

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

**BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER AND
SHRI RAM LAL NEGI, JUDICIAL MEMBER**

ITA NO. 742/MUM/2017 : **A.Y : 2009-10**

Shaheen M. Mujawar Vs. ITO-26(3)(2), Mumbai
Prabhatwadi Kurla Pipeline, (Respondent)
Behind Sagar Heights, Sakinaka,
Mumbai 400 072.
PAN : AAHPM1303K (Appellant)

Assessee by : Shri Jitendra Jain

Revenue by : Ms. Bharti Singh

Date of Hearing : 16/12/2019

Date of Pronouncement : 06/02/2020

ORDER

PER SHAMIM YAHYA, ACCOUNTANT MEMBER

This appeal by the assessee is directed against order of learned CIT(A) dated 21.10.2016 and pertains to assessment year 2009-10. The issue raised is that learned CIT(A) erred in sustaining the penalty of Rs.95,500/- levied under Section 271(1)(c) of the Income Tax Act, 1961 (in short 'the Act').

2. The brief facts of the case are that assessee had filed a belated return. Assessing officer has issued notice under Section 143(2) of the Act. Subsequently, the assessee filed a revised return. In the revised return, assessee declared Capital Gains. The Assessing Officer invoked the provision of

Section 50C of the Act and Capital Gain was levied. The matter had travelled to the learned CIT(A). Thereafter the matter was referred to the DVO. Subsequently, on assessee's share of the Capital Gain, penalty was levied under Section 271(1)(c) of the Act amounting to Rs.95,500/-. The assessee's explanation was that it was a *bona fide* mistake. That the mistake was on the part of assessee's Accountant was not accepted by the authorities below. It was further held that a belated return cannot be revised. Hence, it was held that assessee cannot be exonerated of its liability by claiming that it had filed an invalid revised return.

3. Against the levy of penalty by the Assessing Officer and its subsequent confirmation by the learned CIT(A), the assessee has filed appeal before us.

4. We have heard both the Counsel and perused the records. The learned counsel of the assessee submitted that assessee has *suo moto* filed a revised return without any query or action by the Assessing Officer. He submitted that there was no contumacious conduct on the part of the assessee and that the amount was inadvertently shown in unsecured loan. Hence, he submitted that assessee cannot be visited with the rigours of penalty under section 271(1)(c) of the Act.

5. Furthermore, the learned counsel submitted that penalty has been initiated on the ground that there is filing of inaccurate particulars of income. However, he submitted that final penalty has been levied on concealment of income. He submitted that this is apart from the fact that there is no striking-off of the particular limb specifying the charges on the assessee in the penalty

notice. Hence, the learned counsel of the assessee stated that the penalty may kindly be deleted.

6. *Per Contra*, the learned Departmental Representative relied upon the orders of the authorities below.

7. Upon careful consideration, we find that assessee has filed a revised return before the detection or any query on the impugned subject by the revenue authorities. The assessee's claim of filing the revised return has been negated on the ground that at the extant point of time there was no provision for revising a belated return. It is undisputed that subsequently the Act was amended and revision of belated return was also permitted. Furthermore, we note that the impugned amount was shown in unsecured loan. The assessee has submitted that this was an inadvertent mistake on the part of the Accountant of the assessee which has not been accepted by the authorities below. Furthermore, we note that Honourable Jurisdictional High Court in the case of *CIT vs Fortune Hotels and Estates (P.) Ltd.*, [2014] 52 *taxmann.com* 330 (Bombay) had expounded that when in respect of sale of property, matter was referred to DVO to determine sale consideration at a higher amount, that by itself would not amount to furnishing inaccurate particulars of income so as to levy penalty under Section 271(1)(c) of the Act. Furthermore, the Hon'ble Supreme Court in the case of *Price Waterhouse Coopers (P.) Ltd. vs CIT*, 348 ITR 306 (SC) had expounded that an inadvertent error cannot lead to rigours of penalty. Furthermore, a larger bench of the Honourable Court in the case of *Hindustan Steel Ltd. vs State of Orissa*, 83 ITR 26 (SC) had expounded that when the conduct of the assessee is not

contumacious, the authority may not levy the penalty. That technical and venial breach may not lead to levy of penalty.

8. In the background of aforesaid discussion and precedent, in our considered opinion, the conduct of the assessee in this case is not contumacious to warrant levy of penalty and assessee's plea that there was an inadvertent error on the part of the Accountant deserves to be accepted. Furthermore, admittedly the Act was subsequently amended to provide for revision of the belated return, hence the assessee can at best be held for a technical and venial breach not liable for penalty.

9. In the background of aforesaid discussion and precedent, in our considered opinion, assessee doesn't deserve to be visited by the rigours of penalty under Section 271(1)(c) of the Act. Hence, we set-aside the orders of authorities below and delete the levy of penalty.

10. Since we have deleted the levy of penalty on the merits, the adjudication on jurisdiction, as canvassed by the learned counsel of the assessee, is only of academic interest. Hence, we are not engaging into the same.

11. In the result, this appeal filed by the assessee stands allowed.

Order pronounced in the open court on 6th February, 2020.

Sd/-
(RAM LAL NEGI)
JUDICIAL MEMBER

Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER

Mumbai, Date : 6th February, 2020

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Copy to :

- 1) The Appellant
- 2) The Respondent
- 3) The CIT(A) concerned
- 4) The CIT concerned
- 5) The D.R, "G" Bench, Mumbai
- 6) Guard file

By Order

Dy./Asstt. Registrar
I.T.A.T, Mumbai