

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES "F", MUMBAI**

**BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER
AND
BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER**

**ITA No. 6788/MUM/2019
Assessment Year: 2008-09**

Umesh Shetty, F. No. 1301, Shree Sumukh Heights, Anand Nagar, Oshiwara, Jogeshwari (W), Mumbai - 400102 PAN: ALTPS6390M	Vs.	ITO 25(1)(5), Room No. 229, 2 nd Floor, Kautilya Bhavan, BKC, Bandra (East), Mumbai - 400051
(Appellant)		(Respondent)

Assessee by : None

Revenue by : S.N. Kabra (DR)

Date of Hearing : 11/11/2021

Date of Pronouncement: 24/11/2021

ORDER

PER SAKTIJIT DEY, JM

This is an appeal by the assessee against order dated 26.09.2019 of learned Commissioner of Income Tax (Appeals)-37, Mumbai confirming the penalty imposed under section 271(1)(c) of the Income Tax Act, 1961 on the addition sustained in the quantum proceeding for the assessment year 2008-09.

2. When the appeal was taken up for hearing, none appeared on behalf of the assessee. Therefore, the appeal is decided ex-parte qua the assessee after hearing the learned Departmental Representative and based on materials on record.

3. Briefly the facts are, the assessee is an individual. For the assessment year under dispute, assessee filed his return of income declaring total income of Rs. 3,42,600/-. In course of assessment proceedings, the Assessing Officer on verifying the information available on record found that the assessee has made cash deposit to the tune of Rs. 34,60,500/- in the bank account. Alleging that the assessee could not furnish any evidence to prove the source of such deposit, the AO added back the amount of Rs. 34,60,500/- to the income of the assessee by treating it as unexplained cash credit under section 68 of the Act. Based on such addition, the AO initiated proceeding for imposition of penalty under section 271(1)(c) of the Act and ultimately passed an order imposing penalty of Rs. 11,19,170/-, being 100% of the tax sought to be evaded. The assessee challenged the penalty order before the First Appellate Authority. Taking note of the fact that major part of the addition made by the AO was deleted by the First Appellate Authority and addition only to the extent of Rs. 3,16,715/- was sustained, learned Commissioner (Appeals) directed the AO to impose penalty on the addition of Rs. 3,16,715/-.

4. We have considered the submissions of learned Departmental Representative and perused the materials on record. Though, the AO added back the entire cash deposit of Rs. 34,60,500/- made in the bank account under section 68 of the Act, however, learned Commissioner (Appeals) while deciding assessee's appeal deleted the major part of the addition and sustained addition to the extent of Rs. 3,16,715/-, that too, estimating the gross profit percentage. Thus, as could be seen from the facts on record, the addition based on which a part of the penalty imposed under section 271(1)(c) of the Act

was sustained, was purely made on estimate basis. Thus, prima facie, assessee cannot be accused of concealing the income or furnishing inaccurate particulars of income.

5. In view of the aforesaid, we are inclined to delete the penalty imposed under section 271(1)(c) of the Act.

6. In the result, appeal is allowed as indicated above.

Order pronounced in the open court on 24th November, 2021.

Sd/-

(SHAMIM YAHYA)
ACCOUNTANT MEMBER

Sd/-

(SAKTIJIT DEY)
JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated: 24/11/2021

Alindra, PS

आदेश प्रतिलिपि अग्रेषित/ Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त (अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई /
DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai