



ITA No.3368/Mum/2019
Tulsidas Khimji Private Limited
Assessment Year-2014-15

आयकर अपीलीय अधिकरण "ई" न्यायपीठ मुंबई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
"E" BENCH, MUMBAI

माननीय श्री विकास अवस्थी, न्यायिक सदस्य एवं
माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।
BEFORE HON'BLE SHRI VIKAS AWASTHY, JM AND
HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM
(Hearing through video conferencing mode)

आयकर अपीलसं./ I.T.A. No.3368/Mum/2019
(निर्धारणवर्ष / Assessment Year:2014-15)

M/s. Tulsidas Khimji Private Limited 2 nd Floor, Islam Building 46 Veer Nariman Road, Fort Mumbai-400 001.	बनाम/ Vs.	ACIT-Circle - 2(3)(1) 5 th Floor, Room No.552 Aaykar Bhavan Mumbai- 400 020.
स्थायी लेखासं./जी आइ आर सं./PAN/GIR No. AA ACT-4123-G		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थीकी ओरसे/ Appellant by	:	None
प्रत्यर्थीकी ओरसे/ Respondent by	:	Shri Amit Pratap Singh-Ld. DR

सुनवाईकी तारीख/ Date of Hearing	:	21/09/2020
घोषणाकी तारीख / Date of Pronouncement	:	21/09/2020

आदेश / O R D E R

Manoj Kumar Aggarwal (Accountant Member): -

1. Aforesaid appeal by assessee for Assessment Year [in short referred to as 'AY'] 2014-15 contest levy of penalty u/s 271(1)(c) as confirmed by Ld. Commissioner of Income-Tax (Appeals)-6, Mumbai, [in short referred to as 'CIT(A)'] vide Appeal No. CIT(A)-



6/IT-14/2017-18 order dated 30/04/2019. The grounds raised by the assessee read as under: -

- 1.1 The Ld. CIT(A) erred in confirming the action of the AO by levying penalty u/s.271(1)(c) of the Income Tax Act, 1961 with regard to Income mismatch as per 26AS and as per the books of Account.
- 1.2 While doing so he failed to appreciate that
 - (i) the said penalty was levied by the AO on an erroneous understanding of law which was confirmed by the CIT(A) without according any independent reasoning whatsoever.
- 1.3 It is submitted that in the facts and circumstances of the case and in law no such penalty was called for.

Though during course of hearing none appeared for assessee, however, we find that factual matrix as narrated in the orders of lower authorities is quite adequate to adjudicate this appeal. Therefore, the matter was proceeded further with the assistance of Ld. DR, Shri Amit Pratap Singh, who contended that penalty was justified.

2.1 Facts leading to imposition of penalty are that while framing an assessment u/s 143(3) for year under consideration, an addition of Rs.9,79,921/- was made to the income of the assessee owing to mismatch in income as per books vis-à-vis income as reported in Form 26AS. The assessee submitted that it was engaged as clearing and forwarding agent and there would be numerous clients who deduct TDS on many occasions but would deposit the tax after filing of the tax return by the assessee. But finding the explanation to be not tenable, the aforesaid difference was added to the income of the assessee.

2.2 Consequently, penalty proceedings were initiated in the quantum assessment order and show-cause notice for levy of



penalty was issued. Although the assessee explained various factors which would give rise to mismatch in income as per books vis-à-vis income as reported in Form 26AS, the same could not convince Ld. AO and the assessee was saddled with penalty of Rs.3,02,800/- u/s 271(1)(c) vide order dated 28/06/2017. Though, the assessee contested the penalty before Ld. first appellate authority, however, the same was confirmed vide appellate order dated 30/04/2019 against which the assessee is in further appeal before us.

2.3 While contesting penalty before Ld. CIT(A), the assessee tabulated as well as explained the party-wise differences giving rise to mismatch in Form No. 26AS. The submissions are extracted on page 4 & 5 of the impugned order, which we have carefully perused. On the strength of the same, the assessee raised a plea to delete the quantum additions also. However, Ld. CIT(A) opined that no cognizance of the reconciliation could be taken since the appeal was against the proceedings u/s 271(1)(c) and not against the quantum proceedings. The assessee's another contention that tax was paid on the basis of Book Profit u/s 115JB was also rejected since as per quantum order, the mismatch difference was added while computing Book Profits u/s 115JB also. Finally, the action of Ld. AO in imposing the penalty was upheld. Aggrieved, the assessee is in further appeal before us.

4. Upon careful consideration of orders of lower authorities, it is quite evident from assessee's submissions (as extracted on page



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nos. 4 & 5 of the impugned order) that the assessee was successful in reconciling the mismatch difference. The mismatch arose due to difference in revenue recognition policy as followed by the assessee vis-à-vis assessee's customers. In some cases, the income was already offered by the assessee in earlier years. To substantiate the submissions, customers' ledger extracts were also enclosed. Therefore, there could be no occasion to conclude that the assessee furnished inaccurate particulars of income or concealed the income so as to attract the penalty u/s 271(1)(c). Simply because the assessee did not contest the quantum additions any further, the said fact alone could not be a good ground to confirm the penalty against the assessee. It was not a case that no explanation was furnished by the assessee or the explanation furnished was not bona-fide. The assessment proceedings as well as penalty proceedings are separate proceedings and the assessee could assail the penalty by challenging the quantum additions itself, though not separately challenged. The given factual matrix does not convince us to confirm the penalty against the assessee. Therefore, by deleting the same, we allow the appeal.

5. The appeal stands allowed in terms of our above order.

Order pronounced on 21st September, 2020.

Sd/-
(Vikas Awasthy)
न्यायिक सदस्य / **Judicial Member**

Sd/-
(Manoj Kumar Aggarwal)
लेखा सदस्य / **Accountant Member**



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मुंबई Mumbai; दिनांक Dated : 21/09/2020
Sr.PS:-Jaisy Varghese

आदेश की प्रतिलिपि ढ ग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त(अपील) / The CIT(A)
4. आयकर आयुक्त/ CIT– concerned
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

आदेशानुसार/ BY ORDER,

**उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai.**