

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

**BEFORE SHRI C.N. PRASAD, JM  
&  
SHRI M.BALAGANESH, AM**

**ITA No.4675/Mum/2018  
(Assessment Year :2014-15)**

Shabbir Husseni Merchant B/405, Raj Mandir Off. Yari Road Versova, Andheri East Mumbai – 400 061	Vs.	Income Tax Officer (IT)- 3(2)(1) Mumbai
<b>PAN/GIR No.AEAPM7675K</b>		
<b>(Appellant)</b>	..	<b>(Respondent)</b>

Assessee by	Shri Ashwin C Chhag
Revenue by	Shri Vinod Kumar
<b>Date of Hearing</b>	<b>06/02/2020</b>
<b>Date of Pronouncement</b>	<b>14/02/2020</b>

**आदेश / O R D E R**

**PER M. BALAGANESH (A.M.):**

This appeal in ITA No.4675/Mum/2018 for A.Y.2014-15 arises out of the order by the Id. Commissioner of Income Tax (Appeals)-57, Mumbai in appeal dated 13/06/2017 (Id. CIT(A) in short) in the matter of imposition of penalty u/s.271(1)(c) of the Income Tax Act, 1961.

2. The only ground raised by the assessee is questioning the validity of levy of penalty u/s.271(1)(c) of the Act on merits of the addition made towards loan creditor in the sum of Rs.5 lakhs.

2.1. We also find that assessee had raised an additional ground before us stating that the entire levy of penalty was without the authority of the law. We find that the additional ground raised by the assessee is on a purely legal ground and it goes to the root of the matter and does not require any verification of fresh facts and hence, by following the ratio laid down by the Hon'ble Supreme Court in the case of NTPC Limited reported in 229 ITR 383 and in the case of Jute Corporation of India Ltd. reported in 187 ITR 688, we deem it fit to admit the additional ground of appeal raised by the assessee and take up the same for adjudication.

3. We have heard rival submissions and perused the materials available on record. We find that assessee is an individual and had filed his return of income for the A.Y.2014-15 on 09/12/2014 declaring total income of Rs.7,01,540/-. The Id. AO observed in the assessment order framed u/s.143(3) of the Act on 26/12/2016 that assessee had earned income from business or profession and income from other sources. We find from the perusal of the scrutiny assessment order framed u/s.143(3) of the Act dated 26/12/2016, the Id. AO had directly made an addition on account of receipts of brokerage / commission u/s.194H of the Act in the sum of Rs.5,00,000/- directly in the computation of income for which there is absolutely no whisper or any discussion made in the assessment order. Hence, this entire addition was made by the Id. AO in the assessment without any basis or without any support of any material with him. Even though the assessee had agreed with the said assessment order by paying the due taxes thereon and not contesting by way of an appeal, the same would not automatically lead to imposition of penalty. Since absolutely no reasoning has been given by the Id. AO for making the addition of Rs.5 lakhs, there cannot be any satisfaction or application of mind on the part of the Id. AO for imposition of penalty also on the said addition. But we find in the penalty order u/s.271(1)(c) of the Act dated

13/06/2017 the Id. AO had levied the penalty on both the limbs i.e. for concealing the particulars of income or furnishing inaccurate particulars of income. During the penalty proceedings, the assessee had given an explanation that the said receipt of Rs.5,00,000/- pertain to receipt of loan from Saket Exim P Ltd and the same has been reflected in the statement of assets and liabilities of the assessee as on 31/03/2014 as loan received. Merely because the payer had treated the same as brokerage / commission in its books of accounts by reflecting the said transaction in Form 26AS, the same would not automatically become income in the form of brokerage / commission in the hands of the assessee. The Id. AO ought to have made corresponding verification with the said payer and brought evidences on record in support of his addition, which admittedly was not done in the instant case as is discernible from the assessment order. The Id. AO ignored all these submissions and proceeded to levy penalty u/s.271(1)(c) of the Act vide its order dated 13/06/2017 in the sum of Rs.1,20,153/- being 100% tax sought to be evaded on the addition of Rs.5,00,000/-. We find that the reliance placed by the Id. AR on the decision of Hon'ble Delhi High Court in the case of CIT vs. Vikas Promoters Pvt. Ltd., reported in 145 Taxman 300 is very well founded and is directly applicable to the facts of the case before us. The relevant head notes of the said decision are reproduced hereunder for the sake of brevity:-

*“Section 271(1)(c) of the Income-tax Act, 1961 - Penalty - For concealment of income - Whether provisions of section 271(1)(c) are penal in nature and thus, must be strictly construed and element of satisfaction recorded by concerned authorities should be apparent from order itself and it is not for Courts to go into minds of authorities or trace reasons from files of such authorities - Held, yes - Tribunal set aside order of Assessing Officer imposing penalty under section 271(1)(c) on ground that there was no satisfaction recorded by concerned authorities and that assessee had disclosed all material facts while filing its returns and it was not a case of furnishing inaccurate particulars from which it could be inferred that*

*assessee had concealed its income -Whether appeal against impugned order was without any merit and was to be dismissed - Held, yes”*

3.1. Respectfully following the said decision, we hold that this is not a fit case for levy of penalty u/s.271(1)(c) of the Act. Accordingly, the ground raised by the assessee and the additional ground of the assessee deserves to be allowed.

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

Order pronounced in the open court on this 14/02/2020

**Sd/-**  
**(C.N. PRASAD)**  
**JUDICIAL MEMBER**

Mumbai; Dated  
KARUNA, *sr.ps*

**Sd/-**  
**(M.BALAGANESH)**  
**ACCOUNTANT MEMBER**

14/02/ 2020

**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.

//True Copy//

BY ORDER,

(Asstt. Registrar)  
ITAT, Mumbai