

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

**BEFORE SHRI SAKTIJIT DEY (JUDICIAL MEMBER) AND
SHRI N.K. PRADHAN (ACCOUNTANT MEMBER)**

**ITA No. 1597/MUM/2019
Assessment Year: 2008-09**

Deputy Commissioner of
Income Tax-CC-7(3),
Room No. 655, 6th floor,
Aayakar Bhavan, M.K. Road,
Mumbai-400020.

Vs. Mrs. Kavita Singh,
2B, Swapnlok, L.J. Road,
Neapeansea Road,
Mumbai-400 006

Appellant

**PAN No. ANDPS 0896 C
Respondent**

Revenue by : Mr. Gurbinder Singh, DR
Assessee by : Ms. Shruti Desai, AR

Date of Hearing : 22/02/2021
Date of pronouncement : 02/03/2021

ORDER

PER N.K. PRADHAN, A.M.

This is an appeal filed by the Revenue. The relevant assessment year is 2008-09. The appeal is directed against the order of the Commissioner of Income Tax (Appeals)-49, Mumbai [in short 'CIT(A)'] and arises out of penalty levied u/s 271(1)(c) of the Income Tax Act 1961, (the 'Act').

2. The ground of appeal filed by the Revenue reads as under :

On the facts and circumstances of the case and in law, whether the Ld. CIT(A) was correct in deleting the penalty as levied by the AO; wherein the AO was satisfied that the assessee has concealed the particulars of income and furnished inaccurate

particulars in respect of investments in paintings and jewellery within the meaning of section 271(1)(c) and has allowed the appeal of the assessee considering only the fact that the notice was issued u/s 274 r.w.s. 271(1)(c)/271AAA of the I.T. Act.

3. Briefly stated, the facts of the case are that the Assessing Officer (AO) completed the assessment u/s 143(3) r.w.s. 153A on 30.12.2009. Addition of Rs.2,28,95,000/- on account of unexplained investment in paintings and Rs.41,81,027/- on account of unexplained jewellery was made by the AO. Later on, the AO levied a penalty of Rs.95,00,000/- u/s 271(1)(c) of the Act.

4. Aggrieved by the penalty levied by the AO, the assessee preferred an appeal before the Ld. CIT(A). We find that *vide* order dated 17.12.2018, the Ld. CIT(A) deleted the said penalty on merits by observing that :

“6.8 Even on merits, as could be seen from the facts and circumstances of the case, 98% of the additions have been deleted by the Hon'ble ITAT with regard to unexplained investment in paintings. With regard to the addition on account of investment in unexplained paintings, the Hon'ble ITAT has given relief to the tune of Rs.2,04,35,000/- and no penalty can be levied on this deletion made by the Hon'ble ITAT. What has been confirmed is only an investment to the tune of Rs.4,60,000/- for five paintings. Out of this, two paintings are very old, one of Naina Dalal costing Rs.3,00,000/- which was made in 1973 and the other of William Danial costing Rs.50,000/- which was made in 1843. The assessee is not expected to preserve the bills for such a long period. The addition has been confirmed in the absence of evidence from the assessee but this is not a case which would warrant levy of penalty either for concealment of income or for furnishing of inaccurate particulars. With regard to the addition on account of unexplained investment in jewellery, it has already been mentioned that the same has been restored to the file of the AO for re-adjudication. When the addition itself has been set aside, there is no case for levy of penalty on this addition.”

5. Before us, the Ld. Departmental Representative supports the order passed by the AO. On the other hand, the Ld. counsel for the assessee relies on the order of the Ld. CIT(A).

6. We have heard the rival submissions and perused the relevant materials on record. In the instant case, the Tribunal has deleted addition to the tune of Rs.2,04,35,000/- on account of unexplained investment in paintings. As recorded by the Ld. CIT(A), what has been confirmed is only an investment to the tune of Rs.4,60,000/- on five paintings. Out of this, two paintings are very old, one of Naina Dalal costing Rs.3,00,000/- which was made in 1973 and the other of William Danial costing Rs.50,000/- which was made in 1843. We concur with the observation of the Ld. CIT(A) that “the assessee is not expected to preserve the bills for such a long period.” With regard to addition on account of unexplained investment in jewellery, we find that the same has been restored to the file of the AO for adjudication. In such a scenario, the Ld. CIT(A) has rightly deleted the penalty levied by the AO. We affirm the order of the Ld. CIT(A).

7. In the result, the appeal filed by the Revenue is dismissed.

Order pronounced in the open Court on 02/03/2021.

Sd/-
(SAKTIJIT DEY)
JUDICIAL MEMBER

Sd/-
(N.K. PRADHAN)
ACCOUNTANT MEMBER

Mumbai;
Dated: 02/03/2021
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./Assistant Registrar)
ITAT, Mumbai