

THE INCOME TAX APPELLATE TRIBUNAL
"D" Bench, Mumbai
Shri Shamim Yahya (AM) & Shri Pavan Kumar Gadale (JM)

I.T.A. No. 4734/Mum/2018 (Assessment Year 2015-16)

Shri Rajiv Makhanlal Mattoo 301, Utsav Plot No. 520 12 th Subhash Nagar, Kurla-E Mumbai-400 071. PAN : AAJPM7942A (Appellant)	Vs.	DCIT CC-5(1) Room No. 1928 19 th Floor Air India Building Nariman Point Mumbai-400 021. (Respondent)
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Assessee by	Shri Prateek Jain
Department by	Shri Akhtar Ansari
Date of Hearing	14.09.2020
Date of Pronouncement	24.09.2020

ORDER

Per Shamim Yahya (AM) :-

This appeal by the assessee is directed against the order of learned CIT(A) dated 25.5.2018 for A.Y. 2015-16.

2. Grounds of appeal read as under :-

“On the facts and circumstances of the appellant's case and in law the Ld Commissioner of Income Tax (Appeals) erred in confirming the action of Ld. Assessing Officer's in imposing penalty of Rs.2,53,782/- by invoking provisions of section 271AAB(l)(c) of the Income Tax Act, 1961.”

3. Brief facts of the case a search and seizure action u/s. 132(1) of the Income Tax Act, 1961 was conducted on Gandhar Oil Refinery India Limited Group on 11-11-2014. In the course of search proceedings in the case of the appellant, cash of Rs.8,45,940/- was found at the residence of the assessee. The assessee claimed that a part of cash may be belonging to his mother and daughter though he could not give any such details. In the absence of satisfactory explanation regarding the source of cash found from his residence, cash of Rs.7,00,000/- was seized leaving a balance of Rs.1,45,940/- for meeting the day to day household expenses. In the assessment proceedings,

explanation was once again called. In the assessment proceedings, it was explained that the cash belonged to his mother and daughter. The cash was kept at his residence for the purpose of marriage of his daughter scheduled on 05-12-2014. The AO observed that there was no cogent evidence to explain the source of cash at his residence. There was no evidence to show that such huge cash belonging to his mother and daughter. No bank statement was furnished to show withdrawals of such cash. The AO treated the cash found of Rs.8,45,940/- as unexplained money u/s.69A of the Act and made the addition to the returned income. In the assessment order dated 30-11-2016, penalty proceedings was initiated u/s.271AA(1)(c) of the Act. No appeal was filed against the assessment order. The assessee explained that since the quantum addition was small, no further appeal was filed.

4. In the penalty proceedings the assessee was explained that source of cash found was explained in the statement recorded u/s. 132(4) that the cash belongs to his mother and daughter. The Assessing Officer did not make any inquiry from the mother or daughter and rejected the assessee's contention and levied penalty.

5. Before learned CIT(A) it was submitted that the assessee has been working for more than twenty years and is getting a handsome salary. The family members had received gifts in cash on various occasions and such cash was accumulated over the years. However, learned CIT(A) rejected this submission and confirmed the penalty.

6. Against this order assessee is in appeal before the ITAT.

7. We have heard both the counsel and perused the records. Upon careful consideration we find that cash found was duly stated in the statement recorded u/s. 132(4) that sum belonging to his mother and daughter and was accumulated on the occasion of his daughter's marriage. No inquiry whatsoever from mother or daughter was made and explanation was rejected. The assessee's claim that he has been working for more than twenty years and

is getting a handsome salary has also been rejected without any inquiry whatsoever. Out of the cash found, Rs. 1,45,940/- was not seized by the search party itself to meet day-today household expenses. That sum has also been computed for the purpose of levy of penalty in this case. Without any discussion about the assessee's level of income or any inquiry from his mother or daughter, assessee's explanation has been rejected. In our considered opinion the same is not at all warranted. Moreover, the conduct of the assessee is also not contumacious to warrant levy of penalty. In these circumstances, we set aside the orders of the authority below and delete the levy of penalty.

8. In the result, assessee's appeal stands allowed.

Order pronounced under Rule 34(4) of the ITAT Rules on 24.9.2020.

Sd/-
(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER

Mumbai; Dated : 24/09/2020

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai
6. Guard File.

//True Copy//

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BY ORDER,
(Assistant Registrar)
ITAT, Mumbai