

आयकर अपीलीय अधिकरण “डी” न्यायपीठ मुंबई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
“D” BENCH, MUMBAI

माननीय श्री महावीर सिंह, उपाध्यक्ष एवं
माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।
BEFORE HON’BLE SHRI MAHAVIR SINGH, VP AND
HON’BLE SHRI MANOJ KUMAR AGGARWAL, AM
(Hearing Through Video Conferencing Mode)

आयकर अपील सं./ I.T.A. No.5597/Mum/2018
(निर्धारण वर्ष / Assessment Year: 2012-13)

Mr. Maharaj Bindroo F.S. Sadikot & Co. 17 Sutar Chawl, Ismail Building, 1 st Floor Room No. 11 Mumbai- 400 002	बनाम/ Vs.	ITO-24(2)(4) Mumbai
स्थायीलेखासं ./जीआइआरसं ./PAN/GIR No. AABPB-6053-F		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

Assessee by	:	None
Revenue by	:	Shri Bharat Andhale– Ld. Sr. DR

सुनवाई की तारीख/ Date of Hearing	:	02/06/2021
घोषणा की तारीख / Date of Pronouncement	:	02/06/2021

आदेश / O R D E R

Mahavir Singh (Vice President)

1. In this appeal for Assessment Year (AY) 2012-13, the assessee is aggrieved by confirmation of penalty of Rs.1,55,766/- u/s 271(1)(c) by Ld. Commissioner of Income-Tax (Appeals)-36, Mumbai, [in short referred to as ‘CIT(A)'] vide impugned order dated 21/05/2018. The assessment for the year was framed by Ld. Assessing Officer (AO) u/s

143(3) on 27/03/2015 determining the income at Rs.16.41 Lacs as against returned income of Rs.10.89 Lacs.

2. During hearing, none appeared for assessee. However, the material on record was sufficient for disposal of the appeal. The Ld. DR pleaded for dismissal of the appeal.

3. Facts leading to levy of penalty are that the assessee is a dealer of Kashmiri Shawls and it reflected business loss of Rs.4.90 Lacs. However, since no supporting evidences were furnished towards claim of expenditure, the loss was disallowed and the income was computed on presumptive basis u/s 44AD. Consequently, the assessee was saddled with impugned penalty of Rs.1.55 Lacs u/s 271(1)(c) vide order dated 28/09/2015. The penalty, upon confirmation by Ld. CIT(A), is in further challenge before us.

4. After going through the factual matrix, we find that the assessee had furnished its revised computation of income and offered the income on presumptive basis @8% during assessment proceedings. The same has ultimately been accepted by Ld.AO. Under these circumstances, the penalty could not be levied as held by Amritsar Tribunal in M/s Roop Sons & Co. V/s ITO (ITA No.683/Asr/2013 dated 26/02/2014), the copy of which is on record. The bench, under identical factual matrix, noted that penalty would not be leviable since income was determined purely on estimation basis. We concur with the same and accordingly, delete the penalty as levied by Ld. AO.

5. The appeal stands allowed.

Order pronounced on 02nd June, 2021.

Sd/-**(Manoj Kumar Aggarwal)**लेखा सदस्य / **Accountant Member**

मुंबई Mumbai; दिनांक Dated : 02/06/2021

Sr.PS, Jaisy Varghese

Sd/-**(Mahavir Singh)**उपाध्यक्ष / **Vice President****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.**