

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'B' BENCH
MUMBAI**

**BEFORE: SHRI VIKAS AWASTHY, JUDICIAL MEMBER
&**

SHRI M.BALAGANESH, ACCOUNTANT MEMBER

**ITA No.2970/Mum/2015
(Assessment Year :2006-07)**

Ms. Usha Chandresh Shah 52, Laxmi Niwas CHS Flat No.15, 3 rd Floor 9 th Road, Khar (W) Mumbai – 400 052	Vs.	ITO- 19(1)(2) Mumbai
PAN/GIR No.AURPS1402K		
(Appellant)	..	(Respondent)

Assessee by	None
Revenue by	Shri Tharian Oommen
Date of Hearing	09/08/2021
Date of Pronouncement	30/09/2021

आदेश / O R D E R

PER M. BALAGANESH (A.M):

This appeal in ITA No.2970/Mum/2015 for A.Y.2006-07 arises out of the order by the Id. Commissioner of Income Tax (Appeals)-34, Mumbai in appeal No.CIT(A)-34/ITO-19(1)(2)/IT-34/13-14 dated 11/03/2015 (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. None appeared on behalf of the assessee. The notice sent to the assessee had returned unserved. Since, it is an old appeal, we proceeded

to dispose of this appeal on hearing the Id. DR and perused the materials available on record.

3. The only issue to be decided in this appeal is as to whether the Id. CIT(A) was justified in confirming the levy of penalty u/s.271(1)(c) of the Act in the facts and circumstances of the instant case.

4. We have heard Id. DR and perused the materials available on record. We find that the return of income for the A.Y.2006-07 was filed by the assessee on 06/07/2006 declaring total income of Rs.1,50,049/-. The Id. AO observed that assessee is deriving income from other sources. The assessee was asked to furnish bank summary and capital account vide order sheet noting dated 12/09/2008 during the course of original assessment proceedings and the same were duly furnished before the Id. AO on 29/09/2008. From the perusal of the capital account, the Id. AO observed that on 10/09/2005, the assessee has received sale proceeds of shares amounting to Rs.7,53,061/- resulting in earning long term capital gain on sale of shares of Rs.7,39,103/-. The Id. AO completed the assessment u/s.143(3) of the Act on 29/12/2008 making addition of Rs.7,53,061/- as unexplained cash credit u/s.68 of the Act representing the sale proceeds of the shares of M/s Robinson Worldwide Trade Limited. The Id. AO initiated penalty proceedings for furnishing inaccurate particulars of income in the assessment proceedings. The Id. AO in his penalty order u/s.271(1)(c) of the Act passed on 19/03/2013 stated that assessee had purchased 2700 shares on 13/05/2004 at Rs.5.17 per share totaling to Rs.13,959/-. These shares were sold through broker Shri Sanju Kabra on 10/09/2005 @279.50 amounting to Rs.7,53,894/-. The net sale proceeds amounting to Rs.7,53,061/- was credited by the assessee in her capital account. Since, there was an astronomical appreciation in the price

of the scrip from Rs.5.17 to Rs.279.50 within a span of 16 months, the Id. AO, based on the enquiries conducted from Kolkata Stock Exchange, brokers, depository participant M/s. India Bulls Securities Ltd., the company i.e. M/s. Prime Capital Market Ltd., and M/s. Brightsun Merchants Pvt. Ltd., observed that the scrip treated by the assessee had been categorised as "penny stock" and investigations of Kolkata Investigation Wing revealed that Shri Sanju Kabra (broker) had been involved in manipulation of share prices. The addition made by the Id. AO in the quantum proceedings was upheld by the Id. CIT(A) vide order dated 28/03/2011. It was pointed out that assessee had furnished purchase and sale bills / contract notes, bank statements, brokers confirmations, books of accounts etc., to establish that the share transaction was genuine and bonafide, hence, there cannot be any allegation of concealment of particulars of income or furnishing inaccurate particulars of income on the part of the assessee. The Id. AO however, did not heed to the contentions of the assessee and proceeded to levy penalty u/s.271(1)(c) of the Act on the ground that assessee had furnished inaccurate particulars of income and accordingly, levied penalty of Rs.1,79,430/- in the order passed u/s.271(1)(c) of the Act dated 19/03/2013. The Id. CIT(A) on the basis of quantum appeal being confirmed by the Tribunal vide order dated 26/09/2014, upheld the levy of penalty u/s.271(1)(c) of the Act.

5. We find that against the dismissal of the appeal by the Tribunal vide order dated 26/09/2014 in the quantum appellate proceedings, the assessee had preferred an appeal before the Hon'ble Jurisdictional High Court and the same has been admitted in the Income Tax Appeal No.13 of 2016 dated 18/06/2018. Once the question of law has been admitted by the Hon'ble High Court, there cannot be any allegation that could be

levied on the assessee for furnishing inaccurate particulars of income thereon as the issue becomes debatable. In the instant case, the assessee had indeed furnished all the relevant documents that are necessary for factual adjudication of the issue in dispute. It is only question of non-acceptance of the said evidence by the Id. AO due to astronomical increase in share price of the scrip dealt by the assessee which had eventually led to addition. The substantial question of law raised by the assessee on such addition has been admitted by the Hon'ble Jurisdictional High Court which order is enclosed in page 39 of the paper book filed by the assessee. Once, the substantial question of law on the quantum proceedings is admitted by the Hon'ble High Court, the issue in dispute became debatable. Hence, there cannot be any concealment penalty of the assessee for alleged furnishing of inaccurate particulars of income. Reliance in this regard is placed on the decision of the Hon'ble Delhi High Court in the case of PCIT vs. Harsh International Pvt. Ltd., in Income Tax Appeal No.620/2019 dated 22/12/2020. Hence, we have no hesitation in directing the Id. AO to delete the penalty in the sum of Rs.1,79,430/- in the instant case. Accordingly, the ground raised by the assessee is allowed.

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

Order pronounced on 30/09/2021 by way of proper mentioning the notice board.

Sd/-
(VIKAS AWASTHY)
JUDICIAL MEMBER

Sd/-
(M.BALAGANESH)
ACCOUNTANT MEMBER

Mumbai; Dated 30/09/2021
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