

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "E", MUMBAI**

**BEFORE SHRI B.R. BASKARAN, ACCOUNTANT MEMBER AND  
MS.KAVITHA RAJAGOPAL, JUDICIAL MEMBER**

ITA NO.4737/MUM/2023  
Assessment Year -2004-05  
ITA NO.4738/MUM/2023  
Assessment Year -2005-06  
ITA NO.4739/MUM/2023  
Assessment Year -2006-07

Trupti Divyang Bhansali,  
B/1201, Laxmi Chhaya CHS Ltd.,  
L.T. Road, Babhai Nakka,  
Borivali (W), Mumbai 400 092  
AADPB-8566-D

---- Appellant

Vs.

ACIT Circle – 32(2)  
Room No.720, 7<sup>th</sup> Floor,  
Kautilya Bhavan, C-41 to C-43,  
G-Block, Bandra Kurla Complex,  
Bandra (E), Mumbai – 400 051.

--- Respondent

Appellant by : S/Shri Ajay Singha & Akshay Pawar  
Respondent by : Shri P.D.Chougule, Sr.DR

Date of Hearing : 08/05/2024  
Date of Pronouncement : 22/05/2024

**ORDER**

**PER B.R. BASKARAN, ACCOUNTANT MEMBER :**

All the three appeals filed by the assessee are directed against orders passed by learned Commissioner (Appeals)-55, Mumbai and they relate to the assessment years 2004-05, 2005-06 and 2006-07. The assessee is aggrieved by the decision of the learned Commissioner (Appeals) in confirming the penalty levied under section 271(1)(c) of the Act in all the three years.

2. We shall first take up the appeal filed for assessment year 2004-2005. The chronological events that happened in this year are narrated below:-

(a) The original assessment order was passed by the assessing officer for this year u/s 143(3) of the Act on 22-12-2006 making certain additions.

(b) The assessee challenged those additions by filing appeal before Ld CIT(A) and then to the Tribunal. The Tribunal, however, restored all the issues to the file of the assessing officer, vide its order dated 09-09-2011 passed in ITA No.5925/Mum/2007.

(c) The assessing officer, accordingly, passed the assessment order under section 143 (3) r.w.s 254 of the Act on 26.3.2013, wherein it appears that the Assessing Officer made the very same additions that were made in the original assessment order.

(d) The assessee again challenged the same by filing appeal before the learned CIT(A) and then before the Tribunal.

(e) When the appeal was pending before the Tribunal, the assessing officer passed the impugned penalty order on 27.03.2018.

(f) The assessee challenged the penalty order by filing appeal before the learned CIT (A), but could not succeed. Hence the assessee has filed this appeal before the Tribunal.

(g) We noticed that the assessee had filed appeal against quantum assessment proceedings for the 2<sup>nd</sup> time before the tribunal challenging the order passed by Ld CIT(A) in the second round of proceedings. The Tribunal, vide its order dated 28-11-2018 passed in

ITA No.4572/Mum/2016, restored the matters back to the file of the assessing officer with certain directions.

(h) Thereafter the assessing officer passed the assessment order for the third time on 30.12.2019 in order to give effect to the order passed by the tribunal in the 2<sup>nd</sup> round of proceedings. It is pertinent to note that the assessing officer did not initiate penalty proceedings in the assessment order dated 30-12-2019.

3. With this factual background, we shall examine the validity of impunity penalty order passed by the assessing officer. We noticed the earlier that the assessing officer has passed the impugned penalty order after the receipt of appellate order passed by learned CIT (A) in the 2<sup>nd</sup> round of proceedings. We also noticed that the order so passed by Commissioner (Appeals) has been set aside by the Tribunal, vide its order dated 28. 11. 2018 (referred supra). In that case, the assessment order and Ld CIT(A)'s order passed in the second round of proceedings would merge with the order passed by the Tribunal on 28.11.2018 and as per the order passed by the Tribunal, the Assessing Officer was required to pass the assessment order afresh. Hence, the assessment order and Ld CIT(A)'s order passed earlier in the first round and in the second round will not survive in the eyes of law and what would survive is the latest assessment order passed on 30-12-2019 in order to give effect to the order passed by the Tribunal on 28.11.2018.

4. We noticed that the impugned penalty order has been passed by the Assessing Officer in respect of additions made in the assessment order passed in the 2<sup>nd</sup> round of proceedings. We also noticed that the

orders passed in the first and second round of proceedings would merge with the order passed by the Tribunal and hence they will not survive in the eyes of law. Hence the impugned penalty order will not have legs to stand on its own, as the relevant assessment order does not survive in the eyes of law. Accordingly the order passed by learned CIT(A) upholding the penalty order will also not survive. In view of this legal position, the present appeal of the assessee deserves to be allowed. Accordingly, the penalty order passed by the Assessing Officer in AY 2004-05 is liable to be quashed on this legal ground. We order accordingly.

5. The facts relating to other two years, viz., AY 2005-06 and 2006-07 are identical in nature. Accordingly, the penalty orders passed by the Assessing Officer and Ld CIT(A) in these 2 years will also not survive in the eyes of law. Accordingly the appeals filed by the assessee for assessment years 2005-2006 and 2006-2007 deserves to be allowed on this legal ground. Accordingly, the penalty orders passed by the Assessing Officer in AY 2005-06 and 2006-07 are liable to be quashed on this legal ground. We order accordingly.

6. In the result, all the three appeals of the assessee are allowed.

Order pronounced in the open court on 22<sup>nd</sup> May , 2024.

Sd/-

(KAVITHA RAJAGOPAL)  
JUDICIAL MEMBER

Mumbai, Date : 22<sup>nd</sup> May, 2024

Sd/-

(B.R. BASKARAN)  
ACCOUNTANT MEMBER

Vm

ITA NO.4737/MUM/2023  
Assessment Year -2004-05  
ITA NO.4738/MUM/2023  
Assessment Year -2005-06  
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Assessment Year -2006-07

Copy to :

- 1) The Applicant
- 2) The Respondent
- 3) The PCIT/CIT concerned
- 4) The D.R, "E" Bench, Mumbai
- 5) Guard file

By Order

Dy./Asstt. Registrar  
I.T.A.T, Mumbai