

IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "F", MUMBAI  
BEFORE SHRI ANIKESH BANERJEE, JUDICIAL MEMBER AND  
SHRI GAGAN GOYAL, ACCOUNTANT, JUDICIAL MEMBER  
**ITA No. 6263/Mum/2019 (A.Y.1997-98)**

**Jagdishchandra Prahaladdas Pasari**

503/D, Santoor Apts.,  
Pokhran Road No. 2,  
Thane West, Thane  
Maharashtra – 400 601  
**PAN No.: AAGPP0103M**

..... Appellant

Vs.

**ITO Ward 14,**

6<sup>th</sup> floor, Aksar IT Park,  
Road No. 16Z, Nehru Nagar,  
Wagle Estate, Thane (W),  
Maharashtra – 400 604

..... Respondent

Appellant by	:	None
Respondent by	:	Ms. Rajeshwari Menon, Ld. DR
Date of hearing	:	09/09/2024
Date of pronouncement	:	01/10/2024

**ORDER**

**PER GAGAN GOYAL, A.M:**

This appeal by the assessee is directed against the order of Ld. CIT (A) – 1, Thane dated 10.07.2019 passed u/s. 250 of the Income Tax Act, 1961 (in short 'the Act') for A.Y. 1997-98. The assessee has raised the following grounds of appeal:-

- 1. On facts and in Law by upholding the penalty under section 271(1) (c) of the Act being estimated peak credit under Income tax act without considering the judicial and not applying the natural justice.*
- 2. The Appellant craves leave to add further grounds of appeal or to amend or alter the existing grounds of appeal on or before the date of hearing.*
2. The brief facts of the case are that the Assessee is an individual proprietor of M/s. Venus Enterprises filed his return of income for A.Y. 1997-98 on 03.11.1997 declaring total income at Rs. 1,78,040/- the return was subsequently revised on 7.11.1997 to Rs. 1,26,900/-. Thereafter, the case the return was processed u/s. 143 (1) of the Act. The case was subsequently selected for scrutiny under CASS and the scrutiny assessment proceeding u/s. 143(3) of the Act were completed on 18.02.2000 whereby the total income of the Assessee was held to be Rs. 1,59,725/-.
3. The Ld. CIT-1, Thane vide order dated 27.03.2002 set aside the original assessment order u/s. 263 of the Act and directed the AO to verify all the Assessee's claims vis-à-vis the books of accounts to verify all loans disclosed by the Assessee in his personal capacity as well as in the balance sheet of his business concerns.
4. Thereafter, ITO, Ward 1 (4), finalized the reassessment order section 143(3) r.w.s. 263 of the Act and reassessed the Assessee's total income at Rs. 1,17,90,190/- as against the assessed income of Rs. 1,59,725/-. The Assessee being aggrieved by the order of the AO preferred an appeal before the Ld. CIT (A) 1, Thane.
5. The Ld. CIT (A) in his order dated 23.03.2003 confirmed the addition of Rs. 15,088/- as against the addition of Rs. 2,81,665/- made by the AO due to

the estimation of net profit. Further the Ld. CIT (A) confirmed the entire addition of the Rs. 83,507/- on account of loss on interest paid. Lastly, the Ld. CIT(A) ,Thane restricted the addition on account of fresh capital introduced at estimated peak credit of Rs. 8,00,000/-, as against the addition of Rs. 12,82,757/- made by the AO u/s. 68 of the Act.

