

**INCOME TAX APPELLATE TRIBUNAL
MUMBAI 'G' BENCH, MUMBAI**

**[Coram: Pramod Kumar (Vice President)
and Saktijit Dey (Judicial Member)]**

ITA No. 3364/Mum/2019
Assessment Year: 2012-13

Subhash Shah And Associates Architects Pvt. Ltd., **Appellant**
*02nd Floor, Lunant Mansion, 118/120, Mint Back Road,
Fort, Mumbai 400023[PAN: AAACS5218B]*

Vs.

Assistant Commissioner of Income Tax
Circle 2(3)(2), Mumbai **Respondent**

Appearances:

Dinkle Hariya *for the appellant*

Padmakumar C & Anand Mohan *for the respondent*

Date of concluding the hearing: : January 25, 2021

Date of pronouncement : April 15, 2021

O R D E R

Per Pramod Kumar, VP:

1. This appeal filed by the assessee is directed against the order dated 22nd April, 2019 passed by the learned CIT(A) in the matter of penalty u/s. 271(1)(c) of the Income Tax Act, for the assessment year 2012-13.

2. Grievances of the assessee as set out in the memorandum of appeal are as follows:

1 **NATURAL JUSTICE**

1.1 The Learned Commissioner of Income - tax (Appeals) - 6, Mumbai ["Ld. CIT (A)"] erred in passing the appellate order in breach of the principles of natural justice as much as:

- (i) Not proper, effective and fair opportunity was granted to the Appellant;
- (ii) The Appellant was prevented by bona fide reasons for not being able to represent before him.

1.2 It is submitted that, in the facts and the circumstances of the case, and in law, the order be held as bad in law.

2. **WITHOUT PREJUDICE TO THE ABOVE**

2.1 The Ld. CIT (A) erred in confirming the penalty levied by the A.O. u/s. 271 (1) (c) of the Income - tax Act, 1961 ["the Act"].

2.2 The Ld. CIT (A) failed to appreciate that the order passed by the A.O. and / or the penalty levied was bad and illegal as the necessary conditions for initiating the penalty proceedings and the completion thereof were not fulfilled.

2.3 It is submitted that in the facts and the circumstances of the case, and in law, no such penalty was leviable.

3. **WITHOUT FURTHER PREJUDICE TO THE ABOVE**

3.1 The Ld. CIT (A) erred in confirming the action of the A.O. in levying penalty u/s. 271 (1) (c) of the Act on the allegation of concealment of income with respect to undisclosed income [Rs. 1,77,426/-] and interest earned [Rs. 13,052/-].

3.2 It is submitted that in the facts and the circumstances of the case, and in law, even on merits, no such penalty was leviable.

3.3 Without prejudice to the above, the Ld. CIT (A) erred in confirming the action of the A.O. in levying penalty at 200% of tax sought to be evaded.

3. The short issue that we are required to adjudicate is whether or not learned CIT(A) was justified in confirming the imposition of penalty u/s 271(1)(c) at the rate of 200% of tax sought to be evaded in respect of alleged concealment of income for unaccounted professional fees of Rs. 1,77,426/- and on account of alleged undisclosed income in respect of interest earned amounting to Rs. 13,052/-.

4. Briefly stated the relevant material facts are like this. The assessee before us is a company engaged in the business as architects, valuers, designer and consultants. During the course of the scrutiny assessment proceedings and on basis of inputs received by the Assessing Officer on form 26AS vis-a-vis the TDS amount it was noticed that the assessee has understated his professional income by Rs. 1,77,426/- and his income from interest of fixed deposit by Rs. 13,052/-. When this information and the inputs available to the assessee at to the Assessing Officer were confronted to the assessee it was explained by the assessee that so far as the variation in professional fees is concerned there was a dispute with respect to one of the bills and the bill was finally settled in the assessment year 2013-14, wherein the assessee has duly disclosed that income. However the person making the payment deducted the tax at source accounted for the same in the assessment year 2012-13 itself. It was thus explained that there is no concealment of income but only the difference of the assessment year in which the income is disclosed. So far as the interest income set to be an undisclosed by the assessee of Rs. 13,052/- was concerned it was explained by the assessee that this is on

account of difference in the method of accounting employed by the assessee. In any case the amount was a very small amount and the entire income was dully disclosed an offered to tax in the subsequent assessment year. None of the submissions however, impressed the Assessing Officer the proceeded to impose the I.T. u/s. 271(1)(c) he proceeded at this alleged undisclosed income to the income returned by the assessee and the Assessing Officer also imposed and I.T u/s. 271(1)(c) in respect of these two items while doing so the Assessing Officer impose the penalty at the rate of 200% of tax sought to be evaded. Aggrieved assessee carried the in appeal before the CIT(A) but without success learned CIT(A) confirm the penalty in respect of these two items. The assessee is not satisfied and is in further appeal before us.

5. We have heard the rival contentions, perused the material on record and duly considered facts of the case in the light of the applicable legal position.

6. We find that the impugned penalty has been levied in respect of two items of alleged undisclosed income namely professional fees and the interest income but it is not in disputed that what has been treated as alleged undisclosed income has already been offered to tax by the assessee himself in the immediately succeeding assessment year. There is thus no question of concealment of income. If at all there is a dispute of controversy that is with regard to the year in which the income in question is to be taxed. We have also noted that in respect of both these items the assessee has the reasonable explanation for disclosing these two small components of income in the immediately succeeding year and that the bonafides of these explanations are not even in dispute. In our considered view the explanation offered by the assessee is a reasonable explanation and therefore in view of the said explanation, as also bearing in mind entirety of case, it could not be said that it is a fit case for imposition of penalty. We are therefore of the considered view that the impugned penalty must be deleted. We accordingly direct so. The assessee gets relief accordingly.

7. In the result, the appeal is allowed in the terms indicated above. Pronounced in the open court today on the 15 day of April 2021.

Sd/-
Saktijit Dey
(Judicial Member)

Sd/-
Pramod Kumar
(Vice President)

Mumbai, dated the 15th day of April 2021.

Copies to: (1) *The Applicant* (2) *The respondent*
 (3) *CIT* (4) *CIT(A)*
 (5) *DR* (6) *Guard File*

By order

Assistant Registrar
Income Tax Appellate Tribunal
Mumbai benches, Mumbai