

IN THE INCOME TAX APPELLATE TRIBUNAL, 'D' MUMBAI

**BEFORE:SHRI M.BALAGANESH, ACCOUNTANT MEMBER
&
SHRI AMARJIT SINGH, JUDICIAL MEMBER**

**ITA No.3179/Mum/2019
(Assessment Year :2015-16)**

M/s. Madhav Engineers Pvt.Ltd., 204, Goyal Trade Centre Shanthivan, Borivali East Mumbai	Vs.	Dy. CIT Circle-12(3)(2) Mumbai
PAN/GIR No.AAFCM69731		
(Appellant)	..	(Respondent)

Assessee by	Shri Aditya Ramachandran
Revenue by	Shri Sanjay Sethi
Date of Hearing	01/02/2021
Date of Pronouncement	21/04/2021

आदेश / O R D E R

PER M. BALAGANESH (A.M):

This appeal in ITA No.3179/Mum/2019 for A.Y.2015-16 arises out of the order by the Id. Commissioner of Income Tax (Appeals)-20, Mumbai in appeal No.CIT(A)-20/IT-10405/2017-18 dated 29/03/2019 (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. CITA was justified in confirming the levy of penalty in the sum of

22,71,150/- u/s 271(1)(c) of the Act in the facts and circumstances of the case.

3. We have heard the rival submissions and perused the materials available on record. We find that the assessee had filed its return of income for the Asst year 2015-16 on 29.9.2015 declaring total income of Rs 3,72,87,290/-. In the return of income, the assessee claimed deduction of Rs 70 lacs u/s 35(1)(ii) of the Act at the rate of 175% of actual contribution made in the sum of Rs 40 lacs to School of Human Genetics and Population Health (SHGPH) . There was a survey u/s 133A of the Act on 27.1.2015 at the registered/administrative office of SHGPH and it was found that SHGPH through a network of brokers was engaged in the practice of issuing bogus receipts for donation for commission. This was alleged to have been done by SHGPH in connivance with donors, brokers and accommodation entry providers by indulging in an organized scheme of tax evasion. During the assessment proceedings of the assessee, the assessee withdrew this claim of weighted deduction u/s 35(1)(ii) of the Act in the sum of Rs 70 lacs. Accordingly, the same was added to the total income of the assessee by the Id AO while completing the assessment. The Id AO simultaneously initiated penalty proceedings u/s 271(1)(c) of the Act for the said addition. In response, the assessee submitted that it had full and true disclosure of all the facts pertaining to the said claim of deduction by furnishing all the requisite documents in support of its claim. It was pleaded that no falsity was found by the Id AO in the various documents furnished by the assessee. The only reason available with the Id AO was that the recognition given to SHGPH u/s 35(1)(ii) of the Act was withdrawn by the Board with retrospective effect. There was absolutely no evidence brought on record by the lower authorities that assessee had indulged in accommodation entry

transaction by indulging in organized scheme of tax evasion by getting back cash in the instant transaction of giving contribution to SHGPH. Despite this, the assessee had come forward to withdraw its claim of weighted deduction in order to purchase peace from the department , though the entire facts relating to the said claim of deduction was available in the return of income itself supported by various documents furnished during the course of assessment proceedings. The entire addition was sought to be made ultimately based on the evidences gathered in the course of survey proceedings u/s 133A of the Act carried out in the premises of SHGPH (donee institution) and statements recorded from their office bearers. No where in the said statements, the office bearers had even whispered the name of the assessee or payments given back to assessee in cash in lieu of contributions made by assessee to SHGPH. In any case, the Explanation to section 35(1)(ii) of the Act clearly supports the case of the assessee by categorically providing that the claim of deduction in the hands of the donor (i.e the assessee herein) cannot be disturbed under any circumstances even if the recognition of the donee institution has been withdrawn by the competent authority subsequently. The purpose of this Explanation is that the bonafide belief of the assessee (donor institution) at the time of making contributions should be respected and it cannot be faulted for the fraudulent acts, if any, committed by the donee institution. Despite this , the assessee had come forward to offer the said claim of weighted deduction by withdrawing the same during the course of assessment proceedings and had paid tax thereon. This proves the bonafide intent of the assessee, to purchase peace from the department and to avoid vexatious litigation in this regard. In our considered opinion, this intention of the assessee deserves to be accepted in toto. Hence this is not a fit case for levy of penalty u/s 271(1)(c) of the Act.

4. Moreover, we find that this issue on the levy of penalty on the very same addition was the subject matter of adjudication by this tribunal in the case of Sammy E Major vs ACIT in ITA No. 965/Mum/2019 dated 9.6.2020 for Asst Year 2013-14 wherein the penalty u/s 271(1)(c) of the Act was deleted. In the aforesaid case before this tribunal , the assessee therein made a similar claim of weighted deduction in the original return and later in the return filed in response to notice u/s 148 of the Act, he sought to withdrew the claim of weighted deduction. This tribunal had deleted the penalty u/s 271(1)(c) of the Act in such circumstances.

5. In view of our aforesaid observations in the facts and circumstances of the case and respectfully following the aforesaid judicial precedent, we have no hesitation in directing the Id AO to delete the penalty levied in the sum of Rs 22,71,150/- u/s 271(1)(c) of the Act. Accordingly, the grounds raised by the assessee are allowed.

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

Order pronounced on 21/04/2021 by way of proper mentioning in the notice board.

Sd/-
(AMARJIT SINGH)
JUDICIAL MEMBER

Sd/-
(M.BALAGANESH)
ACCOUNTANT MEMBER

Mumbai; Dated 21/04/2021
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