

IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH, MUMBAI

BEFORE SHRI ABY T. VARKEY, JM AND SHRI AMARJIT SINGH, AM

आयकर अपील सं/ I.T.A. No.5012/Mum/2006

(निर्धारण वर्ष / Assessment Years: 2002-03)

DCIT, Central Circle-1 9 th Floor, Old CGO Bldg, Annexe, MK Road, Mumbai-400020.	बनाम/ Vs.	M/s. Asha Mangal Portfolio P. Ltd. 103/24/1, Foreshore Road, Shibpur, Howrah-711102.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AABCA3340B		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

Assessee by:	None
Revenue by:	Shri Manoj Kumar Sinha (Sr. DR)

सुनवाई की तारीख / Date of Hearing: 11/01/2024

घोषणा की तारीख /Date of Pronouncement: 29/01/2024

आदेश / ORDER

PER ABY T. VARKEY, JM:

This is an appeal preferred by the revenue against the order of the Ld. CIT(A), Central-1, Mumbai dated 25.07.2006 for AY. 2002-03 wherein the Ld. CIT(A) was pleased to delete the penalty levied u/s 271(1)(c) of the Income Tax Act, 1961 (hereinafter "the Act").

2. None appeared for the assessee. However, we note that this is a penalty appeal preferred by the revenue against the action of the Ld. CIT(A) deleting the penalty imposed by the AO u/s 271(1)(c) the Act.

3. The AO had levied the penalty pursuant to the quantum addition made in the assessment order framed on 07.03.2005 u/s 143(3) of the Act wherein he computed the income under the head "*Income from property*" instead of income from '*business*' as offered by the assessee. The quantum assessment was confirmed by the Ld. CIT(A), but deleted by the Tribunal vide order dated 04.04.2008 (ITA. No.6901/Mum/2005 for AY. 2002-03) [along with ITA. No. 2005/Mum/2005 (for AY. 2001-02), ITA. No.4571/Mum/2006 (for AY. 2000-01) and ITA. No.4572/Mum/2006 (for AY. 2003-04)].



ITA No.5012/Mum/2006

A.Y. 2002-03

M/s Asha Mangal

4. The AO levied penalty u/s 271(1)(c) of the Act on 10.05.2006 which was deleted by Ld. CIT(A) by passing the impugned order dated 25.07.2006. Even though, none appeared for the assessee, the Tribunal vide order dated 04.04.2008 in assessee's own case (supra) was pleased to hold that the income returned by the assessee was nothing but the *business income* and cannot be treated as the "*income from house property*" and allowed the expenditure as well as the depreciation claimed by assessee. Thus, the quantum assessment made on this score by the AO was deleted. In such a scenario, when the quantum assessment has been deleted in the hands of the assessee, the penalty levied has to be deleted. For this proposition, we rely on the legal Maxim "*Sublato Fundamento credit opus*" meaning in case foundation is removed, the super-structure falls which squarely applies to the case in hand. The Hon'ble Supreme Court while applying this maxim in the case of Badarinath Vs. Tamilnadu [AIR 2000 (SC) 3243 SC] held that once the basis of proceeding is gone, all consequential order and acts would fall on the ground automatically which is applicable to judicial and quasi-judicial proceedings. In the light of the above discussion, we do not find any infirmity in the action of the Ld. CIT(A) deleting the penalty levied by AO.

5. In the result, the appeal of the revenue stands dismissed.

Order pronounced in the open court on this 29/01/2024.

Sd/-
(AMARJIT SINGH)
ACCOUNTANT MEMBER

Sd/-
(ABY T. VARKEY)
JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated : 29/01/2024.
Vijay Pal Singh, (Sr. PS)



ITA No.5012/Mum/2006

A.Y. 2002-03

M/s Asha Mangal

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त / CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
5. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

**उप/सहायक पंजीकार / (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai**