordingly, the assessment was sought to be reopened by issue of notice u/s.148 of the Act for A.Y.2005-06. In the re-assessment proceedings, the Id. AO observed that assessee had received share capital of Rs.2,50,000/- and share premium of Rs.7,50,000/- during the year under consideration from M/s. Tribhuwan Housing Ltd. and Gujarat Chemi Plasto Ltd. We find that the Id. AO observed that since the assessee could not establish the genuineness of all these transactions together with creditworthiness of the shareholders beyond doubt, the receipt of share capital and share premium in the sum of Rs.10 lakhs requires to be added as unexplained cash credit u/s.68 of the Act. This addition was upheld by the Id. CIT(A). Parallely, the Id. AO levied penalty u/s.271(1)(c) of the Act vide order dated 18/03/2013 on the said cash credit addition of Rs.10 lakhs. The penalty levied was Rs.3,65,925/-. The levy of penalty by the Id. AO was upheld by the Id. CIT(A).

3.1. We find that the Id. AR at the time of hearing placed on record the copy of the order of this Tribunal in assessee's own case in ITA No.5403/Mum/2011 for A.Y.2005-06 dated 07/12/2018 wherein the issue of quantum addition of Rs.10 lakhs towards unexplained cash credit was remanded back to the file of the Id. AO for fresh adjudication and accordingly submitted that the penalty levied by the Id. AO does not survive. We find that since the quantum has been remanded back to the file of the Id. AO for fresh adjudication, it will be premature to decide the validity of levy of penalty at this stage and accordingly, we hold that penalty u/s.271(1)(c) of the Act would not survive at this stage. However, the Id. AO is at liberty to re-initiate penalty proceedings u/s.271(1)(c) of the Act at the time of completion of fresh assessment, if he so desires. Accordingly, the grounds raised by the assessee are allowed.

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

Order pronounced in the open court on this 15/01/2020

Sd/-
(MAHAVIR SINGH)
JUDICIAL MEMBER

Sd/-
(M.BALAGANESH)
ACCOUNTANT MEMBER

Mumbai; Dated 15/01/2020

KARUNA, *sr.ps*

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

BY ORDER,

//True Copy//

(Asstt. Registrar)
ITAT, Mumbai