

IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "A", PUNE – VIRTUAL COURT

BEFORE SHRI R.S. SYAL, VICE PRESIDENT AND
SHRI S.S. VISWANETHRA RAVI, JUDICIAL MEMBER

ITA No.118/PUN/2018

निर्धारण वर्ष / Assessment Year : 2012-13

M/s. Yash Developers C/o Matoshri Educational Institute, Khupsarwadi, Jijau Nagar, Nanded PAN: AABFY1177B	Vs.	ITO, Ward 2, Nanded
Appellant		Respondent

Assessee by None
Revenue by Shri Vitthal Bhosale

Date of hearing 30-04-2021
Date of pronouncement 30-04-2021

आदेश / ORDER

This appeal by the assessee against the order dated 30.10.2017 passed by the CIT(A)-1, Aurangabad for the assessment year 2012-13.

2. We find no representation on behalf of the assessee nor filed any application seeking adjournment. The assessee called absent and set *ex-parte*. Therefore, we proceed to hear the Ld. DR and pass order on the basis of material evidence on record.

3. The only issue emerges from the grounds raised by the assessee is as to whether the Ld. CIT(A) is justified in confirming the penalty imposed by the Assessing Officer u/s. 271(1)(c) of the Act *ex-parte* of assessee in the facts and circumstances of the case.

4. Heard Ld. DR and perused the material available on record. We note that the assessee is a firm and filed return of income declaring total income at nil. On finding a defect in return of income, the Assessing Officer issued a defect notice to the assessee, but however, according to the Assessing Officer, there was no rectification by the assessee. As the matter being barred by limitation, the Assessing Officer issued notice u/s 148 of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') and in response to which the assessee filed return of income declaring total income of Rs.24,64,280/-. As it appears from the record, in the Survey conducted the partner of the assessee offered income of Rs.1,04,00,000/- for the year under consideration being on account of unexplained investment at Rs.74,00,000/- and profit @ 25% on receipts of Rs.1.20 crores. The assessment u/s. 144 r.w.s. 147 of the Act completed on 30.03.2016 *inter-alia*, making additions at

Rs.74,00,000/- and profit on receipts at Rs.16,59,288/-. Thereafter, the Assessing Officer initiated penalty proceedings for concealment of income. Upon considering submissions of assessee, the Assessing Officer imposed a sum of Rs.27,99,329/- u/s 271(1)(c) of the Act vide its order dated 28.09.2016.

5. Aggrieved by the order of imposing penalty by the Assessing Officer, the assessee challenged the same before the CIT(A) in first appellate proceedings. We note that the CIT(A) issued as many as six notices intimating the date of hearing to the assessee but however, in page 2 of the impugned order shows there was no appearance by the assessee to prosecute the grounds raised in the first appellant proceedings. The CIT(A) in the absence of assessee, proceeded to adjudicate the grounds and held the assessee failed to offer any credible explanation indicating the reason as to why the unexplained investment and undisclosed profits were not offered earlier, thereby, concealed the above stated amounts attributing to under-statement of income to the extent stated in the above said paragraphs, thereby, the CIT(A) confirmed the penalty imposed by the Assessing Officer u/s 271(1)(c) of the Act. As discussed

above, the additions made by the Assessing Officer in assessment proceedings completed in reopening of assessment proceedings were on account of unexplained investment and estimation of profits @ 25% on the receipts. In our opinion, it requires the assistance of assessee in support of its claims as noted earlier there was no opportunity to the assessee to prosecute the grounds raised before the CIT(A) in spite of issuance of notices by the CIT(A). Therefore, taking into consideration the facts and circumstances of the case and in the interest of justice, we deem it proper to remand the issue to the file of CIT(A) for fresh adjudication. The assessee is at liberty to file material evidence, if any, in support of its claim. Thus, grounds raised by the assessee are allowed for statistical purposes.

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

Order pronounced in the Open Court on 30th April, 2021.

Sd/-

(R.S.SYAL)

VICE PRESIDENT

पुणे Pune; दिनांक Dated : 30th April, 2021

GCVSR

Sd/-

(S.S. VISWANETHRA RAVI)

JUDICIAL MEMBER

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order is forwarded to:

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent;
3. The CIT(A)-1, Aurangabad
4. The Pr.CIT-1, Aurangabad
5. DR 'A', ITAT, Pune
6. गार्ड फाईल / Guard file

आदेशानुसार/ BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune

		Date	
1.	Draft dictated on	30-04-2021	Sr.PS
2.	Draft placed before author	30-04-2021	Sr.PS
3.	Draft proposed & placed before the second member		JM
4.	Draft discussed/approved by Second Member.		JM
5.	Approved Draft comes to the Sr.PS/PS		Sr.PS
6.	Kept for pronouncement on		Sr.PS
7.	Date of uploading order		Sr.PS
8.	File sent to the Bench Clerk		Sr.PS
9.	Date on which file goes to the Head Clerk		
10.	Date on which file goes to the A.R.		
11.	Date of dispatch of Order.		