

IN THE INCOME TAX APPELLATE TRIBUNAL “B” BENCH, MUMBAI

BEFORE SHRI M. BALAGANESH, AM AND SHRI AMARJIT SINGH, JM

आयकर अपील सं/ I.T.A. Nos. 5019 to 5023/Mum/2018

(निर्धारण वर्ष / Assessment Years: 2006-07 to 2010-11)

Shri Bhanwarlal M. Harsh A/2, 406, Runwal Plaza, Nr. Koresh India Vartak Nagar, Thane (W)-400606.	बनाम/ Vs.	DCIT, Central Circle 3(3) Mumabi.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AACPH5666F		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)
Assessee by:	None	
Revenue by:	Shri Rajendra Joshi (DR)	

सुनवाई की तारीख / Date of Hearing: 02/12/2020

घोषणा की तारीख /Date of Pronouncement: 18/12/2020

आदेश / ORDER

PER BENCH:

The assessee has filed the above mentioned appeals against the different order passed by the Commissioner of Income Tax (Appeals)-51, Mumbai [hereinafter referred to as the “CIT(A)”] relevant to the A.Ys. 2006-07 to 2010-11 in which the penalty levied by the AO has been ordered to be confirmed by the CIT(A).

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2. The assessee has filed the present appeal against the order dated 26.06.2018 passed by the Commissioner of Income Tax (Appeals)-51, Mumbai [hereinafter referred to as the “CIT(A)”] relevant to the A.Y.



2006-07 in which the penalty levied by the AO has been ordered to be confirmed.

3. The assessee has raised the following grounds: -

- “1. Under the facts and in law, the Hon’ble CIT(A) has erred in confirming the penalty of Rs.41,000/- levied under Section 271(1)(C).*
- 2. The Hon’ble CIT(A) failed to appreciate the fact that the Learned AO had failed to arrive at a satisfaction as whether penalty proceeding are initiated for concealment or furnishing inaccurate particulars of income, resulting in the whole penalty proceeding void ab initio.*
- 3. Your appellant craves leave to allow to add/alter/amend/withdraw any ground of appeal.”*

4. The brief facts of the case are that search and seizure action u/s 132 of the I. T. Act, 1961 was conducted on 25.08.2011 & 27.08.2011 in PPP Group of cases. The assessee was one of the persons belonging to this group. Notice u/s 153A of the Act was issued on 12.02.2013 which was served upon the assessee. In pursuance of notice u/s 153A of the Act, the assessee filed the return of income on 28.02.2013 admitting a total income of Rs.1,16,030/-. Notices u/s 143(2) & 142(1) of the Act were issued and served upon the assessee. The assessee filed the original return of loss on 23.03.2007 admitting total income of Rs.1.16.030/-. The assessee declared the business income of Rs.1,03,468/-, House Property Loss of Rs.3726 and Long Term Capital Gain of Rs.16,292/-. The assessee was engaged in the business of Trading in Cloth, Commission and Brokerage Income. The brief background of this case was that under search and seizure action was



taken against PPP Group of cases which comprised four persons including assessee Mr. Bhanwarlal M. Harsh and requisitions made u/s 133A which comprised Ten companies mentioned as under:-

S. No	Name of the concern	Directors/Proprietor
1	Ms. Reena Thakkar	Individual
2	Gopal B Harsh, S/o Shri Bhanwarlal M./ Harsh	Individual
3	Vijay Kumar Kheria Prop. Rohit Enterprises	Proprietor- M/s. Rohit Enterprises
4	Tej Corporate Service P. Ltd.	Shri Dinanath Yadav & Shri Pradeep Prajapati
5	Nahar Developers P. Ltd.	As in 1 above
6	Nakshtra Electricals and Engineers P. Ltd.	As in 1 above
7	Nova Corporate Services P. Ltd.	As in 1 above
8	Nupur Management Consultancy P. Ltd.	As in 1 above
9	Pantaloon Apparels P. Ltd.	As in 1 above
10	Tarana Advertising & Marketing Services P. Ltd.	As in 1 above
11	Tejaswini Multimedia P. Ltd.	As in 1 above
12	Tissot Management Consultancy P. Ltd	As in 1 above
13	Tiscon Sales Agency P. Ltd.	As in 1 above

