

**IN THE INCOME TAX APPELLATE TRIBUNAL (VIRTUAL COURT),
'D' BENCH MUMBAI**

**BEFORE: SHRI M.BALAGANESH, AM
&
SHRI PAVAN KUMAR GADALE, JM**

**ITA No.1174/Mum/2019
(Assessment Year :2014-15)**

M/s. Rasex Traders Private Limited 139C, Noman Mansion Kemps Corner, Near Shalimar Hotel Mumbai – 400 036	Vs.	The ACIT-5(3)(1) Mumbai
PAN/GIR No. AACCR9605B		
(Appellant)	..	(Respondent)

Assessee by	None
Revenue by	Shri Bharat Andhle
Date of Hearing	18/02/2021
Date of Pronouncement	08/03/2021

आदेश / ORDER

PER M. BALAGANESH (A.M.):

This appeal in ITA No.1174/Mum/2019 for A.Y.2014-15 arises out of the order by the Id. Commissioner of Income Tax (Appeals)-10, Mumbai in appeal No.CIT(A)-10, Mumbai/10021/2017-18 dated 21/12/2018 (Id. CIT(A) in short) in the matter of imposition of penalty u/s.271(1)(c) of the Income Tax Act, 1961 (hereinafter referred to as Act).

2. The only issue to be decided in this appeal is as to whether the Id. CIT(A) was justified in confirming the levy of penalty u/s.271(1)(c) of the Act in the sum of Rs.68,289/- in the facts and circumstances of the instant case.

3. None appeared on behalf of the assessee. We have heard the Id. DR and perused the materials available on record. We find that assessee is a company engaged in the business as commission agent of agricultural products and had filed its return of income for the A.Y.2014-15 on 30/11/2014 declaring total income of Rs.91,45,440/-. The assessment was completed u/s.143(3) of the Act determining total income of Rs.92,55,440/- making disallowance of donation of Rs.1,11,000/- after granting deduction u/s 80G of the Act in the assessment. We find that assessee had given donation to genuine trusts and Prime Minister's National Relief Fund etc., and had by oversight not disallowed the same in the computation of income while filing the return. It is a fact that assessee also did not claim deduction under 80G of the Act in the return. But the fact of incurrance of expenditure towards donation has been explicitly disclosed in the profit and loss account of the assessee. This donation of Rs.2,21,000/- was disallowed by the Id. AO in the assessment and deduction u/s.80G was granted to the tune of Rs.1,10,000/- and disallowance to the tune of Rs.1,11,000/- was made in the assessment. For this disallowance, the Id. AO levied penalty u/s.271(1)(c) of the Act for furnishing inaccurate particulars of income. We find that the fact of incurrance of donation had been duly disclosed separately in the profit and loss account of the assessee, which alone enabled the Id. AO to make disallowance in the assessment. It is not in dispute that the profit and loss account was filed along with the return of income. Hence, there was no other external information which the Id. AO had received enabling him to

make this disallowance. Hence, it tantamounts only to legitimate error committed by the assessee, which when pointed out, was rightly withdrawn by the assessee in the course of assessment proceedings. The genuineness of incurrance of such expenditure is not doubted by the Revenue. It is not in dispute that the assessee had also duly produced donation receipts before the Id. AO. Hence, we find that assessee's case squarely falls within the ratio decidendi laid down by the Hon'ble Apex Court in the case of Price Water House Coopers vs. CIT reported in 348 ITR 306 and Reliance Petro Chemicals Ltd., reported in 322 ITR 158. Respectively following the said decision, we have no hesitation in directing the Id. AO to delete the penalty levied in the sum of Rs.68,289/- in the facts and circumstances of the instant case. Accordingly, the ground raised by the assessee is allowed.

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

Order pronounced on 08/03/2021 by way of proper mentioning in the notice board.

Sd/-
(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Sd/-
(M.BALAGANESH)
ACCOUNTANT MEMBER

Mumbai; Dated 08/03/2021
KARUNA, *sr.ps*

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai