

आयकर अपीलिय अधिकरण न्यायपीठ, नागपुर में ।
IN THE INCOME TAX APPELLATE TRIBUNAL BENCH, NAGPUR

(At e-Court, PUNE)

BEFORE SHRI INTURI RAMA RAO, AM
AND SHRI S. S. VISWANETHRA RAVI, JM

आयकर अपील सं. / ITA No.125/NAG/2017
निर्धारण वर्ष / Assessment Year : 2011-12

Mahendra Ishwarsingh Bais,
Harde Nagar, Paratwada,
Distt. Amravati,
Paratwada- 444805.

PAN : AIJPB9426E

.....अपीलार्थी / Appellant

बनाम / V/s.

ITO, Ward-1,
Amravati.

.....प्रत्यर्थी / Respondent

Assessee by : None
Revenue by : Shri Vitthal Bhosale

सुनवाई की तारीख / Date of Hearing : 12.11.2021
घोषणा की तारीख / Date of Pronouncement : 18.11.2021

आदेश / ORDER

PER INTURI RAMA RAO, AM:

This is an appeal filed by the assessee directed against the order of Id. Commissioner of Income Tax (Appeals)-1, Nagpur ('CIT(A)' for short) dated 15.12.2016 for the assessment year 2011-12 confirming the levy of penalty of Rs.2,85,750/- u/s 271(1)(c) of the Income Tax Act, 1961 ('the Act').

2. Briefly, the facts of the case are that the appellant is an individual engaged in the business of execution of contracts. The return of income for the assessment year 2011-12 was filed on 08.03.2012 declaring total income of Rs.6,77,670/-. Against the said return of income, the assessment was completed by the Income Tax Officer, Ward-1, Amravati ('the Assessing Officer') vide order dated 25.02.2014 passed u/s 144 of

the Act estimating the total income of contract receipts of Rs.2,34,94,425/- and also initiated penalty proceedings u/s 271(1)(c) of the Act for concealment of income. In response to the show-cause notice, it is submitted that since the income was assessed on estimate basis, no penalty can be levied. Rejecting the above explanation, the Assessing Officer proceeded with levy of penalty of Rs.2,85,750/- u/s 271(1)(c) of the Act vide order dated 19.08.2014. Even on appeal before the Id. CIT(A), the same was confirmed.

3. Being aggrieved, the appellant is in appeal before us in the present appeal.

4. When the matter was called on for hearing, none appeared on behalf of the assessee despite due service of notice.

5. After hearing the Id. Sr. DR and perusing the material on record, we proceed to dispose of this matter. The only issue in the present appeal relates to levy of penalty u/s 271(1)(c) in case where the income was assessed on estimate basis. It is settled position of law that no penalty can be levied u/s 271(1)(c) in case the income was assessed on estimate basis. Reliance in this regard can be placed on the decision of the Hon'ble Supreme Court in the case of ACIT vs. Dhariya Construction Co., 328 TTR 515 (SC).

6. In the light of the above settled legal position of law, we direct the Assessing Officer to delete the penalty of Rs.2,85,750/- levied u/s 271(1)(c) of the Act. Thus, the ground raised by the assessee stands allowed.

7. In the result, the appeal filed by the assessee stands allowed.

Order pronounced on this 18th day of November, 2021.

Sd/-

Sd/-

(S. S. VISWANETHRA RAVI)
न्यायिक सदस्य/JUDICIAL MEMBER

(INTURI RAMA RAO)
लेखा सदस्य/ACCOUNTANT MEMBER

पुणे / Pune; दिनांक / Dated : 18th November, 2021.

Sujeet

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. The CIT(A)-1, Nagpur.
4. The Pr. CIT-1, Nagpur.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, नागपुर / DR,
ITAT, "Nagpur" Pune;
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER

// True Copy //

वरिष्ठ निजी सचिव / Sr. Private Secretary
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune.