

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "F" MUMBAI**

**BEFORE SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)
AND
SHRI RAHUL CHAUDHARY (JUDICIAL MEMBER)**

**ITA No. 3741/MUM/2023
Assessment Year: 2004-05**

The Vithalnagar Co-operative
Hsg. Society Ltd.,
Jai Hind Club Building JVPD
Scheme, 2nd floor, N.S. Road,
11, Vile Parle West,
Mumbai-400049.

Vs.

Additional/Joint/Deputy/Assistant
Commissioner of Income
Tax/Income-tax Officer, National
Faceless Centre, Delhi
Income Tax Officer, 34(3)(5) earlier
25(3)(5),
2nd floor, Kautilya Bhavan, Bandra
Kurla Complex, Bandra (E)
Mumbai-400051.

**PAN NO. AAAAT 3055 F
Appellant**

Respondent

Assessee by : Mr. Shalin Divatia
Revenue by : Ms. Rajeshwari Menon, DR

Date of Hearing : 16/04/2024
Date of pronouncement : 25/04/2024

ORDER

PER OM PRAKASH KANT, AM

This appeal by the assessee has been preferred against order dated 25.08.2023 passed by the Ld. Commissioner of Income-tax (Appeals) – National Faceless Appeal Centre, Delhi [in short ‘the Ld. CIT(A)’] for assessment year 2004-05, raising following grounds:



1. *The learned Commissioner of Income Tax (Appeals) erred in confirming the Order of the Assessing Officer levying penalty u/s 271 (1) (C) of the Income Tax Act, 1961.*
2. *The learned commissioner of Income Tax (Appeals) erred in confirming penalty u/s 271 (1) (C) without having adjudicated on the appeal against the addition pursuant to which of the penalty was levied.*
3. *The assessee craves leave to add, alter or modify the grounds of appeal and submit a detailed statement of facts, written submissions and case law relied upon at the time of the hearing.*

2. At the outset, the Ld. counsel for the assessee submitted that the Ld. CIT(A) has passed order ex-parte qua the assessee without taking into consideration submission of the assessee and therefore, appeal might be restored back to the file of the Ld. CIT(A) for deciding afresh after taking into consideration submission of the assessee.

3. The Ld. Departmental Representative (DR) on the other hand objected that assessee did not make compliance of the various notices issued by the Ld. CIT(A) as noted on page 5 of the impugned order. In the rejoinder, the Ld. Counsel for the assessee submitted that the assessee being a cooperative society, the notices issued on the portal of the Income-tax Website could not be complied due to change of employees from time to time. Before us, the Id Counsel gave undertaking that if the matter is restored back to the Ld. CIT(A) then due compliance shall be made by the assessee.

5. We have heard rival submission of the parties and perused the material on record. Before us the Id counsel submitted that in the impugned order penalty for concealment/ furnishing of inaccurate particulars of income has been sustained by the Id CIT(A) , whereas



the appeal against quantum of addition is pending before him. As far as the issue of the impugned order passed without taking into consideration submission of the assessee is concerned, we find that the assessee has not complied with various notices issued for the reason that concerned employees of the assessee dealing with accounts/tax matter got changed from time to time. In view of the undertaking given by the Ld. counsel for the assessee before us and quantum proceedings pending before ld CIT(A), we feel it appropriate to restore the issue in dispute involved in this appeal back to the file of the Ld. CIT(A) for deciding afresh after taking into consideration submission of the assessee. The assessee is directed to ensure compliance of all the notices which will be issued by the ld CIT(A) for hearing of the matter. The grounds raised by the assessee are accordingly allowed for statistical purposes.

6. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open Court on 25/04/2024.

Sd/-
(RAHUL CHAUDHARY)
JUDICIAL MEMBER

Sd/-
(OM PRAKASH KANT)
ACCOUNTANT MEMBER

Mumbai;
Dated: 25/04/2024
Rahul Sharma, Sr. P.S.



Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER,
(Assistant Registrar)
ITAT, Mumbai