6. The Assessee being aggrieved by the order of the Ld. CIT (A), Thane preferred an appeal before a coordinate bench of this Tribunal. The revenue too filed cross appeals against the Assessee and the Appeal was decided vide order dated 28.11.2011 in ITA No. 4187/Mum/2004 wherein the ITAT confirmed the additions of Rs. 83,507/- and Rs. 8, 00,000/-.
7. The AO herein had already initiated penalty proceedings u/s. 271(c) of the Act at the time when the order by the Ld. CIT (A), Thane was passed and treated the additions of Rs. 83,507/- and Rs. 8, 00,000/- as income for which particulars have been concealed/ inaccurate particulars have been filed and levied a penalty of Rs. 3, 25,005/- u/s. 271(c) of the Act.
8. Aggrieved by the above order of the AO the Assessee preferred an Appeal before the Ld. CIT (A). The Ld. CIT(A) herein referred to the order of the Ld. CIT(A), Thane, wherein the addition of Rs 12,82,7547/- made by the AO were restricted to Rs 8,00,000/- on basis of systematic working as per details available with the then CIT(A), Thane. The Ld. CIT (A) herein also referred to the order of this tribunal wherein the order given by the Ld. CIT (A), Thane was also upheld by the ITAT and the addition of Rs 8, 00,000/- was upheld. Therefore the Ld. CIT(A) herein confirmed the penalty of Rs 3,25,000/- levied by the AO on addition of Rs 8,00,000/- and Rs 83,507/-.

Aggrieved by the order of the Ld. CIT (A) the Assessee has preferred this present appeal before us.

9. In response to the AO's letter the Assessee submitted as follows:-

*"Return of income was filed on 3 November 1997 along with Audit Report declaring total income at Rs 1, 78,040/-. Thereafter revised return was filed on 7" November 1997 wherein total income was reduced to Rs 1, 26,900/-*

*In this case, the proceeding was 263 was initiated and Id. AO accordingly reframed the assessment. The Id. AO substantiating various additions, which were deleted by the Ld. CIT Appeal and Hon'ble ITAT. The only addition on account of cash credit remained.*

*All the necessary documentary evidences were produced. The Appellate Authority without appreciating the facts on records and the legal provision, confirmed the addition of Rs 8, 00,000/-. The perusal of the Ld. CIT appeal order will reveals that the addition was sustained on estimated basis and not on part-wise creditors. In the original assessment, no penalty proceeding under section 271(1)(c) of the Act was initiated. In the reframed assessment penalty proceeding has been initiated. I have already explained that the addition was not with respect of party wise cash credit but on estimated addition.*

*I am a heart patient; the tax and heavy interest charged under various sections on me have sleepless nights. Any further liability may create havoc on my part and on my health, which please note. For interest levied, I am going necessary waiver application separately.*

*In view of the above, it is not a case where penalty proceedings under section 271 (1) (c) could be initiated. In the original assessment, no such proceeding was initiated. In view of the above it is requested that the penalty proceeding initiated may kindly be dropped."*

10. The Above submissions of the Assessee were rejected by the AO as firstly, both the Appellate authorities, viz. Ld. CIT (A) and the ITAT had confirmed the additions of Rs. 83,507/- and Rs. 8, 00,000/-. Secondly, on the Assessee's contention that the no penalty proceedings were initiated in the original assessment order, the AO held that in the original assessment order there were no additions and the said order was set aside by Ld. CIT-1, Thane. Thus, in light of the above the AO treated the additions of Rs. 83,507/- and Rs. 8,00,000/- as income for which particulars have been concealed/ inaccurate particulars have been filed and levied a penalty of Rs. 3,25,005/- u/s. 271(c) of the Act.
11. Aggrieved by the above order of the AO the Assessee preferred an Appeal before the Ld. CIT(A) referred to the order of the CIT(A) 1, Thane, wherein the addition of Rs 12,82,7547/- made by the AO were restricted to Rs 8,00,000/- on basis of systematic working as per details available with the then CIT(A), Thane. The addition of Rs 8, 00,000/- was confirmed after due analysis of figures available with the Ld. CIT (A), Thane. The Ld. CIT (A) herein thereafter reproduced the relevant portions of the CIT(A), Thane order which have been produced hereunder for the sake of better understanding

*"...In the trial balance capital account is having opening debit balance of Rs 74,444/-. During the year, there was total debit of Rs. 4, 62,319/- in the capital accounts. During the year, there was total credit introduced at Rs. 12, 82,757/-. Total credit balance as on 31.3.97 has been shown at Rs. 7, 47,994/- in the capital account. It is thus seen that there is total credit balance increase of Rs. 12, 82,757/- and total debit balance at Rs. 4, 62,319/-during the year.*

*From the profit and loss account it is noted that net profit of Rs 1, 60,232/- has been transferred to the capital account of the appellant during the year. It is thus seen that out of total credit of Rs 12, 82,757/-, credit of Rs 1, 60,232/- is out of the profit earned*

