

आयकर अपीलीय अधिकरण  
मुंबई पीठ "एफ", मुंबई  
श्री विकास अवस्थी, न्यायिक सदस्य एवं  
श्री एस. रिफौर रहमान, लेखा सदस्य के समक्ष  
IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH " F ", MUMBAI  
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER &  
SHRI S.RIFAUR RAHMAN , ACCOUNTANT MEMBER

आअसं.1694/मुं/2022 (नि.व. 2008-09)  
ITA NO.1694/MUM/2022(A.Y.2008-09)

Mr. Vishwajit C. Chindarkar,  
M/s. CH & Co., Shop No.5,  
Gr.Floor, Neelkanth Shopping Arcade,  
Mumbai 400 071.

PAN: ACXPC-8042-M.

..... अपीलार्थी /Appellant

बनाम Vs.

The DCIT – 22(2),  
Mumbai.

..... प्रतिवादी/Respondent

अपीलार्थी द्वारा/ Appellant by : None

प्रतिवादी द्वारा/Respondent by : Ms. Vranda U Matkarni

सुनवाई की तिथि/ Date of hearing : 22/08/2022

घोषणा की तिथि/ Date of pronouncement : 15/11/2022

आदेश/ ORDER

**PER VIKASH AWASTHY, JM:**

This appeal by the assessee is directed against the order of Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi [in short 'the CIT(A) ] dated 28/03/2022 for the Assessment Year 2008-09, confirming penalty levied u/s. 271(1)(c) of the Income Tax Act, 1961 ( in short 'the Act'].

2. The Assessing Officer vide assessment order dated 27/12/2010 passed u/s. 143(3) of the Act inter-alia made addition of Rs.49,54,600/- on account of cash deposits in the bank account. Penalty proceedings u/s. 271(1)(c) of the Act in respect of aforesaid addition were initiated. The Assessing Officer vide order dated 14/03/2013 levied penalty of Rs.16,84,068/- in respect of the aforesaid addition. The assessee remained unsuccessful before the CIT(A) in quantum proceedings. Thereafter, the assessee filed appeal in ITA No.2762/Mum/2012 before the Tribunal, inter-alia, assailing the addition of Rs.49,54,600/- confirmed by the CIT(A). The Tribunal vide order dated 13/09/2017 deleted the said addition. The assessee in the mean time filed appeal against the order levying penalty u/s. 271(1)(c) of the Act. The CIT(A) vide impugned order upheld the levy of penalty. Hence, the present appeal by the assessee.

3. Since, the addition on which penalty u/s. 271(1)(c) of the Act was levied has been deleted by the Tribunal vide ITA No.2762/Mum/2012 (supra), the penalty does not survive.

4. Ergo, the impugned order is set aside and appeal by the assessee is allowed.

Order pronounced in the open court on Tuesday the 15<sup>th</sup> day of November, 2022.

Sd/-

SHRI S.RIFAUH RAHMAN

लेखा सदस्य/ACCOUNTANT MEMBER

मुंबई/ Mumbai, दिनांक/Dated 15/11/2022

Vm, Sr. PS(O/S)

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य/JUDICIAL MEMBER

**प्रतिलिपि अग्रेषित Copy of the Order forwarded to :**

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त(अ)/ The CIT(A)-
4. आयकर आयुक्त CIT
5. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT, Mumbai
6. गार्ड फाइल/Guard file.

BY ORDER,

//True Copy//

(Dy./Asstt. Registrar)/Sr. Private Secretary  
ITAT, Mumbai