

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

**BEFORE: SHRI MAHAVIR SINGH, VICE PRESIDENT
&
SHRI M.BALAGANESH, ACCOUNTANT MEMBER**

**ITA No.5854/Mum/2019
(Assessment Year : 2008-09)**

Pannaben Nilesh Shah Flat No.7,8,9, 3 rd Floor Waman CHS Ltd., M.G. Road, Vile Parle (E) Mumbai – 400 057	Vs.	Income Tax Officer Ward 25(3)(2) Kautilya Bhavan G-Block, Bandra Kurla Complex, Bandra East Mumbai – 400 051
PAN/GIR No.AOMPS6784D		
(Appellant)	..	(Respondent)

Assessee by	Shri Manoj Pandit
Revenue by	Ms.Shreekala Pardeshi
Date of Hearing	10/06/2021 & 22/10/2021
Date of Pronouncement	27/10/2021

आदेश / ORDER

PER M. BALAGANESH (A.M.):

This appeal in ITA No.5854/Mum/2019 for A.Y.2008-09 arises out of the order by the Id. Commissioner of Income Tax (Appeals)-37, Mumbai in appeal No.CIT(A)-37/IT-10003/ITO-25(3)(2)/2018-19 dated 19/06/2019 (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. The only effective issue to be decided in this appeal is as to whether the Id. CIT(A) was justified in upholding the levy of penalty u/s.271(1)(c) of the Act in the facts and circumstances of the instant case.

3. We have heard rival submissions and perused the materials available on record. We find that assessee is an individual and had filed her return of income for the A.Y.2008-09 on 19/09/2008 declaring total income of Rs.1,56,782/- consisting of income from house property, interest income from bank, income from part time trading and share trading. The assessee filed a revised computation of income during the course of scrutiny assessment proceedings requesting the Id. AO to treat the income from part time trading as business income as against income from other sources offered in the return. The assessee stated that the part time retail business in dress material was carried on by her and the business income had been derived thereon. With regard to the cash deposits made in the bank account to the tune of Rs.10,36,000/-, the assessee explained before the Id. AO that the source of said deposits were out of sale proceeds of trading business carried out by the assessee. Since the entire trading income has been offered to tax by the assessee, these cash deposits has been duly explained according to assessee. The assessee also vide letter dated 09/12/2010 filed before the Id. AO stated the fact that materials were supplied to the assessee's place. The assessee also filed complete details of the brokers along with their names, addresses together with confirmation letters before the Id. AO to drive home the point that this trading business was carried on by her and the sales thereon were made in cash. The assessee also filed the details to whom goods were sold by the assessee before the Id. AO. The assessee

also produced the complete cash flow statement explaining the source of cash deposits of Rs.10,36,000/- before the Id. AO.

3.1. The Id. AO however, did not heed to the contentions of the assessee and made addition of Rs.10,36,000/- as unexplained cash credit u/s.68 of the Act in the sum of Rs.10,36,000/- while completing the assessment. This addition was primarily made disbelieving the fact that assessee had carried on business in trading of dress materials. The Id. AO also observed in his assessment order that assessee made purchases from unregistered dealers and purchase bills submitted by the assessee were without complete address and most of the bills had same description of articles, rate, and amount with the same hand writing. Further notices u/s.133(6) of the Act issued to the said purchases were returned back by the postal authorities with remarks "not known". The assessee preferred appeal before the Id. CIT(A) which was dismissed by the Id. CIT(A). The assessee further preferred an appeal before this Tribunal against the quantum proceedings which was also dismissed. Thereafter, the Id. AO levied penalty u/s.271(1)(c) of the Act since the quantum proceedings had attained finality up to the level of the Tribunal against the assessee.

3.2. It was pointed out by the Id. AR that assessee had filed affidavits before the Id. AO to prove the nature and source of the credit within the meaning of Section 68 of the Act from all the parties to whom assessee had sold the dress materials to drive home the point that the sale proceeds received thereon in cash were deposited in the bank account. The Id. AR pointed out that these affidavits were never examined by the Id. AO in any manner whatsoever.

4. Per contra, the Id. DR vehemently argued that since the quantum appeal has been confirmed up to the Tribunal, the levy of penalty u/s. 271(1)(c) of the Act is automatic and warranted and had been validly made by the Id. AO. We find that assessee had indulged in trading of dress materials and these facts are evidenced by the fact that assessee had made purchases from certain parties and had made sales to various parties which are duly reflected in trading and profit and loss account prepared by the assessee and also supported by the confirmation letters by those parties and also by affidavits from the concerned parties which are already on record. The law is very well settled that once, the affidavit is placed on record by the assessee, it is the duty of the Assessing Officer to put that affidavit to test in order to prove that the contents in the said affidavit are false. Once, the Id. AO chooses not to examine those affidavits in the manner known to law, then the contents of the said affidavits are to be accepted as true. Hence, no adverse inference could be drawn on the said affidavits. Reliance in this regard is placed on the decision of the Hon'ble Supreme Court in the case of Mehta Parikh and Co., vs. CIT reported in 30 ITR 181. We also hold that levy of penalty is not automatic merely because addition has been confirmed in the quantum proceedings. This is a clear case of explanation given by the assessee not being accepted by the Id. AO leading to different interpretation and not examining the affidavits filed on record to support the contentions of the assessee. Hence, there cannot be any allegation that could be levelled on the assessee for concealment of income or furnishing of inaccurate particulars of income. In these facts and circumstances, we direct the Id. AO to delete penalty levied u/s.271(1)(c) of the Act.

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

Order pronounced on 27/10/2021 by way of proper mentioning in the notice board.

Sd/-
(MAHAVIR SINGH)
VICE PRESIDENT

Mumbai; Dated 27/10/2021
KARUNA, *sr.ps*

Sd/-
(M.BALAGANESH)
ACCOUNTANT MEMBER

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