

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

माननीय श्री शक्तिजी दे, न्यायिक सदस्य एवं
माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।
BEFORE HON'BLE SHRI SAKTIJIT DEY, JM AND
HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM
(Hearing Through Video Conferencing Mode)

आयकर अपील सं./ I.T.A. No.3806/Mum/2019
(निर्धारण वर्ष / Assessment Year: 2010-11)

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| ACIT-31(1) Room No.602, 6 th Floor Kautilya Bhawan BKC, Bandra (E) Mumbai – 400 051 | बनाम/ Vs. | M/s Amardeo Plastic Industries Gala No.1, Virwani Indl. Estate Western Express Highway Goregaon (E) Mumbai – 400 063 |
| PAN/GIR No. AAFA-3965-E | | |
| (अपीलार्थी/ Appellant) | : | (प्रत्यर्थी / Respondent) |

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| Assessee by | : | Shri Anuj Kisnadwala-Ld. AR |
| Revenue by | : | Shri Brajendra Kumar-Ld.-DR |

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| सुनवाई की तारीख/ Date of Hearing | : | 02/12/2020 |
| घोषणा की तारीख / Date of Pronouncement | : | 02/12/2020 |

आदेश / O R D E R

Manoj Kumar Aggarwal (Accountant Member)

1. By way of this appeal, the revenue contests the order of Ld. first appellate authority dated 26/02/2019 which has deleted the penalty of Rs.342 Lacs as levied by Ld. AO u/s 271(1)(c) vide order dated 28/03/2018. The assessment for the year under consideration was framed u/s 143(3) on 15/03/2013 wherein the assessee was saddled with certain additions under the head Capital Gains as well as under the head Income from House Property. Consequently penalty proceedings

were initiated on account of quantum addition which resulted into levy of impugned penalty of Rs.342 Lacs by Ld. AO vide order dated 28/03/2018. However, Ld. CIT(A) deleted the penalty, inter-alia, by observing that the issues were debatable one and the assessee had disclosed all material particulars of his income and there was no concealment of facts. Aggrieved by deletion of penalty, the revenue is in further appeal before us.

2. It is admitted position that besides the favorable order of Ld. CIT(A) on merits, the quantum additions against which the penalty was levied, came up for challenge by the assessee before this Tribunal vide ITA Nos.1874-75/Mum/2017 order dated 31/05/2019. A copy of the order is on record. Upon perusal of the same, it is quite evident that substantial additions of Rs.11.12 Crores were deleted by the Tribunal. There is nothing on record that the said order has been reversed subsequently, in any manner. Therefore, since the quantum addition stands deleted by the Tribunal, the penalty levied against those additions would not survive. For the said reason alone, the impugned order would not require any interference on our part, to that extent.

3. The only surviving addition against which penalty has been levied is addition of Rs.3.02 Lacs under the head Income from House Property. The assessee rented out Gala No.B-316 to an entity on monthly rent of Rs.5000/-. However, Gala No. B-317 was also given on rent by the assessee at monthly rent of Rs.36,000/-. The assessee explained that Gala No.B-316 was given on rent since 1984 whereas the other gala was rented out in the year 2009-10 at higher rent. However, rejecting the same, Ld. AO adopting the new rates, computed additional income of Rs.3.02 Lacs and added the same to the income of the assessee and

levied penalty against the same. The Ld. CIT(A) deleted the penalty by observing that penalty could not be levied for addition of notional income. Aggrieved, the revenue is in further appeal before us.

4. Upon due consideration, going by the factual matrix of the additions, we concur with the stand of Ld. CIT(A) in deleting the penalty. It is quite evident that the addition has been made merely on notional basis. However, there was full disclosure of income earned by the assessee. Therefore, the penalty against the notional additions so made could not be sustained.

5. In nutshell, the appeal stands dismissed.

Order pronounced on 02nd December, 2020.

Sd/-

Sd/-

(Saktijit Dey)

(Manoj Kumar Aggarwal)

न्यायिक सदस्य / **Judicial Member**

लेखा सदस्य / **Accountant Member**

मुंबई Mumbai; दिनांक Dated : 02/12/2020

Sr.PS:-Jaisy Varghese

आदेश की प्रतिलिपि □ प्रेषित/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.**