



IN THE INCOME TAX APPELLATE TRIBUNAL

"F" BENCH, MUMBAI

BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER AND
SHRI MANOJ KUMAR AGGARWAL, ACCOUNTANT MEMBER

ITA no.2002/Mum./2018
(Assessment Year : 2009-10)

Shri Umesh A. Mishra
511, Building no.3
Dheeraj Vally Compound
Near Sai Baba Complex
Goregaon (E), Mumbai 400 063
PAN – AAGPM0190F

..... Appellant

v/s

Income Tax Officer
Ward-10(3)(3), Mumbai

..... Respondent

Assessee by : None
Revenue by : Shri Chintamni Dingankar

Date of Hearing – 24.11.2020

Date of Order – 04.12.2020

ORDER

PER SAKTIJIT DEY. J.M.

The aforesaid appeal has been filed by the assessee challenging the order dated 28th December 2017, passed by the learned Commissioner of Income Tax (Appeals)-17, Mumbai, confirming penalty of ₹ 7,05,430, imposed under section 271(1)(c) of the Income Tax Act, 1961 (for short "*the Act*") for the assessment year 2009-10.

2. When the appeal was called for hearing, no one was present on behalf of the assessee to represent the case. There is no application seeking adjournment either. Considering the nature of dispute, we proceed to dispose off the appeals ex-parte qua the assessee after hearing the learned Departmental Representative and on the basis of material available on record.

3. Brief facts are, the assessee is an individual. For the assessment year under dispute, the assessee filed his return of income on 13th November 2009, declaring total income of ₹ 8,62,822. While completing the assessment under section 143(3) of the Income Tax Act, 1961 (for short "*the Act*"), the Assessing Officer treated the agricultural income shown by the assessee as unexplained cash credit under section 68 of the Act and further, disallowed expenses claimed by the assessee. Such additions/disallowances by the Assessing Officer though was contested by the assessee, however, as it appears from the facts on record, the Tribunal vide order dated 26th July 2017, passed in ITA no.870/Mum./2014, sustained the addition. On the basis of the aforesaid additions, the Assessing Officer initiated proceedings for imposition of penalty under section 271(1)(c) of the Act alleging furnishing of inaccurate particulars of income and ultimately he passed an order imposing penalty of ₹ 7,05,430. The assessee challenged imposition of penalty before the first appellate authority.

4. Learned Commissioner (Appeals) by the impugned order confirmed the penalty imposed by the Assessing Officer.

5. We have heard the learned Departmental Representative and perused the material on record. The order passed by the learned Commissioner (Appeals) is not clear on certain facts. Though, in the cause title learned Commissioner (Appeals) has mentioned that no one appeared on behalf of the assessee, however, in Para-1 of his order, he has stated that learned Authorised Representative of the assessee appeared and filed submissions. From Para-3.1 of the appeal order, it appears that learned Commissioner (Appeals) has proceeded to decide the issue by referring to the statement of facts. Nowhere in the appeal order learned Commissioner (Appeals) has referred to the submissions made by the assessee in the course of appeal proceedings. Thus, prima facie, it appears that learned Commissioner (Appeals) neither has given reasonable opportunity of being heard to the assessee nor has considered the submissions made by the assessee. Further, though, from the penalty order passed under section 271(1)(c) of the Act, it is very much clear that the Assessing Officer has imposed penalty on the charge that the assessee has furnished inaccurate particulars of income, however, learned Commissioner (Appeals) has given a finding that the assessee has concealed the particulars of

income. Therefore, it is very much clear that the limb under which the Assessing Officer imposed penalty under section 271(1)(c) of the Act defers from the limb under which learned Commissioner (Appeals) has sustained imposition of penalty under section 271(1)(c) of the Act. It is not known whether the assessee was given an opportunity to explain whether the charge of concealment of income is justified or not. In view of the aforesaid, we are inclined to set aside the impugned order of learned Commissioner (Appeals) and restore the issue back to him for de novo adjudication after providing reasonable opportunity of being heard to the assessee. The grounds raised by the assessee are allowed for statistical purposes.

6. In the result, appeal is allowed for statistical purposes.

Order pronounced in the open court on 04.12.2020

Sd/-
MANOJ KUMAR AGGARWAL
ACCOUNTANT MEMBER

Sd/-
SAKTIJIT DEY
JUDICIAL MEMBER

MUMBAI, DATED: 04.12.2020

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The CIT(A);
- (4) The CIT, Mumbai City concerned;
- (5) The DR, ITAT, Mumbai;
- (6) Guard file.

Pradeep J. Chowdhury
Sr. Private Secretary

True Copy
By Order

Assistant Registrar
ITAT, Mumbai