

IN THE INCOME TAX APPELLATE TRIBUNAL “E” BENCH, MUMBAI
BEFORE SHRI M. BALAGANESH, AM AND SHRI AMARJIT SINGH, JM
(Hearing through Video Conferencing Mode)

आयकर अपील सं/ I.T.A. No.919/Mum/2020
(निर्धारण वर्ष / Assessment Year: 2007-08)

Mrs. Sheetal Gokul Parikh 33, Ghanshyam Dube Chawl No.2, Deep Narayan Dube Road, Pragatinagar, Dahisar (E), Mumbai-400068.	<u>बनाम/</u> Vs.	ITO, Ward 30(2)(6) Earlier Ward 24(2)(2) Kautilya Bhavan, BKC, Mumbai-400051.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AIZPP6142M		
(अपीलार्थी / Appellant)	..	(प्रत्यर्थी / Respondent)
Assessee by:	None	
Revenue by:	Ms. Amrita Singh (DR)	

सुनवाई की तारीख / Date of Hearing: 30/08/2021
घोषणा की तारीख /Date of Pronouncement: 27/10/2021

आदेश / O R D E R

PER AMARJIT SINGH, JM:

The assessee has filed the present appeal against the order dated 23.06.2010 passed by the Commissioner of Income Tax (Appeals)-41, Mumbai [hereinafter referred to as the “CIT(A)”] relevant to the A.Y. 2007-08 wherein the penalty levied by the AO has been ordered to be confirmed.

2. The assessee has raised the following grounds: -

“1. The Hon’ble CIT(A) has erred in upholding the order passed by the Ld. Assessing Officer levying penalty under section 271(1)(C) of the I. T. Act, 1961.



The appellant prays that the penalty levied by the learned Assessing Officer be deleted as it is against the principle of law and natural justice.

2. *The appellant prays to add, amend and alter above mentioned grounds of appeal."*

3. The brief facts of the case are that the assessee filed her return of income on 31.10.2007 declaring total income to the tune of Rs.2,77,940/-. The case was selected for scrutiny. Notices u/s 143(2) & 142(1) of the Act were issued and served upon the assessee. The assessee failed to appear before the AO despite giving number of opportunities, therefore, the assessment was finalized u/s 144 of the Act. The assessee has shown the sundry creditors of Rs.43,02,528/- as on 31.03.2007. No details were given, therefore, the AO treated the 50% of Rs.43,02,528/- as unexplained liability. The assessee has claimed the total expenses of Rs.10,70,019/- to the profit and loss accounts under various heads. Since the assessee did not file the details and nor verified and did not appear, therefore, the 20% of Rs.10,70,019/- i.e. 2,14,003/- was disallowed and added to the income. The penalty proceeding was initiated. The notice was given but the assessee did not appear, therefore, the penalty a sum of Rs.7,36,122/- was levied. The assessee filed an appeal before the CIT(A) who confirmed the penalty, therefore, the assessee has filed the present appeal before us.

4. We have heard the argument advanced by the Ld. Representative of the revenue and has gone through the case filed carefully. We find that the claim of the assessee in connection with the sundry creditors of Rs. 43,02,528/- as on 31.03.2007 and claim of expenses in sum of Rs.



ITA. No.919/Mum/2020
A.Y. 2007-08

10,70,019/- were not explained. The assessee did not appear before the AO and the assessment was completed u/s 144 of the Act. Subsequently, the claim of sundry creditors was reduced to the tune of Rs.50% of Rs.43,02,528/- i.e. Rs.21,51,264/- and added to the income of the assessee and the claim expenses was denied to the extent of Rs.20% of Rs.10,70,019/- i.e. to the tune of Rs.2,14,003/-. On these grounds, the penalty proceeding was initiated u/s 271(1)(c). The claim of the assessee was disallowed and the income was assessed on estimation basis which nowhere leads to the penalty in view of the decision of the Hon'ble Supreme Court in the case of **Reliance Petroproduct Vs. CIT (P) Ltd. 322 ITR 158 SC**. Accordingly, the order of the CIT(A) is not justifiable. Taking into account of all the facts and circumstances, we are of the view that the levy the penalty is not justifiable, hence, we set aside the finding of the CIT(A) on this issue and delete the penalty.

5. In the result, the appeal filed by the assessee is hereby allowed.

Order pronounced in the open court on 27/10/2021

Sd/-

(M. BALAGANESH)

लेखा सदस्य / ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated : 27/10/2021

Vijay Pal Sing/Sr. PS

Sd/-

(AMARJIT SINGH)

न्यायिक सदस्य/JUDICIAL MEMBER



ITA. No.919/Mum/2020
A.Y. 2007-08

आदेश की 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**