

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

**BEFORE SHRI ANIKESH BANERJEE, JUDICIAL MEMBER AND  
SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

**I.T.A No.1219/Mum/2024  
(Assessment Year: 2014-15)**

<b>Mumbai Police Welfare Fund</b> 1 <sup>st</sup> Floor, New Building, Dr.D.N. Road, Crawford Market, Mumbai-400 001 <b>PAN:AAEAM1674K</b>	<b>vs</b>	<b>Assistant Commissioner of Income- tax-17(2),</b> Aayakar Bhavan, M.K. Road, Mumbai-400020
<b>APPELLANT</b>		<b>RESPONDENT</b>

Assessee by : Shri Rajiv Khandelwal  
Respondent by : Shri P.D.Chougule (Addl.CIT) SR DR  
  
Date of hearing : 26/08/2024  
Date of pronouncement : 28/08/2024

**ORDER**

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

Instant appeal of the assessee was filed against the order of the Learned National Faceless Appeal Centre (NFAC), Delhi [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 08.03.2024. The impugned order was emanated from the order of the Id. Assistant Commissioner of Income-tax, Ward-17(2), Mumbai passed under section 271(1)(c) of the Act, order dated 26/06/2019.

2. The assessee has taken the following grounds: -

*“The Commissioner of Income-tax (Appeals) -National Faceless Appeal Centre, Delhi (hereinafter referred to as the CIT(A)) erred in upholding the action of the Assistant Commissioner of Income-tax 17(2), Mumbai (hereinafter referred to as the Assessing Officer) in levying penalty of Rs 1,08,56,103 under section 271(l)(c) of the Act.*

*The appellants contend that on the facts and in the circumstances of the case and in law, the CIT(A) ought not to have confirmed the impugned penalty levied by the Assessing Officer under section 271(l)(c) of the Act.*

*The appellants further contend that the CIT(A) erred in upholding the action of the Assessing Officer in levying the impugned penalty inasmuch as the bona fides of the appellants cannot be doubted.*

*The appellants crave leave to add to, alter or amend the aforestated ground of appeal.”*

3. The brief fact of the case is that the assessee is an AOP and maintaining a fund for the welfare of the Police of Maharashtra. For the impugned assessment year, the assessee has not filed the income-tax return of income (in short ROI). The assessee had an assumption that the income generated for the impugned assessment year under consideration was not taxable as it is used for the welfare of the state government employees. Accordingly, after the advice from tax consultant, the assessee filed first ROI for A.Y. 2015-16. The notice under section 148 was issued and the case was reopened under section 147 for impugned assessment year. After receiving the notice, the assessee immediately filed the return U/s 148 of the Act and offered tax on the professional fees and interest income amount to Rs.13,83,20,568/-. The assessment was framed under section 147 / 143(3) of the Act and no separate addition was made. The return filed under section 148 is duly accepted and the demand was Nil for the impugned assessment year. The Ld.AO initiated penalty proceedings under section 271(1)(c)

of the Act. As the income was first identified by the revenue authorities on that basis, the penalty @100% being tax sought to be evaded amount to Rs.1,08,56,103/- is levied. Being aggrieved on the penalty order, the assessee filed an appeal before the Id. CIT(A). The assessee submitted the detailed submission. But the Id.CIT(A) passed the appeal order upholding the penalty order. Being aggrieved on the appeal order, the assessee filed an appeal before us.

4. We heard the rival submissions and considered the documents available on the record. Ld.AR argued that the assessee is in bonafide belief did not file the return of income for the impugned assessment year. The assessee is a welfare fund and activities related to the welfare of the police of Maharashtra State. The welfare fund was formed by the Mumbai police on dated 04/05/2012 and it is just the second assessment year, the assessee has not filed the ROI. The moot question is whether the penalty will be leviable for the impugned assessment year after a bonafide belief of the assessee that income is nontaxable, and TDS was deducted on income. Considering this question, the Ld.AR respectfully relied on the judgment of Hon'ble **Bombay High Court** in the case of **CIT vs Sudhirkumar Chottubhai (2002) 120 Taxman 277 (Bombay)** wherein the Hon'ble jurisdictional High Court accepted the bonafide belief of the assessee and the penalty was rejected and the order was passed in favour of the assessee. The Ld.AR further relied on the decision in the case of **City and Industrial Development Corporation of Maharashtra Limited vs ACIT-10(3) 25 taxmann.com 333(Mum)**, held that no income in the hands of the assessee acting totally on behalf of the state

government and the revenue authorities was not justified to levy tax on the assessee.

5. The Ld.DR argued and fully relied on the orders of the revenue authorities.

6. In our considered view, the assessee was a non-filer of ROI for the impugned assessment year. But there was sufficient amount of TDS was deducted on income. After receiving the notice under section 148, the return was filed which was before receiving of the recorded reason and the tax was paid in full. In the assessment Id. AO accepted ROI and tax paid and no other findings for concealment of income was found. The assessee is a welfare fund and not in the activity of profit making. All the personnel are employed in the State of Maharashtra. We respectfully relied on the order of the Hon'ble jurisdictional High Court in the case of **Sudhirkumar Chottubhai** (supra) and **City and Industrial Development Corporation of Maharashtra Limited** (supra). The levy of penalty is unjustified. So, the penalty under section 271(1)(c) amount to Rs.1,08,56,103/- is quashed.

7. In the result, the appeal of the assessee bearing **ITA No.1219/Mum/2024** is allowed.

Order pronounced in the open court on 28<sup>th</sup> day of August 2024.

Sd/-

(GIRISH AGRAWAL)  
ACCOUNTANT MEMBER

Mumbai, दिनांक/Dated: 28/08/2024  
Pavanan

sd/-

(ANIKESH BANERJEE)  
JUDICIAL MEMBER

**Copy of the Order forwarded to:**

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

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BY ORDER,

(Asstt. Registrar), ITAT, Mumbai