

**IN THE INCOME TAX APPELLATE TRIBUNAL
“E” BENCH, MUMBAI**

**BEFORE SHRI RAJESH KUMAR, ACCOUNTANT MEMBER &
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER**

**ITA No. 4894/Mum/2018
(Assessment Years: 2005-06)**

Taruna Kataria Flat No. 404, Bule Heaven CHS Ltd., J.N. Road, Vakola, Santacruz (E), Mumbai.	बनाम/ Vs.	ITO 19(2)(2) Mumbai.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : ACGPK7391G		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी ओर से/ Appellant by :	Shri Bhavesh P. Shah
प्रत्यर्थी की ओर से/Respondent by :	Shri Amit Pratap Singh, DR

सुनवाई की तारीख / Date of Hearing	20/10/2020
घोषणा की तारीख /Date of Pronouncement	21/10/2020

आदेश / O R D E R

PER PAVAN KUMAR GADALE - JM:

The assessee has filed the appeal against the order of the Ld. Commissioner of Income Tax (Appeals)-34, Mumbai passed u/s 271(1)(c) and 250 of the Income Tax Act, 1961. The assessee has raised the following grounds of appeal:

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“1.a The Ld. CIT(A) erred in confirming the penalty u/s 271(1)(c) of the Act of Rs. 5,58,990/- as unexplained investments.

b. The Ld. CIT (A) failed to appreciate that appellant has submitted full details of long term capital gain i.e. sales bills, demat statements, broker notes, purchase bills etc.

c. The Ld. CIT(A) ought to have appreciate that appellant has filed appeal before ITAT and partly hearing completed, hence quantum is still not fixed.

d. The Ld. CIT(A) ought to have appreciate that appellant has filed appeal before ITAT and partly hearing completed, hence quantum is still not fixed.

2. The Ld. CIT(A) not considering that A.O has not given opportunity to the appellant before levying the penalty.

3. The learned reserve the right to add, alter or amend any ground of appeal”.

2. At the time of hearing, the LdAR submitted that the quantum appeal for the said assessment year was allowed by the Hon’ble Tribunal in ITA No. 584/Mum/2013 vide order dated 05.09.2019 and referred to the copy of ITAT order. Hence, the penalty levied shall not be sustained. Contra, the Ld. DR accepted the fact of relief allowed to the assessee by the Hon’ble Tribunal.

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4. We heard the rival submissions and perused the material on record. On perusal of the facts as envisaged by the Ld AR and supported by the order of the Hon'ble Tribunal dated 05.09.2019 in allowing the quantum appeal of the assessee. The penalty levied by the A.O and confirmed by the CIT(A) cannot be sustained. Accordingly, we set aside the order of the CIT(A) and allow the grounds of appeal of the assessee.

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

Order pronounced in the open court on 21.10.2020

Sd/-

Sd/-

(RAJESH KUMAR)

(PAVAN KUMAR GADALE)

ACCOUNTANT MEMBER

JUDICIAL MEMBER

Mumbai, Dated 21/10/2020

KRK, PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / The CIT(A)
4. आयकर आयुक्त(अपील) / Concerned CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Asst. Registrar)
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Mumbai