

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

**BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER &
 SHRI AMARJIT SINGH, ACCOUNTANT MEMBER**

**ITA No.2466/Mum/2021
 (A.Y. 2007-08)**

ACIT, Circle 5(1)(1) R.No. 568, Aaykar Bhavan, M.K. Road, Mumbai- 400 020	Vs.	Shri Chetan Ramniklal Shah, 103 Shreeji Chambers, Tata Road, No.2, Opera House, Mumbai - 400004
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: AAJPS7227C		
Appellant	..	Respondent

Appellant by :	Sandeep Rai
Respondent by :	None

Date of Hearing	25.05.2022
Date of Pronouncement	25.05.2022

आदेश / O R D E R

Per Amarjit Singh (AM):

The present appeal filed by the revenue is directed against the order passed by the ld. CIT(A)-53, Mumbai, which in turn arises from the penalty order passed by the A.O. u/s 271(1)(c) of the Income Tax Act, 1961, for A.Y. 2007-08. The revenue has assailed the impugned order on the following grounds before us:

"Whether on the facts and circumstances of the case and in law, the ld. CIT(A) erred in deleting the penalty u/s 271(1)(c) of the I.T. Act, 1961 of Rs.3,76,20,132/- without considering the fact that the ITAT's order of deleting the

quantum addition has not been accepted by the Revenue and further appeal before the Hon'ble Bombay High Court has been filed by the Department.

The appellant prays that the order of the ld. CIT(A) be set aside and the order of the A.O be restored.”

2. The fact in brief is that assessment u/s 143(3) r.w.s 147 of the Act was passed on 31.03.2015 treating unsecured loan of Rs.11,06,80,000/- as unexplained cash credit u/s 68 of the Act. The ld. CIT(A) has dismissed the appeal of the assessee. Therefore, the A.O has levied penalty of Rs.3,76,20,132/- u/s 271(1)(c) dated 08.01.2018.

3. Aggrieved, the assessee has filed the appeal before the ld. CIT(A). The ld. CIT(A) has deleted the addition stating that ITAT, Mumbai has deleted the quantum addition of Rs.11,06,80,000/- vide order dated 09.03.2019.

4. At the outset, the ld. Counsel has brought to our notice that quantum addition on the basis of which impugned penalty was levied had been deleted by the ITAT, Mumbai, vide order dated 19.03.2019, therefore, there is no merit in the appeal of the revenue.

On the other hand, the ld. D.R could not controvert this fact that impugned penalty has been deleted by the ITAT, Mumbai as referred by the ld. Counsel.

5. Heard both the sides and perused the material on record. The ITAT, Mumbai, vide order No. 3751/Mum/2017 dated 19.03.2019 has deleted addition of Rs.11,06,80,000/- made by the A.O u/s 68 of the Act. We consider that where addition made in the assessment order on the basis of which penalty for concealment was levied are deleted, there remains no basis of which penalty for concealment was levied. Therefore, we don't

find any infirmity in the decision of ld. CIT(A). Accordingly, the appeal of the revenue stand dismissed.

6. In the result, the appeal of the revenue stand dismissed.

Order pronounced in the open court on 25.05.2022

Sd/-

(VIKAS AWASTHY)
JUDICIAL MEMBER

Mumbai, Dated 25.05.2022

PS: Rohit

Sd/-

(AMARJIT SINGH)
ACCOUNTANT MEMBER

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

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

आदेशानुसार / BY ORDER,
सत्यापित प्रति // True Copy //

(Asst. Registrar) ITAT, Mumbai