*during the year. In spite of particulars given, appellant could not furnish copy of capital accounts during the year. When there are both debit and credit in the capital account, addition can be made only to the extent of peak credit. However in the absence of complete copy of accounts, working of peak credit is not possible. Appellant has claimed total deduction of Rs 4, 62,319/- on account of debit during the year. Deduction of Rs 74,444/- on account of opening debit balance and deduction of Rs 1, 60,232/- on account of net profit credited during the year. The evidence of net profit of Rs 1, 60,232/- is available in the profit & loss account for the year. However, in the absence of books of accounts and complete copy of accounts peak credit cannot be worked out. In view of this, appellant's claim of net introduction of capital to the extent of Rs 5, 85,762/- cannot be accepted. However, it is seen that there is debit in this account to the extent of Rs 4, 62,319/- There is opening debit balance of Rs 74,444/- during the year. After deduction, of net profit of Rs 1, 60,232/- net credit of addition is worked out at Rs 11, 22,525/- (Rs. 12, 82,757 – Rs. 1, 60,232). Looking into the overall facts and circumstances, I hereby sustain the addition on account of fresh capital introduced at estimated peak credit of Rs 8,00,000/- against Rs 12,82,757/- made in the assessment order dated 28.2.2009."*

12. Further, the addition of Rs 8,00,000/- confirmed by the then CIT(A) 1, Thane was also upheld by a coordinate bench of this Tribunal vide order dated 28.11.2011 in ITA No. 4187/Mum/2004 the relevant portion of the order has been reproduced hereunder for the sake of clarity and better understanding:-

*"25. Aggrieved the assessee is on appeal before us. We find that the addition has been made in respect of credit balance in the capital account because the assessee could not furnish any proof for the source of this additional credit. The only amount available for the credit to the capital account is the profit made during the year. That being so, we agree with the lower authorities that they have no other option but to add the amount credited to the capital account which cannot be otherwise explained. The CIT (A) restricted the addition on account of unexplained credits to Rs. 8, 00,000 /- as against Rs. 12, 82,757/- made by the AO. We find this addition is reasonable and on account of want of further evidence, we sustain the same. The assessee's appeal on this issue is dismissed."*

13. The Ld. CIT(A) herein also made a reference to the above orders of the Ld. CIT(A), Thane and the coordinate bench of this Tribunal and thereafter observed as follows:-

*“5.3 ...CIT(A), Thane had estimated the peak credit on the basis of detailed analysis of the figures available with the CIT(A), as the appellant failed to produce complete copy of accounts as well as copy of capital account on the basis of which exact amount of peak credit could be worked out. Therefore, the contention of the AR, that no Penalty under section 271(1) (c) is imposable on estimated addition, factum of either concealment of particulars of income is not tenable, therefore rejected. The peak credit was estimated on account of lapse on part of the appellant of not furnishing the requisite details during the course of appellate proceedings. Considering the facts and circumstances of the case, I hold that in the case on hand before me, there is no estimated addition of peak credit but on detailed working of the same based on the documents provided by the appellant and within the meaning of provisions of Sec 271(1) (c) of the Act, this is a fit case for penalty. In view of the above discussion, it is held that the appellant has furnished inaccurate particulars of income to the extent of Rs. 8, 00,000/- and hence the penalty on addition of Rs. 8, 00,000/- is confirmed.”*

*“5.4 As far as levy of penalty on Rs. 83,507/- on account of disallowance of interest paid, it is seen that the appellant had received total interest of Rs 1,04,577/- and paid interest of Rs 1,53,574/- and claimed net interest payment of Rs 48,977/- in the P&L Account. The appellant had claimed further interest of Rs 83,507/- on account of interest paid for which no justification was furnished. It was merely contended before the CIT (A) during the course of quantum appellate proceedings that the claimed was made separately by mistake. The then CIT (A), Thane confirmed the addition of Rs 83,507/- as the assessee could not explain the basis on which this additional interest was claimed. The said addition was also confirmed by the Hon'ble ITAT. Considering the factual matrices, it is held that the AO was justified in levying penalty on income of Rs 83,507/- in respect of which inaccurate particulars, were furnished and the claim of additional interest could not be explained. Therefore, the penalty on Rs 83,507/- is also confirmed.*

