

आयकर अपीलीय अधिकरण "ए" न्यायपीठ पुणे में ।
IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH, PUNE

BEFORE SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER
AND
SHRI S.S. VISWANETHRA RAVI, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.761/PUN/2019
निर्धारण वर्ष / Assessment Year : 2014-15

M/s. Malharmachi Holiday Resort,
1, Baner Park Opp., Aundh Telephone Exchange,
Baner, Pune – 411045

PAN : AASFM6435D

.....अपीलार्थी / Appellant

बनाम / V/s.

Assistant Commissioner of Income Tax,
Circle – 2, Pune

.....प्रत्यर्थी / Respondent

Assessee by : N O N E
Revenue by : Shri S.P. Walimbe

सुनवाई की तारीख / Date of Hearing : 04-08-2022
घोषणा की तारीख / Date of Pronouncement : 05-08-2022

आदेश / ORDER

PER S.S. VISWANETHRA RAVI, JM :

This appeal by the assessee against the order dated 25-03-2019 passed by the Commissioner of Income Tax (Appeals)-3, Pune [‘CIT(A)’] for assessment year 2014-15.

2. We find letter dated 03-08-2022 seeking adjournment. On perusal of the record, we find the issue raised in the appeal is covered in favour of the assessee. Therefore, the adjournment letter is rejected and we proceed to dispose of the appeal by hearing the ld. DR and perusing the material available on record.

3. The assessee raised ground Nos. 1 to 4 amongst which the only issue is to be considered is as to whether the CIT(A) is justified in confirming the order penalty levied by the AO u/s. 271(1)(c) of the Act.

4. Heard ld. DR and perused the material available on record. We note that the assessee is a partnership firm engaged in the business of running hotel and resort. The assessee filed return of income declaring a total income of Rs.39,48,230/- on 29-11-2014. A survey action u/s. 133A of the Act was conducted on the assessee on 24-02-2015. In the said survey, the assessee declared a sum of Rs.1,64,00,000/- as additional income. Under scrutiny notices u/s. 143(2) and 142(1) of the Act were issued. In response to the said notices, the assessee filed revised return of income declaring a total income of Rs.2,03,48,233/- which is inclusive of the additional income as declared during the course of survey action as well as the original income as declared in the original return of income. The AO accepted the said return of income vide its order dated 09-12-2016 passed u/s. 143(3) of the Act.

5. As matter stood thus, the AO initiated penalty proceedings u/s. 271(1)(c) of the Act for concealment of income by the assessee. According to the AO, the survey resulted into undisclosed investment in purchase of agricultural lands and other properties, had there been no survey, the assessee would not have declared the additional income as admitted during the survey action. The short point for consideration before us whether the assessee concealed any income or disclosed income admitted during the course of survey which was accepted by the Revenue in the revised return of income constitutes concealment of income or not. Admittedly, the assessee offered Rs.1,64,00,000/- as additional income during the course of survey and under scrutiny in response to notices u/s. 143(2) and 142(1) of the Act, the assessee declared the same as its income in the revised return of income, which shows the assessee offered the same for taxation. Admittedly, the AO did not make any addition during the course of examination of revised return of income but however initiated penalty proceedings u/s. 271(1)(c) of the Act on the charge of concealment of income, which, in our opinion, is not justified for the reason when there is no addition made by the AO during the course of examination of revised return of income and the AO accepted the revised return of income which is inclusive of additional income declared by the assessee during the course of survey, which clearly establishes, in our opinion, there was no concealment of income by the assessee. Therefore, the initiation of penalty proceedings by the AO on the charge of concealment of income is not justified. Thus, the penalty levied by the AO u/s. 271(1)(c) of the Act as

confirmed the CIT(A) is not justified. Thus, grounds raised by the assessee are allowed.

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

Order pronounced in the open court on 05th August, 2022.

Sd/-
(Inturi Rama Rao)
ACCOUNTANT MEMBER

Sd/-
(S.S. Viswanethra Ravi)
JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 05th August, 2022.
रवि

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A)-3, Pune
4. The Pr. CIT-2, Pune
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "ए" बेंच,
पुणे / DR, ITAT, "A" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

//सत्यापित प्रति// True Copy//

आदेशानुसार / BY ORDER,

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