

THE INCOME TAX APPELLATE TRIBUNAL
"SMC-I" Bench, Mumbai
Shri Shamim Yahya (AM)

I.T.A. No. 182/Mum/2019 (Assessment Year 2011-12)

Shri Pragnesh J. Patel 510, C. Bhakti Building Om Nagar, Andheri (E) Mumbai-400 099. PAN : AACPP0600R (Appellant)	Vs.	ITO Ward 21(1)(4) C-10, Pratyakshkar Bhavan, 6 th Floor Bandra Kurla Complex, Bandra E Mumbai-400 051. (Respondent)
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Assessee by	Ms. Dinkle Hriya
Department by	Shri Kailash Gaikwad
Date of Hearing	13.10.2020
Date of Pronouncement	15.10.2020

ORDER

This is an appeal by the assessee against the order of Learned Commissioner of Income Tax (Appeals) [in short learned CIT(A)] dated 15.10.2018 pertains to A.Y. 2011-12.

2. The grounds of appeal read as under :-

NATURAL JUSTICE

1.1 The Learned Commissioner of Income - tax (Appeals) - 53, Mumbai ["Ld. CIT (A)"] erred in passing the appellate order in breach of the principles of natural justice as much as:

- (i) Not proper, effective and fair opportunity was granted to the Appellant;
- (ii) The Appellant was prevented by bona fide reasons for not being able to represent before him.

1.2 It is submitted that, in the facts and the circumstances of the case, and in law, the order be held as bad in law.

WITHOUT PREJUDICE TO THE ABOVE

2.1 The Ld. CIT (A) erred in confirming the penalty levied by the A.O. u/s. 271 (1) (c) of the Income - tax Act, 1961 ["the Act"].

2.2 The Ld. CIT (A) failed to appreciate that the order passed by the A.O. and/or the penalty levied was bad and illegal as the necessary conditions for

initiating the penalty proceedings and the completion thereof were not fulfilled.

2.3 It is submitted that in the facts and the circumstances of the case, and in law, no such penalty was leviable.

OUT FURTHER PREJUDICE TO THE ABOVE

3.1 The Ld. CIT (A) erred in confirming the action of the A.O. in levying penalty of Rs. 1,38,3607- u/s. 271(1)(c) of the Act on the allegation of concealment of income and furnishing inaccurate particulars of income by the Appellant.

3.2 It is submitted that in the facts and the circumstances of the case, and in law, even on merits, no such penalty was leviable.

3. Brief facts of the case

The assessee is proprietor of M/s Shree Sai Graphics involved in the business of printing and stationery. In the assessment order u/s 143(3) dated 24.03.2014, additions on account of undisclosed income of Rs.3,37,732/- was made on account of difference between income offered and the details as per 26AS statement. Addition was also made in respect of undisclosed investment of Rs.1,23,480/-. Penalty proceedings were initiated. In the penalty proceedings, the assessee submitted that no income was concealed, that the mistake was due to clerical error and that the assessee decided not to file an appeal. That however there was no intention to conceal the income. That the assessee has booked less purchase bills which resulted in payment of higher income tax. That this was due to non receipt of purchase bills and clerical error, that purchase bills were not booked. The AO has narrated in the penalty order such differences, as follows :-

Name	As per 26AS	As per books	Difference
ETC Networks Ltd.	63,027	40,676	22,251
Abhudaya Bank	1,54,875	1,22,858	32,017
IDBI Bank	2,78,06,880	2,75,23,516	2,83,364
Total	2,80,24,782	2,76,87,050	3,37,732

In respect of the undisclosed investment in purchase, the Assessing Officer has noted that inquiries were conducted by obtaining information u/s 133(6) of the IT Act. In the case of M/s. Executive Paper Co., difference was found

amounting to Rs.1,23,480/-. That the assessee was following mercantile method of accounting and therefore accounts were maintained in such manner, and the difference was not a clerical mistake. Accordingly, the AO levied penalty which was computed at Rs.1,38,360/-.

4. Upon assessee's appeal learned CIT(A) noted the assessee's submission that the difference in the 26AS and the income offered of Rs.3,37,732/- was just a clerical error which is added in sales in the subsequent year. But in the interest of revenue, to avoid litigation and dispute, to buy peace of mind, no appeal was filed. That as regards, difference of purchase/expenses of Rs.1,23,480/-, it was stated that there was an accounting and clerical error and similar expenditure was filed. That it was reiterated that appellant had no intention to conceal any income and it had no malafide intention to avoid tax.

5. However, learned CIT(A) was not convinced. He held that the assessee should have reconciled the account and 26AS statement. Hence he confirmed the penalty.

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

7. I have heard both the counsel and perused the record. I note that addition in this case is a result of difference in booking of income as per assessee's books and that as per 26AS statement. Certain differences have also resulted from purchase reconciliation. Assessee has explained that those are result of clerical error. This explanation has been brushed aside. I note that when the amount is duly reflected in 26AS, there is no presumption that the assessee still wishes to conceal income. The nature of difference and the assessee explanation complement each other. In these facts assessee cannot be visited with the regour of penalty u/s. 271(1)(c) of the Act, in as much as assessee cannot be held guilty of submitting inaccurate particulars of income or concealment. Moreover the conduct of the assessee is not contumacious

warranting levy of penalty. Hence, I set aside the orders of the authorities below and direct that the penalty is deleted.

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

Order pronounced under Rule 34(4) of the ITAT Rules on 15.10.2020.

Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER

Mumbai; Dated : 15/10/2020

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//

BY ORDER,

(Assistant Registrar)
ITAT, Mumbai

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