

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "C" MUMBAI**

**BEFORE SHRI RAJESH KUMAR (ACCOUNTANT MEMBER) AND
SHRI RAVISH SOOD (JUDICIAL MEMBER)**

**ITA No.6104/MUM/2019
(Assessment Year: 2011-12)**

Chetna Sanjay Patil
C-1, Indraprasth Building Bhim
Nagar, Trapur Road, Boisar (W),
Dist. Palghar,
Maharashtra – 401501

Vs. ITO, Ward 1,
Aayakar Bhavan,
Income Tax Office,
BIDCO Road, Tal & Dist.
Palghar, Maharashtra 401404

PAN No. AHGPP8098N

(Assessee)

(Revenue)

Assessee by : Shri Subodh Ratnaparkhi, A.R
Revenue by : Ms. Sheekala Pardeshi, D.R

Date of Hearing : 29/07/2021
Date of pronouncement : 30/07/2021

ORDER

PER RAVISH SOOD, J.M:

The present appeal filed by the assessee is directed against the order passed by the CIT(A)-3, Thane, dated 08.07.2019, which in turn arises from the order passed by the A.O u/s 271(1)(c) of the Income Tax Act, 1961 (for short 'Act'), dated 29.06.2017.

2. Briefly stated, the assessee had filed his return of income for A.Y. 2011-12 on 06.09.2011, declaring a total income of Rs.7,83,290/-. The return of income was initially processed as such u/s 143(1) of the Act. Subsequently, the case of the assessee was reopened u/s 147 of the Act. Assessment was thereafter framed by the A.O vide his order passed u/s 143(3) r.w.s 147, dated 15.12.2016 ,

wherein after making an addition under Sec. 68 qua an unexplained cash credit of Rs.25,00,000/- the income of the assessee was assessed at Rs.32,83,290/-.

3. On appeal, the CIT(A) vide his order passed in ITA No. 10665-THN/16-17, dated 05.07.2019 scaled down the addition of Rs.25,00,000/- made by the A.O to an amount of Rs.12,50,000/-.

4. Subsequently, the A.O after framing the assessment vide his order passed u/s 271(1)(c), dated 29.06.2017 imposed a penalty of Rs.7,72,500/- on the assessee.

5. The assessee assailed the order passed by the A.O u/s 271(1)(c) of the Act, dated 29.06.2017 before the CIT(A), who after taking cognizance of the fact that the addition made in the hands of the assessee was in the course of the quantum appeal restricted to an amount of Rs.12,50,000/-, therein sustained the penalty qua the addition that was upheld by his predecessor. Insofar the contention advanced by the assessee to drive home his claim that no penalty u/s 271(1)(c) was liable to be imposed on him, the same did not find favour with the CIT(A) and was rejected. Accordingly, the appeal filed by the assessee was partly allowed.

6. Aggrieved, the assessee has assailed the order passed by the CIT(A), dated 08.07.2019 in appeal before us. The Id. Authorized Representative (for short 'A.R') for the assessee at the very outset of the hearing of the appeal submitted that the quantum appeal filed by the assessee against the order passed by the CIT(A), had been allowed by the Tribunal, vide its order passed in ITA No. 6103/Mum/2019, dated 20.07.2021. It was thus submitted by the Id. A.R that the Tribunal vide its aforesaid order had quashed the assessment framed by the A.O. u/s 143(3) r.w.s 147, dated 15.12.2016. In order to buttress his aforesaid claim the Id. A.R had taken us through the order passed by the Tribunal disposing off the quantum appeal of the assessee. It was submitted by

the Id. A.R that now when the assessment order had been quashed by the Tribunal, therefore, the penalty imposed by the A.O u/s 271(1)(c) of the Act could not be allowed to exist on a standalone basis and was liable to be quashed on a similar footing.

7. Per contra, Id. Departmental Representative (for short 'D.R') did not controvert the aforesaid factual position.

8. We have heard the Id. Authorized Representatives for both the parties, perused the orders of the lower authorities and the material available on record. As stated by the Id. A.R, and rightly so, the Tribunal vide its order passed in ITA No. 6103/Mum/2019, dated 20.07.2021 had quashed the assessment order passed by the A.O u/s 143(3) r.w.s 147 of the Act. Accordingly, now when the very genesis for imposing the penalty u/s 271(1)(c) of the Act i.e the assessment order passed by the A.O u/s 143(3) r.w.s 147 had been quashed and ceases to exist anymore, therefore, penalty imposed u/s 271(1)(c) cannot survive on a standalone basis, and has to meet the same fate. We, thus, in terms of our aforesaid observations quash the order passed by the A.O u/s 271(1)(c) of the Act, dated 29.06.2017.

9. The appeal filed by the assessee is allowed in terms of our aforesaid observations.

Order pronounced in the open court on 30.07.2021

Sd/-
(Rajesh Kumar)
ACCOUNTANT MEMBER

Sd/-
(Ravish Sood)
JUDICIAL MEMBER

Mumbai;
Dated: 30.07.2021
PS: Rohit

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A)-
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

BY ORDER,
//True Copy//

(Sr. Private Secretary)
ITAT, Mumbai