

**IN THE INCOME TAX APPELLATE TRIBUNAL,
'B' BENCH, KOLKATA**

**Before Shri Rajpal Yadav, Vice-President (KZ)
&
Shri Rajesh Kumar, Accountant Member**

**I.T.A. No. 83/KOL/2019
Assessment Year: 2006-2007**

**Swarnasathi Advisory Services Pvt. Limited,.....Appellant
Block-C, Flat No. 201, 2nd Floor,
4, D.L. Khan Road, Kolkata-700025
[PAN: AAGCS9358A]
-Vs.-**

**Income Tax Officer,.....Respondent
Ward-9(4), Kolkata,
Aayakar Bhawan, 8th Floor,
P-7, Chowringhee Square,
Kolkata-700069**

Appearances by:

*Shri Anil Kumar Agrawal, FCA, appeared on behalf of the assessee
Shri Partha Pratim Barman, Addl. CIT, appeared on behalf of the Revenue*

**Date of concluding the hearing : September 19, 2022
Date of pronouncing the order : September 20, 2022**

O R D E R

Per Rajpal Yadav, Vice-President (KZ):-

The assessee is in appeal before the Tribunal against the order of Id. Commissioner of Income Tax (Appeals)-3, Kolkata dated 19.12.2018 passed under section 271(1)(c) of the Income Tax Act, 1961.

2. Brief facts of the case are that the assessee has filed its return of income on 31.03.2007 declaring total income of Rs.4,528/-. An assessment order was passed under section 143(3) determining the taxable income of the assessee at Rs.48,230/-. The Assessing Officer later on received an information from the DIT (Inv.)-II, New Delhi vide letter dated 15.03.2013 that the assessee has taken accommodation entries from Surendra Kumar Jain Group for an amount of Rs.1,25,000/-. An

assessment order was passed under section 147 read with 143(3) on 25.03.2014 determining the total assessed income of Rs.1,73,230/-.

3. It appears that assessee challenged this addition before the ld. CIT(Appeals). During the course of appeal, it was felt by the ld. 1st Appellate Authority that assessee had received share application money of Rs.18,00,000/-. A show-cause notice for enhancement of income was issued and ultimately an addition of Rs.18,00,000/- was made by the ld. 1st Appellate Authority. The ld. 1st Appellate Authority thereafter initiated penalty proceedings against the assessee under section 271(1)(c) of the Act. After hearing the assessee, the ld. CIT(Appeals) has imposed the penalty of Rs.5,56,200/- on this addition of Rs.18,00,000/-.

4. Before us, ld. Counsel for the assessee contended that aggrieved with the order of ld. CIT(Appeals) dated 13.08.2018 by which addition of Rs.18,00,000/- with the aid of section 68 was made, the assessee filed an appeal before the ITAT bearing ITA No. 1929/KOL/2018. This appeal was allowed by the Tribunal vide its order dated 04.01.2019. The ld. Counsel for the assessee placed on record copy of the Tribunal's order and Tribunal has deleted the addition of Rs.18,00,000/-.

5. With the assistance of ld. Representative, we have gone through the record carefully. The relevant part of section 271(1)(c) reads as under:-

“Failure to furnish returns, comply with notices, concealment of income, etc.

271. (1) If the Assessing Officer or the Commissioner (Appeals) or the Principal Commissioner or Commissioner in the course of any proceedings under this Act, is satisfied that any person-

(a) x x x x x x x

(b) x x x x x x x

(c) has concealed the particulars of his income or furnished inaccurate particulars of such income, or

(d)

(i).....

(ii).....

(iii) *in the cases referred to in clause (c) or clause (d), in addition of tax, if any, payable by him, a sum which shall not be less than, but which shall not exceed (three times), the amount of tax sought to be evaded by reason of the concealment of particulars of his income (or fringe benefits) of the furnishing of inaccurate particulars of such income (or fringe benefits)".*

6. A perusal of sub-cause (iii) of section 271(1)(c) would reveal that in the cases falling within the ambit of clause (c), the assessee would be directed to pay in addition to taxes any amount, which shall not be less than but which shall not exceed (three times) the amount of tax sought to be evaded. In other words, apart from the taxes required to be paid by an assessee on the additions made to his income, he will be required to pay a penalty, which is to be computed equivalent to the taxes sought to be evaded or three times of such taxes. Thus the moment additions are being deleted the computation of penalty would fail. In other words, the foundation for levy of the penalty is the addition made to the income of an assessee, which can be construed as concealed income or income with regard to which assessee has furnished inaccurate particulars in his return. In the present case, since the additions have been deleted, the very foundation to visit the assessee with the penalty does not survive. Hence, no penalty is imposable upon the assessee. Therefore, we allow this appeal of the assessee and delete the penalty.

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

Order pronounced in the open Court on September 20th , 2022.

Sd/-

Sd/-

(Rajesh Kumar)
Accountant Member

(Rajpal Yadav)
Vice-President (KZ)

Kolkata, the 20th day of September, 2022

- Copies to :*
- (1) **Swarnasathi Advisory Services Pvt. Limited,
Block-C, Flat No. 201, 2nd Floor,
4, D.L. Khan Road, Kolkata-700025**
 - (2) **Income Tax Officer,
Ward-9(4), Kolkata,
Aayakar Bhawan, 8th Floor,
P-7, Chowringhee Square, Kolkata-700069**
 - (3) *Commissioner of Income Tax (Appeals)-3, Kolkata;*
 - (4) *Commissioner of Income Tax, Kolkata-1;*
 - (5) *The Departmental Representative*
 - (6) *Guard File*

TRUE COPY

By order

*Assistant Registrar,
Income Tax Appellate Tribunal,
Kolkata Benches, Kolkata*

Laha/Sr. P.S.