

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

**BEFORE SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER AND  
SHRI ANIKESH BANERJEE, JUDICIAL MEMBER**

**ITA 3973/Mum/2023  
(Assessment year : 2014-15)**

<b>M/s Arham Neejdeep Realtors</b> Shop No.8, Milan Apartment, Near Post Office, Vasai Road (W), Dist. Palghar PIN-401 202 <b>PAN :AASFA6761C</b>	<b>vs</b>	<b>The Asst. Commissioner of Income- tax, Circle(4), Thane</b>
<b>APPELLANT</b>		<b>RESPONDENT</b>

Assessee by : Ms. Niyati Mehta, CA  
Respondent by : ShriManoj Kumar Sinha (SR.DR.)  
Date of hearing : 02/07/2024  
Date of pronouncement : 02/ 07/2024

**ORDER**

**PER ANIKESH BANERJEE, J.M:**

Instant appeal of the Assessee is preferred against the order of the  
Commissioner of Income-tax (Appeals), Pune-11 [for brevity, 'Ld.CIT(A)'] passed  
under section 250 of the Income-tax Act, 1961 (in short, 'the Act'), for Assessment  
Year 2014-15, date of order 20.09.2023. The impugned order was emanated from  
the order of the Id. Assistant Commissioner of Income-tax, Circle 4, Thane (in  
short, 'the A.O.') passed under section 271(1)(c) of the Act, date of order  
28/03/2019.

2. The assessee has taken the following grounds:-

*“a.) Under the facts and circumstances of the case and in law, the Hon. Commissioner of Income tax(A) erred in confirming the penalty levied u/s 271(1)(c) of the income tax act by the then Assessing Officer amounting to 100% of the tax amount i.e. Rs. 37,04,485/- on following amounts without any appropriate reason, ignoring the submission and explanations present with him and only on the basis of assumption and conjectures.*

*a. On business income Rs. 82,00,000/-considering the same as alleged unexplained credits on account of furnishing inaccurate particulars of income.*

*b. On amount of Rs. 26,98,750/- on account of difference between the estimated profit as on date of survey and returned profit as per audited profit and loss account as on 31.03. 2014 allegedly considering the same as furnishing inaccurate particulars of income.*

*b) Under the facts and circumstances of the case and in law, the Hon. Commissioner of Income Tax(A) erred in not providing enough opportunity for preparing and submitting the submission and presenting the matter before him.*

*c) The Appellant crave leave to add, amend or delete any of the above ground.”*

3. Brief facts of the case are that the assessee is a firm and is engaged in business of real estate development and construct the residential and commercial buildings. In a survey operation carried out under section 133A of the Act, the assessee declared an amount of Rs.82 lakhs related to ‘on-money transactions’ and accepted the addition. The assessee filed return by declaring the total income at Rs.1,14,01,250/-. The case was selected for scrutiny and after addition of the declared amount, the assessed income is fixed amount to Rs.1,42,00,000/-. By re-computing the business income after considering the ‘on-money

receipts' the difference in net profit is calculated amount to Rs.26,98,750/- is added back with the total income of the assessee. The Ld.AO initiated the penalty proceedings under section 271(1)(c) of the Act and the tax sought to be evaded is calculated amount to Rs.37,04,485/-. The tax is levied @100% as penalty under section 271(1)(c) of the Act which is amount to Rs. 37,04,485/-. The assessee challenged the penalty order before the Id. CIT(A). The Ld.CIT(A) passed an exparte order. As the assessee was unable to submit the documents in favour of its claim. Finally, the appeal order is passed by upholding the penalty order. Being aggrieved on the appeal order, the assessee filed an appeal before us.

4. The Ld.AR argued vehemently and placed that the assessee was unable to submit the document before Ld.CIT(A) due to change of consultant. The Ld.AR further placed that in quantum appeal, the addition was deleted. So the penalty will be recomputed accordingly after giving effect to the order of the ITAT. The Ld.AR prayed for setting aside the matter before the Ld.CIT(A) for hearing the appeal petition afresh.

5. The Ld.DR argued and did not make any objection against the submission of the Ld.AR. The Ld.DR invited our attention in para 6 of appeal order, which is reproduced as below:-

*"6. During the appellate proceedings, various notices were issued to the appellant, which were served on the e-mail addresses dcdoshi005@gmail.com and arhamrealtors@ymail.com available in ITBA. The details of notices issued during the appellate proceedings are as under: -*

<u>Sr.No.</u>	<u>Dt of notice</u>	<u>Dt. of hearing</u>	<u>Remarks</u>
1	29/12/2020	13/01/2021	No Response
2	29/10/2021	15/11/2021	No Response

3	13/01/2022	28/01/2022	No Response
4	22/04/2022	09/05/2022	Appellant requested for adjournment for 15 days
5	03/11/2022	-	Enablement of Communication Window
6	18/04/2023	04/05/2023	Appellant requested for adjournment till 19.05.2023
7	08/05/2023	23/05/2023	No Response
8	07/08/2023	22/08/2023	No Response"

6. We heard the rival submission and considered the documents available in the record. The penalty was levied due to difference of net profit calculated on basis of the income declared in the return and income assessed under section 143(3). The penalty is levied @100% of the evaded tax which amounts to Rs.37,04,485. The appellate authority allowed the reasonable opportunity to the assessee during the appeal hearing. The Ld.AR was unable to substantiate the reasons for non-compliance of the notices of the Ld.CIT(A). But the assessee has not got the reasonable opportunity to submit its grievance and the evidence before the Ld.CIT(A) during the appellate proceedings. The Id. DR informed that the income should be recomputed on basis of the effect of quantum appeal. Somehow there is amendment in calculation of total income of the assessee which will affect for determination of penalty amount. In our considered view, one more opportunity should be given to the assessee before the Id. CIT(A) for hearing. Accordingly, we set aside the impugned appeal order and remit back the matter to the file of the Ld.CIT(A) for further adjudication of appeal. We are not expressing any view on the merit of the case which will impair the appeal proceedings. Needless to say, the assessee should get a reasonable opportunity

of hearing in set aside proceedings. On the other hand, the assessee should be diligent and co-operative with the appellate authority for quick disposal of the appeal.

7. In the result, the appeal of the assessee in **ITA 3973/Mum/2023** is allowed for statistical purposes.

Order pronounced in the open court on 2<sup>nd</sup> day of July, 2024.

Sd/-

(PRASHANT MAHARISHI)  
ACCOUNTANT MEMBER  
Mumbai, दिनांक/Dated: 02/07/2024  
Pavanan

sd/-

(ANIKESH BANERJEE)  
JUDICIAL MEMBER

**Copy of the Order forwarded to:**

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त CIT
4. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT,  
Mumbai
5. गार्डफाइल/Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar), **ITAT, Mumbai**