

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

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER
AND
SHRI RATNESH NANDAN SAHAY, ACCOUNTANT MEMBER**

**ITA No.3908/M/2023
Assessment Year: 2006-07**

Naresh H. Shah 52- Shreeji Kutir, Ram Gally, Kandivali (W.), Mumbai- 400067. PAN: ANEPS6449Q	Vs.	ACIT 25(3) Kautilya Bhavan, BKC Bandra Kurla Complex, Bandra (East), Mumbai.
(Appellant)		(Respondent)

Present for :

Assessee by : Shri Vijay Shah, A.R.

Revenue by : Shri Sunil Shinde, Sr. A.R.

Date of Hearing : 13 . 08 . 2024

Date of Pronouncement : 28 . 08 . 2024

O R D E R

Per : Ratnesh Nandan Sahay, Accountant Member:

1. This appeal has been filed by the appellant against the Order of the Ld. CIT (Appeals) passed u/s. 250 of the Income Tax Act [the 'Act' in short]

vide DIN & Order No. 35/ACIT-25(3)/Income Tax Act.42/12-13 Dated 17/12/2013 for the Assessment Year 2006-07.

2. Following grounds of appeal have been raised by the appellant:

1. *“On the facts and circumstances of the case and in law, the CIT(A) has erred in confirming order levying penalty of Rs.17,74,362/- issued by assessing officer without giving proper opportunity of being heard to the appellant.*
2. *On the facts and circumstances of the case and in law, the CIT(A) has erred in confirming order levying penalty @200% of tax on concealed income instead of 100%.*
3. *On the facts and circumstances of the case and in law, the assessing officer has levied penalty without issuing the proper notice u/s 271(1)(c) for leaving the penalty therefore, the appellant prays that the penalty of Rs.17,74,362/- may be deleted.*
4. *The appellant prays to add, amend and to alter the grounds and grounds of appeal as and when given.”*

3. The facts of the case, in brief, are that during the course of assessment proceedings the AO found that the assessee did not file its return of income u/s. 139(1) of the Act for the assessment year under consideration and filed its return of income only in response to the notice u/s.148 of the Act declaring total income at Rs.19,05,913/- consequent to the survey action conducted in the case of the assessee on 01-01-2006.The entire returned income of Rs.19,05,913/- was treated as concealed income by the AO while passing order u/s 143 (3) r.w.s 147 of the Act. The penalty proceedings u/s.271(1)(c) of the I.T.Act was also initiated in this case.

4. In the course of the first appeal the addition made under different heads bringing the total income to Rs.1,01,17,240/- was reduced to Rs.26,35,713/-. The AO issued penalty notice along with assessment order and subsequently again sent notice to show-cause why penalty should not be levied. However, there was no response and therefore the AO passed the order looking into the facts and circumstances available before him. It is a fact that the return of income in this case was filed on consequent to the survey action u/s.133A of the I.T.Act and it is also a fact that during the course of assessment further concealed income was found part of which was duly confirmed by the CIT(A). The assessee has not availed opportunity to explain as to why he furnished inaccurate particulars and concealed his income and therefore the AO levied penalty of 200% on tax sought to be evaded u/s.271(1)(c) of the I.T. Act which is Rs.17,74,362/-. During appeal again the appellant was provided numerous opportunities to explain as to why penalty should not be upheld. However, despite of various opportunities on following dates 09-04-2013, 20-06-2013, 18-07-2013, 07-08-2013, 16-09-2013, 22-10-2013, 11-11-2013 and 10-12-2013 no one has attended only adjournment letters have been filed on and often.
5. The Ld. CIT(A), therefore, was constrained to dismiss the appeal on the ground that the assessee had not come forward to explain any reason for



furnishing inaccurate opportunities of income and thereby concealing the income both during the assessment proceedings as well as the appellant proceedings. Aggrieved by the order of the Ld. CIT(A), this appeal has been filed before us.

6. We have considered the facts of the case and submission made by the appellant. It is found that the Ld. CIT(A) has dismissed the appeal on the ground that the appellant did not appear during the appellant proceedings pending before him despite given several opportunities of being heard. Therefore, we think it proper to send the matter back to the file of Ld. CIT(A) to decide the penalty imposed u/s. 271(1)(c) of the Act after giving reasonable opportunity to the appellant. The appellant is also directed to make compliance before the Ld. CIT(A) and explain its case before him.
7. In the result, the appeal is allowed for statistical purpose.

Order pronounced in the open court on 28.08.2024.

Sd/-
AMIT SHUKLA
JUDICIAL MEMBER

Sd/-
RATNESH NANDAN SAHAY
ACCOUNTANT MEMBER

Mumbai, Dated: 28.08.2024.
Snehal C. Ayare, Stenographer



Copy to: The Appellant
The Respondent
The CIT, Concerned, Mumbai
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.