The case of Shri Bhanwarlal M Harsh was covered u/s 153A of the Act who admitted about this fact to provide an accommodation entry. The statement of Shri Bhanwarlal M. Harsh was recorded. The expenses have been shown with M/s. Shriram Textile Mills to which no business was admitted by the assessee. No vouchers were produced, therefore, the expenses in sum of Rs.1,34,967/- was disallowed and added to the income of the assessee. The penalty



proceeding was initiated by issuance of notice. The AO levied the penalty to the tune of Rs.41,000/-. Feeling aggrieved, the assessee filed an appeal before the CIT(A) who confirmed the penalty, therefore, the assessee has filed the present appeal before us.

5. We have heard the argument advanced by the Ld. Representative of the revenue and have gone through the case carefully. Anyhow, it is a case of disallowance of expenses claimed by the assessee. Disallowance of claim nowhere leads to penalty in view of the decision of **PCIT Vs. Rasiklal M. Parikh, ITA No. 169 of 2017** and we also find support of the decision of Hon'ble Supreme Court in the case of **CIT Vs. Reliance Petroproducts Pvt. Ltd. (2010) 322 ITR 158 (SC)**. The Hon'ble Supreme Court in the case of **Reliance Petroproduct (supra)** has held that the *"A glance at the provision of section 271(1)(C) of the Income Tax Act, 1961, suggest that in order to be covered by it, there has to be concealment of the particulars of the income of the assessee. Secondly, the assessee must have furnished inaccurate particulars of his income. The meaning of the word "particulars" used in section 271 (1)'c,) would embrace the details of the claim made. Where no information given in the return is found to be incorrect or inaccurate, the assessee cannot be held guilty of furnishing inaccurate particulars. in order to expose the assessee to penalty, unless the case is strictly covered by the provision, the penalty provision cannot be invoked. liv no stretch of imagination can making an incorrect c/anti tantamount to furnish*



ink' inaccurate particulars. There can be no dispute that everything would depend upon the return filed by the assessee, because that is the only document where the assessee can furnish the particulars of his income. When such particulars are found to be inaccurate, the liability would arise. To attract penalty, the details supplied in the return must not be accurate, not exact or correct. not according to the truth or erroneous. Where there is no finding that any details supplied by the assessee in its return are found to be incorrect or erroneous or false there is no question of inviting the penalty under section 271(1)(c). A mere making of a claim, which is not sustainable in law, by itself, will not amount to furnish inaccurate particulars regarding the income of the assessee. Such a claim made in the return cannot amount to furnishing of inaccurate particulars."

6. In view of the said circumstances and by relying upon the decision in case of **PCIT Vs. Rasiklal M. Parikh, ITA No. 169 of 2017** and **CIT Vs. Reliance Petroproducts Pvt. Ltd. (2010) 322 ITR 158 (SC)**, we are of the view that the finding of the CIT(A) is not justifiable, therefore, we set aside the finding of the CIT(A) and delete the penalty.

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7. All the appeals are on similar ground containing similar facts of the case, therefore, the finding given above while deciding the appeal bearing ITA. No.5019/M/2018 is quite applicable to the facts of all



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cases as mutatis mutandis. Accordingly, we delete the penalty in these appeals also and allowed the appeals of the assessee.

8. In the result, the appeals filed by the assessee are hereby allowed.

Order pronounced in the open court on 18/12/2020

Sd/-

Sd/-

(M. BALAGANESH)

(AMARJIT SINGH)

लेखा सदस्य / ACCOUNTANT MEMBER

न्यायिक सदस्य/JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated : 18/12/2020

Vijay Pal Singh/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.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

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