

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "H" MUMBAI**

**BEFORE SHRI MAHAVIR SINGH (VICE PRESIDENT) AND
SHRI N.K. PRADHAN (ACCOUNTANT MEMBER)**

**ITA No. 5256/MUM/2018
Assessment Year: 2005-06**

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**ITA No. 5257/MUM/2018
Assessment Year: 2006-07**

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**ITA No. 5258/MUM/2018
Assessment Year: 2007-08**

&

**ITA No. 5259/MUM/2018
Assessment Year: 2008-09**

&

**ITA No. 5260/MUM/2018
Assessment Year: 2009-10**

&

**ITA No. 5261/MUM/2018
Assessment Year: 2010-11**

&

**ITA No. 5262/MUM/2018
Assessment Year: 2011-12**

Shri Khushal Gianchandji Golecha,
458/68, 2nd floor, Room No. 28,
JKB Housing Society, Chira Bazar,
Mumbai-400002.

PAN No. AACPG4937G

Appellant

Vs. DCIT, Central Cir-5(1),
Aayakar Bhavan, Income
Tax Office Mumbai-400012.

Respondent

Assessee by : None
Revenue by : Mr. R. Bhoopathi, DR

Date of Hearing : 20/10/2020
Date of pronouncement : 21/10/2020

ORDER

PER BENCH

The captioned appeals filed by the assessee are directed against the order of the Commissioner of Income Tax (Appeals)-53, Mumbai and arise out of the penalty levied u/s 271(1)(c) of the Income Tax Act 1961 (the 'Act'). As common issues are involved, we are proceeding to dispose them off by this consolidated order for the sake of convenience. Though the case was fixed for hearing on 03.12.2019 and 19.10.2020, neither the assessee nor its authorized representative appeared before the Tribunal on the above dates. In view of the non-compliance by the assessee, we proceed to dispose off these appeals after examining the materials available on record and after hearing the Ld. Departmental Representative (DR).

2. Briefly stated, the facts of the case are that a survey action was carried out u/s 133A on 13.09.2010 at Room No 39, 1st Floor, 142F Lal Bhaval Haveli Kandori Nagar CHS, Bhuleshwar Mumbai in the case of M/s Patel Ashok Kumar Mohanlal & Co. and couple of other premises. The survey was based on information that Angadiya services were being provided for transferring cash and valuables. On finding cash at these premises the survey action was converted into search action u/s 132 of the Act. During the course of search action, an amount of Rs.7.50 lakhs was seized from one Shri Navo Kumar Sasvan who worked as a security guard in M/s. Kanika Gems. He admitted that cash amounting to Rs.7.50 lakhs was given to him by the appellant, who was a proprietor of M/s Kanika Gems, to be delivered to the Angadiya firm M/s. Patel Ashok Kumar Mohanlal & Co. Since the appellant did not explain the source of cash and expressed ignorance, the cash was treated as unexplained

and seized in the hands of Shri Patel Ashok Kumar c/o M/s Patel Ashok Kumar Mohahal & Co. Notices u/s 153C were issued to the appellant. In these cases, the assessment u/s. 144 r.w.s. 153C of the Act was completed on 21-03-2013. In the assessment order, disallowances were made out of expenses claimed against commission income. The appellant had preferred appeal against the orders u/s. 144 r.w.s. 153C before the CIT(A). The Id.CIT(A) *vide* order dated 22-01-2016 in CIT(A)-53/DCCC-32/IT-67 to 73/13-14 for AYs 2005-06 to 2011-12 disposed off the appeals *ex-parte* and dismissed the appeals of the appellant. Penalty proceedings were initiated and since no submissions were filed, penalty orders were passed on 29.03.2017. In appeal, the Ld. CIT(A) confirmed the penalty levied by the AO.

3. The reason for dismissing the appeal by the Ld. CIT(A) is that there was no compliance by the assessee during the course of appellate proceedings before him. At para 4.3 of the impugned order, the Ld. CIT(A) has mentioned that :

“4.3 A letter was filed on 18.06.2018 on behalf of Shri Avesh Patel, CA enclosing letter of authority and seeking adjournment for AY 2008-09. He was informed that appeals are pending for AY 2005-06 to AY 2011-12, and that notice had been issued earlier too and to attend in person on 19.06.2018 at 1 am. Neither did Shri Patel attend nor any further response was received.”

Before us, the Ld. DR submits that as there is repeated non-compliance by the assessee, the order passed by the Ld. CIT(A) be confirmed.

4. We have heard the Ld. DR and perused the relevant materials on record. Having examined the notice for hearing issued by the Ld. CIT(A) on 13.04.2018; the report of the Inspector; again the notice dated 30.05.2018;

again the report of the Inspector and finally, fixing the case for hearing on 19.06.2018 at 1 am (it should be 19.06.2018 at 1 pm), we are of the considered view that another opportunity be given to the appellant and the case be decided on merit.

Therefore, we set aside the order of the Ld. CIT(A) and restore the matter to him to decide the appeal afresh on merit, after giving reasonable opportunity of being heard to the appellant. We direct the appellant to appear before the Ld. CIT(A) along with relevant documents/evidence on the date to be fixed for hearing.

5. In the result, the appeals are allowed for statistical purposes.

Sd/-

(MAHAVIR SINGH)
VICE PRESIDENT

Sd/-

(N.K. PRADHAN)
ACCOUNTANT MEMBER

Mumbai;
Dated: 21/10/2020
Rahul Sharma, Sr. P.S.

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,

(Dy/Asst. Registrar)
ITAT, Mumbai