



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

**BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER AND**  
**SHRI G. MANJUNATH, ACCOUNTANT MEMBER**

ITA no.7488/Mum./2018  
(Assessment Year : 2009-10)

Menora Corporation  
101, Titan House, M.P. Vaidya Marg  
Ghatkopar (E), Mumbai 400 077  
PAN – AAOFM6800A

..... Appellant

v/s

Dy. Commissioner of Income Tax  
Circle-22(1), Mumbai

..... Respondent

Assessee by : None  
Revenue by : Smt. Jyothilakshmi Nayak

Date of Hearing – 21.01.2020

Date of Order – 14.02.2020

**ORDER**

**PER SAKTIJIT DEY. J.M.**

The aforesaid appeal has been filed by the assessee challenging the order dated 4<sup>th</sup> October 2018, passed by the learned Commissioner of Income Tax (Appeals)-25, Mumbai, confirming the penalty imposed of ₹ 4,55,517 under section 271(1)(c) of the Income Tax Act, 1961 (for short "*the Act*").

2. When the appeal was called for hearing, no one was present on behalf of the assessee to represent the case despite service of notice.

There is no application by the assessee seeking adjournment either. Therefore, we proceed to dispose off the appeal ex-parte qua the assessee after hearing the learned Departmental Representative and on the basis of material available on record.

3. We have heard the learned Departmental Representative and perused the material on record. As could be seen from the facts on record, while completing the assessment the Assessing Officer made couple of additions aggregating to ₹ 14,74,163. On the basis of such additions, the Assessing Officer initiated proceeding for imposition of penalty under section 271(1)(c) of the Act and ultimately passed an order on 20<sup>th</sup> September 2013, imposing penalty of ₹ 4,55,517, under section 271(1)(c) of the Act. Against the penalty order so passed, the assessee preferred appeal before learned Commissioner (Appeals). However, due to repeated adjournment sought by the assessee, learned Commissioner (Appeals) proceeded to dispose off assessee's appeal ex-parte by the impugned order confirming the penalty imposed under section 271(1)(c) of the Act. Having perused the facts on record and considering the submission of the learned Departmental Representative, we are of the view that the assessee deserves an opportunity to advance his case against the imposition of penalty under section 271(1)(c) of the Act which could not be availed due to ex-parte disposal of the appeal by learned Commissioner (Appeals).

Without entering into the controversy of for whose fault the appeal was disposed off ex-parte, we are inclined to set aside the impugned order of learned Commissioner (Appeals) and restore the issue back to his file for fresh adjudication after providing reasonable opportunity of being heard to the assessee. At the same time, we direct the assessee to respond to the notice of hearing and co-operate in disposal of the appeal without seeking any unnecessary adjournment. With the aforesaid observations, grounds are allowed for statistical purposes.

4. In the result, appeal is allowed for statistical purposes.

Order pronounced in the open Court on 14.02.2020

**Sd/-  
G. MANJUNATH  
ACCOUNTANT MEMBER**

**Sd/-  
SAKTIJIT DEY  
JUDICIAL MEMBER**

**MUMBAI, DATED: 14.02.2020**

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The CIT(A);
- (4) The CIT, Mumbai City concerned;
- (5) The DR, ITAT, Mumbai;
- (6) Guard file.

*Pradeep J. Chowdhury  
Sr. Private Secretary*

True Copy  
By Order

Assistant Registrar  
ITAT, Mumbai