

**आयकर अपीलीय अधिकरण “एफ” न्यायपीठ मुंबई में।**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**“F” BENCH, MUMBAI**

**माननीय श्री शक्तिजी दे, न्यायिक सदस्य एवं**  
**माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।**  
**BEFORE HON’BLE SHRI SAKTIJIT DEY, JM AND**  
**HON’BLE SHRI MANOJ KUMAR AGGARWAL, AM**  
**(Hearing Through Video Conferencing Mode)**

आयकर अपील सं./ I.T.A. No.5912/Mum/2018  
(निर्धारण वर्ष / Assessment Year: 2014-15)

<b>Shri Vijay P. Manjrekar</b> Flat No.201, BMC Employees Parimal CHS Ltd. Shimpoli Road, Shimpoli Borivali West, Mumbai – 400 092	<b>बनाम/ Vs.</b>	<b>ITO-25(1)(4)</b> Mumbai – 400 020.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No. <b>ALHPM-1352-K</b>		
(पीलार्थी/ <b>Appellant</b> )	:	(प्रत्यर्थी / <b>Respondent</b> )

<b>Assessee by</b>	:	Shri K.K.Lalkaka-Ld. AR
<b>Revenue by</b>	:	Ms. Usha Gaikwad– Ld. Sr. DR

सुनवाई की तारीख/ <b>Date of Hearing</b>	:	19/05/2021
घोषणा की तारीख / <b>Date of Pronouncement</b>	:	24/05/2021

**आदेश / O R D E R**

**Manoj Kumar Aggarwal (Accountant Member)**

1. In this appeal for Assessment Year (AY) 2014-15, the assessee is aggrieved by confirmation of penalty of Rs.8,35,565/- u/s 271(1)(c) by Ld. Commissioner of Income-Tax (Appeals)-37, Mumbai, [in short referred to as ‘CIT(A)'] vide impugned order dated 10/07/2018. The assessment for the year was framed by Ld. Assessing Officer (AO) u/s 143(3) on 01/12/2016 whereas penalty was levied vide order dated

21/06/2017. The penalty, upon confirmation by Ld. CIT(A), is in further challenge before us.

2. The Ld. Counsel for Assessee, assailed penalty on legal grounds as well as on merits. The Ld. AR submitted that mistake of making inadmissible claim in the return of income occurred due to wrong advice tendered by tax consultant who happens to be purchaser of assessee's property. On legal grounds, Ld. AR submitted that Ld. AO failed to frame specific charge against the assessee and therefore, the penalty was not sustainable in the eyes of law. The Ld. Sr. DR, on the other hand, submitted that the assessee made a claim which was not admissible and therefore, penalty was rightly levied on the given facts and circumstances.

3. We have carefully heard the rival submissions and perused relevant material on record. Our adjudication to the subject matter of appeal would be as given in succeeding paragraphs.

4. Facts leading to imposition of penalty are that during assessment proceedings, it transpired that the assessee sold a flat situated at Andheri (West), Mumbai but did not offer the capital gains arising therefrom in the return of income. The assessee admitted the mistake during assessment proceedings and offered short-term capital gains of Rs.26.56 Lacs in the revised computation of income. In the revised computation, the assessee also offered additional interest income of Rs.0.27 Lacs and withdrew claim of loss from House Property for Rs.0.47 Lacs. The tax demand was duly paid by the assessee in due course of time. However, penalty proceedings were initiated u/s 271(1)(c) in the assessment order and a show-cause notice was issued

u/s 274 r.w.s. 271 on 01/12/2016 requiring the assessee to defend the proposed penalty.

5. During penalty proceedings, the assessee submitted that it relied on the professional advice tendered by one Shri Jitendra Chimanlal Darji that the gain so earned by the assessee were eligible for deduction u/s 54 since the assessee had purchased a new flat within two years. However, it was realized during assessment proceedings that the property sold by the assessee was not entitled for deduction since it was a short-term capital asset. Upon realizing the mistake, the claim was withdrawn. Under these circumstances, the assessee pleaded for dropping of penalty proceedings. However, not convinced, Ld. AO imposed a penalty of Rs.8.35 Lacs invoking the provisions of Sec. 271(1)(c) read with Explanation-1. The penalty, upon confirmation by Ld. CIT(A), is in further appeal before us.

6. Before us, it is the plea of Ld. AR that the mistake in the return of income occurred due to wrong legal advice tendered by the purchaser of the property who held himself to be a Chartered Accountant though he was only an accounts assistant in the Chartered Accountant firm of M/s Sampat Mehta & Co. The said accountant filed return of income on behalf of the assessee by mentioning his own email and telephone number in the Income tax Return. The perusal of copy of ITR-4 as placed on record supports the said submissions. We also find that the assessee had made investment of Rs.36 Lacs on 31/07/2013 in a new residential flat situated at C-103, Baba Sadan, 4, Bungalows, J.P. Road, Andheri (W), Mumbai which is evident from the copy of agreement as placed on record. The payment of the same was made through bank account on 28/06/2013 and 04/07/2013. Hence, the assessee would

have been eligible to claim deduction u/s 54 if the property sold was a long-term capital asset. The assessee has also placed on record letter dated 11/10/2018 from Shri Jitendra Chimanlal Darji admitting the said mistake. The assessee has also filed an affidavit as to the above stated facts. All these facts and documentary evidences lend strength to assessee's submissions that the claim was under bona-fide mistake and the same was duly accepted during assessment proceedings. Under these circumstances, it could not be said that the assessee failed to offer any explanation as to wrong claim or the explanation furnished by the assessee was untrue. Therefore, keeping in view the ratio laid down by Hon'ble Apex Court in **Price Waterhouse Coopers Pvt. Ltd. V/s CIT(348 ITR 306)** which held that no penalty would be leviable in case of bona-fide explanation, we are inclined to delete the impugned penalty. The adjudication of issue, on legal grounds, have thus been rendered merely academic in nature.

7. The appeal stands partly allowed in terms of our above order.

*Order pronounced on 24<sup>th</sup> May, 2021.*

**Sd/-**

**(Saktijit Dey)**

न्यायिक सदस्य / **Judicial Member**

**Sd/-**

**(Manoj Kumar Aggarwal)**

लेखा सदस्य / **Accountant Member**

मुंबई Mumbai; दिनांक Dated : 24/05/2021

*Sr.PS, Jaisy Varghese*

**आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT- concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.Registrar)  
आयकरअपीलीयअधिकरण, मुंबई / ITAT, Mumbai.