

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर
IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE
BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER
AND
SHRI B.M. BIYANI, ACCOUNTANT MEMBER

ITA No. 170/Ind/2023
Assessment Year: 2006-07

Shri Bhagwan Das Baheti, Flat No.101, Bhagwati Residency, Phiroj Shaw Road, Neemuch	<u>बनाम/</u> Vs.	I.T.O., Neemuch
(Assessee / Appellant)		(Revenue / Respondent)
PAN: AAOPB9624R		
Assessee by	Shri Pankaj Shah, CA and Shri Soumya Bumb, ARs	
Revenue by	None	
Date of Hearing	14.09.2023	
Date of Pronouncement	15.09.2023	

आदेश / O R D E R

Per B.M. Biyani, A.M.:

Feeling aggrieved by appeal-order dated 09.03.2023 passed by learned Commissioner of Income-tax-NFAC, Delhi ["CIT(A)"], which in turn arises out of penalty-order dated 05.10.2016 passed by learned ITO, Neemuch ["AO"] u/s 271(1)(c) of Income-tax Act, 1961 ["the Act"] for assessment-year ["AY"] 2006-07, the assessee has filed this appeal.

2. When the case was called, none appeared on behalf of revenue. However, there is an intimation from revenue's side that the Ld. DR is on office tour. Ld. AR for assessee submitted that the case is straightforward

and can be decided taking into account his submissions even without representation from revenue. Accordingly, the hearing was proceeded.

3. Ld. AR submitted that the assessee filed return declaring "Nil" income in the proceeding of section 147. The AO, however, completed assessment vide order dated 24.12.2009 u/s 147 read with section 143(3) determining the total income at Rs. 48,80,053/- as against returned income of Rs. Nil. The assessee carried matter in first-appeal to CIT(A) but could not succeed. The assessee went in next appeal ITA No. 94/Ind/2016 to ITAT, which the ITAT decided on 27.11.2018 wherein the assessment-order was set aside to AO. In pursuance thereof, the AO passed newer assessment-order dated 31.12.2019 accepting the returned income of Rs. Nil. During intervening period, the AO passed penalty-order u/s 271(1)(c) dated 05.10.2016 qua the originally assessed income of Rs. 48,80,053/-. Now, since the assessed income has again turned to Rs. Nil, there is no surviving addition. Therefore, the penalty imposed by AO u/s 271(1)(c) also has no legs to stand and the same deserves to be deleted fully.

3. We find merit in the submissions of Ld. AR, accordingly the penalty imposed by AO is deleted. The assessee succeeds in this appeal.

4. Resultantly, this appeal is allowed.

Order pronounced in the open court on 15.09.2023.

Sd/-
(VIJAY PAL RAO)
JUDICIAL MEMBER
Indore

दिनांक /Dated : 15.09.2023.
CPU/Sr. PS

sd/-
(B.M. BIYANI)
ACCOUNTANT MEMBER