



ITA No.4670-73/Mum/2018
Assessment Years :2006-07 to 2009-10
Ramesh Kumar Jain

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

माननीय श्री महावीर सिंह, उपाध्यक्ष एवं
माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।
BEFORE HON’BLE SHRI MAHAVIR SINGH, VP AND
HON’BLE SHRI MANOJ KUMAR AGGARWAL, AM

आयकर अपील सं./ I.T.A. No.4670/Mum/2018
(निर्धारण वर्ष / Assessment Year: 2006-07)

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आयकर अपील सं./ I.T.A. No.4671/Mum/2018
(निर्धारण वर्ष / Assessment Year: 2007-08)

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आयकर अपील सं./ I.T.A. No.4672/Mum/2018
(निर्धारण वर्ष / Assessment Year: 2008-09)

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आयकर अपील सं./ I.T.A. No.4673/Mum/2018
(निर्धारण वर्ष / Assessment Year: 2009-10)

Ramesh Kumar Jain Flat No.702, 13A Jai Siddhi Vinayak Building Adeshar Dady Street Cross Lane, C.P. Tank Road Mumbai- 400 004.	बनाम/ Vs.	ACIT-Central Circle 1(2) Old CGO Building Annexure 7 th Floor M.K.Marg Mumbai- 400 020.
स्थायी लेखा सं./जी आइ आर सं./PAN/GIR No. ADAPJ-5347-C		
(पीलार्थी/ Appellant)	:	(प्रत्यर्थी/ Respondent)

Assessee by	:	Shri V.K. Tulsian-Ld.AR
Revenue by	:	Shri Jayant Jhaveri- Ld. CIT- DR

सुनवाई की तारीख/ Date of Hearing	:	06/02/2020
घोषणा की तारीख / Date of Pronouncement	:	19/02/2020



आदेश / ORDER

Per Bench

1.1 Aforesaid appeals by assessee for Assessment Years [in short referred to as 'AY'] 2006-07 to 2009-10 contest common order of Ld. Commissioner of Income-Tax (Appeals)-47, Mumbai, [in short referred to as 'CIT(A)'] *qua* confirmation of penalty u/s 271(1)(c). Since impugned order is common order for all the years, the appeals were heard together and are now being disposed-off by way of this common order for the sake of convenience and brevity. It is admitted position that adjudication in any one year shall apply to other years also.

1.2 In the above background, the grounds raised by the assessee in AY 2006-07 read as under: -

1. Whether the CIT(A) was justified by deciding the appeal without affording a reasonable opportunity of being heard.
2. Whether the CIT(A) was justified by upholding the Penalty order passed u/s 271(1)(c) which is neither only contrary to law but also beyond the order of Hon'ble ITAT on the quantum Appeal, void ab-initio because it was beyond the jurisdiction.
3. Whether the CIT(A) was justified by upholding the A.O. exercise of assumption of jurisdiction U/S 271(1)(c) which all are based upon presumption of petty commission income at Adhoc basis.
4. Whether the CIT(A) was justified by upholding the penalty order despite the facts that decision on quantum by ITAT has clearly disregard the nature of Additions made which is on surmises basis even without any adverse material contrary to evidences already filed before A.O.
5. Whether the CIT(A) was justified by upholding the penalty order which is based on Adhoc basis commission income even without either collecting any evidence or examining the nature of evidence and its verification in terms of settled law.
6. The Ld. CIT(A) erred in confirming the penalty order without appreciating to that merits that the appellant had duly discharged his primary onus as called.

2. We have carefully heard the rival submissions and perused relevant material on record. Our adjudication to the subject matter of the appeal would be as given in succeeding paragraphs.



3.1 Facts leading to imposition of penalty are that the assessee being resident individual was assessed for year under consideration u/s 153A r.w.s. 143(3) on 26/12/2011 wherein it was, *inter-alia*, saddled with estimated addition of 1.5% amounting to Rs.1,49,250/- against accommodation entries being provided to the other entities. It so happened that the assessee was subjected to search action u/s 132 on 07/10/2009 wherein certain cash and Jewellery was found and inventorized. It also transpired that the assessee actually managed and controlled the affairs of an entity namely *M/s Akruti Metals and Alloys Ltd.* for providing accommodation entries to various persons including *M/s ABG Shipyard Ltd.* After considering the factual matrix, Ld.AO estimated commission income against accommodation entries @1.5% which resulted into an addition of Rs.1,49,250/- in the hands of the assessee. Consequently, penalty proceedings u/s 271(1)(c) were initiated in the assessment order.

3.2 In the meantime, the matter of estimation of commission income reached up-to the level of this Tribunal vide ITA Nos. 3512/Mum/2013 & ors. Dated 22/04/2015 which is common order for AYs 2004-05 to 2010-11. The net commission income was estimated by the Tribunal @0.10% which reduced the additions to Rs.9,950/-. The Ld. AO, after considering this decision, levied penalty u/s 271(1)(c) for Rs.3,045/- vide penalty order dated 30/12/2015. The Ld. CIT(A), observing that the assessee could not discharge the onus to establish that it acted in a bona-fide manner in terms of Section 271(1)(c) read with clause (B) of



Explanation-1, confirmed the penalty. Aggrieved, the assessee is under further appeal before us.

4. From the facts as enumerated hereinabove, it emerges that Ld. AO made estimated addition of 1.5% in the hands of the assessee which was substantially reduced to 0.10% by the Tribunal. The range of estimation would reveal that the additions were merely estimated additions. However, the levy of penalty, in our opinion, would not be automatic and there should be some cogent material on record to establish that the assessee indulged in deliberate concealment of income. Further, the estimations were primarily made on the basis of statement given by the parties during search proceedings. Another factor which lead us to strike down the impugned penalty would be the fact that Ld. AO, while passing penalty order, has invoked both the limbs of Section 271(1)(c) which is evident from following observations given in the penalty order: -

“.....the assessee has willfully reduced its incidence of taxation and has thereby concealed its income as well as furnished inaccurate particulars thereof.....”

Both the stated limbs, as per settled legal position, carry different connotations and operate differently. It was obligatory on the part of Ld. AO to frame specific charge against the assessee before levying penalty. The failure to do the same would render the penalty null and void in the eyes of law. Therefore, the factual matrix does not convince us to confirm the impugned penalty. By deleting the same, we allow the appeal.



ITA No.4670-73/Mum/2018
Assessment Years :2006-07 to 2009-10
Ramesh Kumar Jain

ITA No.4671-73/Mum/2018, AYs 2007-08 to 2009-10

5. Facts are pari-materia the same in these years. The assessee has been saddled with penalty of Rs.1.46 Lacs for AY 2007-08, Rs.2.55 Lacs for AY 2008-09 & Rs.0.10 Lacs for AY 2009-10, on similar factual matrix. The penalty order as well as impugned order is, more or less, on similar lines. Therefore, following the view taken in AY 2006-07, we delete the penalty for all these years.

Conclusion

6. All the appeal stands allowed in terms of our above order.

Order pronounced in the open court on 19th February, 2020.

Sd/-

(Mahavir Singh)

उपाध्यक्ष / **Vice President**

Sd/-

(Manoj Kumar Aggarwal)

लेखा सदस्य / **Accountant Member**

मुंबई Mumbai; दिनांक Dated : 19/02/2020
Sr.PS, Jaisy Varghese

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT– concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकरअपीलीयअधिकरण, मुंबई / ITAT, Mumbai.