

IN THE INCOME TAX APPELLATE TRIBUNAL “D” BENCH, MUMBAI
BEFORE SHRI SHAMIM YAHYA, AM AND SHRI RAMLAL NEGI, JM

ITA Nos.4708/4709/Mum/2019
(Assessment Years: 2012-13 & 2013-14)

Dilip Shashikant Zaveri Room No. 606, Arun Chambera, Tardeo Main Road, Tardeo, Mumbai-400 034	Vs.	Income Tax Officer-18(1)(4)
PAN/GIR No. AAAPZ 0498 D		
(Appellant)	:	(Respondent)

Appellant by	:	None
Respondent by	:	Shri Bharat Andhle

Date of Hearing	:	08.03.2021
Date of Pronouncement	:	09.03.2021

ORDER

Per Shamim Yahya, A. M.:

These are appeals by the assessee against the order of the learned Commissioner of Income Tax (Appeals)-29, Mumbai ('Id.CIT(A) for short) dated 06.06.2019, wherein following penalty levied u/s. 271(l)(c) has been confirmed as under :

Assessment year	Amount of penalty
2012-13	Rs.62,418/-
2013-14	Rs.1,98,351/-

2. Brief facts of the case leading to the levy of penalty are that the assessee had filed his return of income for A.Y.s 2012-13 on 17.10.2012 declaring total income of Rs.19,60,750/-. Subsequently, the Assessing Officer received information from the office of Pr. Director of Income-tax (Inv)-1, Mumbai that the assessee has claimed deduction of Rs.2,00,000/- u/s.35AC as donation to Navjeevan Charitable Trust. Accordingly, notice u/s.148 was issued on 17.02.2016 and the case was re-opened u/s.147 of the Act. In view of the facts and the conclusive finding by the Income Tax Department in respect of the trust that it has not done any genuine charitable activities and only indulged in giving back the donation receipts in cash to donors after deduction of commission, the deduction

of Rs.2,00,000/- claimed u/s. 35AC of the act was disallowed and added to the income declared by the assessee and penalty proceeding u/s.271(1)(c) was initiated. In response to notice u/s. 271(1)(c) of the Act, the assessee furnished reply dated 31.01.2017 and 26.04.2017 stating that payment was made by cheques and the Navjeevan charitable Trust has given receipt to the assessee for the donation given to them. However, the A.O. was not satisfied with the reply submitted by the assessee as it is clear that the assessee being a beneficiary has also received back the cash from the Trust in lieu of the donation of Rs.2,00,000/- given to Navjivan Charitable Trust. It has further claimed a deduction of Rs.2,00,000/- u/s. 35 AC of the Act. Considering the facts of the case for furnishing inaccurate particulars of income the A.O. initiated penalty and after obtaining reply levied penalty of Rs.62,418/- being 100% of the tax sought to be evaded.

3. In the penalty order, the AO noted that the assessee has discussed various facts of the case and submitted various arguments in support of non-levying of penalty on this issue. In his reply, the assessee argued that the assessee made the payment through cheques and the Navjeen Charitable Trust has given stamp receipt to the assessee for the donation given to them. Therefore, the assessee has not furnished inaccurate particulars of income with a view to conceal his income for the A.Y. 2012-13. The assessee also relied upon various case laws in support of his argument wrt non levying of penalty.

4. However, he rejected by observing that documents were found in search without specifying them, which corroborated the donations were bogus.

5. Upon the assessee's appeal, the Id. CIT(A) confirmed the penalty.

6. Against this order, the assessee is in appeal before us.

7. We have heard the Id. Departmental Representative (DR) and perused the records. As clear from the facts of the case narrated above, the assessee has submitted all the documentary evidences in support of the claim of the donation. The claim has been rejected on the ground that a search in the recipient's premises has revealed that the said entity was providing accommodation entries. We find that addition in this regard doesn't *ipso facto* mean that assessee should be visited with the rigors of penalty u/s.271(1)(c).

The said penalty is levied when the assessee is guilty of furnishing inaccurate particulars of income or concealment. In the present case, we find that there is no document evidence to support this view. As a matter of fact, on many occasions, on similar circumstances, in quantum proceedings, the disallowance itself has been deleted. In our considered opinion, on the facts and circumstances of the case, the assessee cannot be said to have been guilty of concealment or furnishing of inaccurate particulars of income. In this regard, we draw support from the decision of a larger Bench of the Hon'ble Supreme Court comprising of three of their Lordships in the case of *Hindustan Steel Ltd. vs. State of Orissa* [1972] 83 ITR 26 (SC), wherein it was held that the authority may not levy the penalty, if the conduct of the assessee is not found to be contumacious.

8. In the background of aforesaid discussion and precedent, we set aside the order's of authorities below and delete the levy of penalty.

9. In the result assessee's appeals are allowed.

Order pronounced under rule 34(4) of the Income Tax (Appellate Tribunal) Rules, 1962, by placing the details on the notice board on 09.03.2021.

Sd/-
(Ram Lal Negi)
Judicial Member

Sd/-
(Shamim Yahya)
Accountant Member

Mumbai; Dated : 09.03.2021

Roshani, Sr. PS

Copy of the Order forwarded to :

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

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai