

**IN THE INCOME TAX APPELLATE TRIBUNAL “F” BENCH, MUMBAI**

**BEFORE SHRI AMARJIT SINGH, JM AND SHRI MANOJ KUMAR  
AGGARWAL, AM**

आयकर अपील सं/ I.T.A. Nos. 3933 & 3934/Mum/2017

(निर्धारण वर्ष / Assessment Years: 2002-03 & 2003-04)

Jaya Baban Kadam 34/42 RSC-13, Gorai Link Road, Borivali (w) Mumbai- 400092.	<b>बनाम/</b> Vs.	Erstwhile ACIT 26(21), KG Mittal Hospital Bldg, 6 <sup>th</sup> Floor, R. No.610, Charni Road, Mumbai-400002.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : ABOPA3306A		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)
Assessee by:	Shri Rajesh Gupta (AR)	
Revenue by:	Shri Usha Gaikwad (DR)	

सुनवाई की तारीख / Date of Hearing: 17/12/2020

घोषणा की तारीख /Date of Pronouncement: 01/03/2021

**आदेश / O R D E R**

**PER AMARJIT SINGH (JM):**

The assessee has filed the above mentioned appeals against the order dated 14.03.2017 passed by the Commissioner of Income Tax (Appeals)-46, Mumbai [hereinafter referred to as the “CIT(A)”] relevant to the A.Ys. 2002-03 & 2003-04 in which the penalty levied by the AO has been ordered to be confirmed by the CIT(A).

**ITA. NO.3933/Mum/2017**

2. The assessee has filed the present appeal against the order dated 14.03.2017 passed by the Commissioner of Income Tax (Appeals)-46, Mumbai [hereinafter referred to as the “CIT(A)”] relevant to the A.Y.



2002-03 in which the penalty levied by the AO has been ordered to be confirmed.

**3.** The assessee has raised the following grounds: -

“1. On the facts and circumstances of the case, the Ld. CIT(A) erred in levying penalty u/s 271(1)(c) of the I. T. Act, on an amount of Rs.3,28,129/-.

2. On the facts and circumstances of the case, the Ld. CIT(A) erred in levying penalty even when the subject matter is in appeal.

3. On the facts and circumstances of the case, the Ld. CIT(A) erred in not accepting the cash flow which was accepted by the AO in his remand report.

4. On the facts and circumstances of the case, the Ld. CIT(A) erred in enhancing income by Rs.2,10,129 as short term capital gain and Rs.1,18,000/- as income from professional income.

5. The appellant craves leave to add, amend, alter and/or modify any of the above mentioned hereinabove.”

**4.** The brief facts of the case are that assessment order was passed u/s 143(3) of the Act. Against the assessment order, the assessee filed an appeal before the CIT(A) which was decided on 06.09.2016. The assessee has earned the professional income of Rs.1,18,000/- which was shown in the return of income. However, the same was shown in the own fund flow statement. The same was reflected as professional fees. The penalty proceeding was initiated and penalty in sum of Rs.1,00,407/- was levied. 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 parties and perused the record. We find that the Hon'ble ITAT has remanded the issue before the AO by virtue of order dated on 01.02.2019 bearing ITA. No.7591 to 7593/M/2016 for the A.Ys. 1997-98, 2002-03 & 2003-04, therefore, the penalty is not liable to leviable. Since the addition is not in existence and the issue has been restored to the AO, therefore, in the said circumstances, no penalty is leviable, hence, we set aside the finding of the CIT(A) on this issue and delete the penalty.

**ITA. No. 3934/Mum/2017**

**6.** The assessee has filed the present appeal against the order dated 14.03.2017 passed by the Commissioner of Income Tax (Appeals)-46, Mumbai [hereinafter referred to as the "CIT(A)"] relevant to the A.Y. 2003-04 in which the penalty levied by the AO has been ordered to be confirmed.

**7.** The assessee has raised the following grounds: -

“1. On the facts and circumstances of the case, the Ld. CIT(A) erred in levying penalty u/s 271(1)(c) of the I. T. Act, on an amount of Rs.85,000/-.

2. On the facts and circumstances of the case, the Ld. CIT(A) erred in not considering the fact that the assessee had voluntarily offered Rs.85,000/- as her professional income.



3. On the facts and circumstances of the case, the Ld. CIT(A) erred in not accepting the fact that it was an inadvertent error on the part of the AO in computing the same while completing the remand proceedings.

4. The appellant craves leave to add, amend, alter and/or modify any of the above mentioned hereinabove.”

**8.** The brief facts of the case are that the assessment u/s 143(3) was completed on 27.03.2006. Thereafter, the assessee filed the appeal before the CIT(A) which was decided on 06.09.2016. The assessee failed to reflect the professional fees in sum of Rs.85,000/-. However, the same was reflected in own fund statement. The penalty proceeding was initiated and penalty in sum of Rs.26,775/- was levied. 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.

**9.** We have heard the argument advanced by the Ld. Representative of the parties and perused the record. We find that the Hon'ble ITAT has remanded the issue before the AO by virtue of order dated on 01.02.2019 bearing ITA. No.7591 to 7593/M/2016 for the A.Ys. 1997-98, 2002-03 & 2003-04, therefore, the penalty is not liable to sustainable. Since the addition is not in existence and the matter of controversy has been restored to the AO, therefore, in the said circumstances, no penalty is leviable, hence we set aside the finding of the CIT(A) on this issue and delete the penalty.



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A.Ys. 2002-03 & 2003-04

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

Order pronounced in the open court on 01/03/2021

Sd/-

(**MANOJ KUMAR AGGARWAL**)

लेखा सदस्य / ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated : 01/03/2021

*Vijay Pal Singh/Sr. PS*

Sd/-

(**AMARJIT SINGH**)

न्यायिक सदस्य/JUDICIAL MEMBER

**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**