

IN THE INCOME TAX APPELLATE TRIBUNAL "SMC" BENCH, MUMBAI
BEFORE SHRI D. KARUNAKARA RAO, ACCOUNTANT MEMBER
I.T.A. No.7488/M/2014 (Assessment Year: **2008-2009**)

Mrs. Meghna Arun Singit, 59, Rekha Kunj, R.A. Kidwai Road, King Circle, Mumbai – 400 019.	बनाम/ Vs.	ITO 17(2)(3), ITAT, 4 th Floor, Pratishta Bhavan, M.K. Road, Mumbai – 400 020.
स्थायी लेखा सं./PAN : AAJPS7201A		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी की ओर से / Appellant by	:	None
प्रत्यर्थी की ओर से/ Respondent by	:	Shri Somanath Ukkali, JCIT

सुनवाई की तारीख /Date of Hearing : 21.06.2016

घोषणा की तारीख /Date of Pronouncement : 22.08.2016

आदेश / ORDER

PER D. KARUNAKARA RAO, AM:

This appeal filed by the assessee on 16.12.2014 is against the order of the CIT (A)-29, Mumbai dated 9.10.2014 for the assessment year 2008-2009. In this appeal, assessee raised the following grounds which read as under:-

"1. *The Ld CIT (A) erred in upholding the action of AO in treating the appellant to be in default u/s 271(1)(c) of the Act and consequently erred in confirming the penalty of Rs. 10,02,705/-.*

1.1. *The Ld CIT (A) in confirming the penalty did not appreciate that the income of Rs.28,04,943/- (sic) on which the tax was deducted at source in respect of advance received against job charges during the year under appeal was offered to tax in the immediate succeeding year based on completion of job.*

1.2. *The Ld CIT (A) erred in holding "there is complete suppression of income on the part of the appellant."*

2. Briefly stated relevant facts of the case are that the assessee, who is an individual, filed the return of income declaring the total income of Rs. 7,34,856/-. Assessment was completed the u/s 147 r.w.s 143(3) of the Act and the assessed income was determined at Rs. 36,83,260/- which includes certain disallowances. During the assessment, AO observed that the assessee received job work receipts amounting to Rs. 28,94,843/- and the same was offered to tax in the AY 2009-2010. However, AO is of the opinion, the same should suffer tax in the year under

consideration ie 2008-2009. In the quantum proceedings, the claim of the assessee was approved and the receipts were subject to tax in the year under consideration. Further, AO levied penalty of Rs. 10,02,705/- u/s 271(1)(c) of the Act. On appeal, CIT (A) confirming the same. Aggrieved, assessee is in appeal before the Tribunal.

3. During the proceedings before the Tribunal, none appeared to represent the assessee's case. However, Ld DR for the Revenue fairly submitted that the issue under consideration is chargeability of the penalty when the year of taxation is the subject matter. In response to the Bench's query about the debatability of such issues, Ld DR for the Revenue fairly relied on the orders of the Revenue Authorities.

4. After hearing the Ld DR and on considering the submissions of the assessee as well as the contents of the orders of the Revenue Authorities, I am of the opinion that there is no concealment of income by the assessee as the said receipts are admittedly offered to tax in the next AY 2009-2010. The taxability of the same in the year under consideration, in my opinion, involves debate although the said issue is decided in favour of the Revenue in quantum proceedings. Therefore, I am of the considered view that no penalty should be levied on such income which involves debate *qua* the year of taxation. For this proposition, the decision of the ITAT, Mumbai in the case of DCIT vs. Otis Elevator Co (I) Ltd (27 ITR 3030) is relied wherein it was observed that *it is the case where the year of taxability of income was in dispute.....in such matters, penalty under section 271(1)(c) cannot be levied*. Considering the settled nature of the issue as well as respectfully following the said decision of the Tribunal and also following the principle of consistency, assessee gets relief and the penalty is deleted. Accordingly, grounds raised by the assessee are allowed.

5. In the result, appeal of the assessee is allowed.

Order pronounced in the open court on 22nd August, 2016.

Sd/-

(D. KARUNAKARA RAO)
ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक 22.8.2016
व.नि.स./ OKK, Sr. PS

आदेश की प्रतिलिपि अग्रेषित/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
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR,
ITAT, Mumbai
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

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