*“To sum up the penalty of Rs. 3, 25,000/- levied by the AO on addition of Rs. 8, 00,000/- and Rs 83,507/- is confirmed and all the above grounds of appeal are dismissed.”*

14. The only issue before us is whether the Ld. CIT(A) has rightly applied the law viz. Section 271(c) of the Act whilst confirming the penalty of Rs 3,25,000/- levied by the AO on addition of Rs 8,00,000/- and Rs 83,507/-.

15. [2016] 69 taxmann.com 219 (SC) Sudhir Kumar Sharma (HUF) v. CIT.

[2014] 42 taxmann.com 375 (Kar.) Ashok P. Magaji kondi v. ITO

[2014] 41 taxmann.com 323 (Ahm. - Trib.) ACIT v. Jayesh Finance

*“It is an established way of computation of income wherever there is recycling of cash in a financial business to work out the peak credit. Particularly in a situation, when no regular or proper books of account are maintained by the assessee then a cash flow statement is generally prepared. The department then makes an addition on the basis of the peak credit, as appearing in the cash-flow statement, if there is recycling of cash. That peak credit is, thus, treated as an unexplained income of the assessee. But that working ought not to be final. Certain other factors are also required to be taken into account. As far as the assessee is concerned, the undisputed fact is that on the basis of the seized material a cash flow statement was prepared which was supplied to the Assessing Officer. After the search, the working of the said cash flow statement was, therefore, required to be examined by the Assessing Officer, that too after due verification from the seized material. A cash flow statement which was prepared on the basis of the seized material must not be ignored. Once the assessee is in the business of finance, then the assessee is required to furnish the cash flow statement, so as to arrive at the figure of the incremental peak credit, as per the prevalent practice. [Para 15]*

■ *Having found that the borrowings had been made from various characters which were not genuine, the question of law arises so as to determine the quantum of the addition to be made under the theory of incremental peak credit to be applied so as to ascertain the maximum amount which the petitioner had in the books of account at particular date during the year which is to be treated as non-genuine.*

■ *So, the logic behind the applicability of the peak credit theory is that if the borrowing from various persons is to be treated as non-genuine, then systematic repayment to such person, should also be treated as non-genuine. Such recycling, thus, constituted unexplained credits and unexplained debits. Accordingly, a netting of the two is required to be worked out from the cash flow statement. In the background of the above observations, it can finally be summarized that the procedure to be followed by the Assessing Officer ought to be to first work out the interest income generated from the finance business, on one hand, and the interest paid to the parties as per seized material, so as to arrive at the net figure of interest earned from the finance business. Thereupon, the net investment is to be worked out, which shall be the difference between the borrowings from the parties and the loans advanced to the parties. The third figure is the incremental peak as computed on the basis of the cash flow. Then the Assessing Officer is required to decide whether the net undisclosed investment in the finance business is to be taxed or the net undisclosed finance business income is to be assessed. In any case, the telescoping amongst these two computations is permissible in such type of working. These suggestions are*

*not exhaustive. So, the Assessing Officer is directed to finalize the correct figure of net addition as per law and as per the accounting principles. [Para 15]”*

[2009] 185 Taxman 64 (P & H) Prempal Gandhi v. Commissioner of Income-tax-I

*“The main contention raised by the assessee was that he had a plausible explanation to give and he having surrendered the income and no further enquiry having been held, penalty was not justified. [Para 6]*

*The above contention could not be accepted. The plausibility or otherwise of the explanation of the assessee was a pure question of fact. Admittedly, the assessee had concealed transactions in the bank account and when notice of reassessment was issued, finding no other way out, he surrendered income to avoid penal consequences. In such a situation, it could not be held that the assessee wanted to buy peace of mind and there was no evidence of concealment, which called for penalty. The instant case was not a case where penalty had been imposed only because the assessee had disclosed higher income voluntarily, but a case of clear concealment where the assessee, having found no other way out, was forced to surrender undisclosed income. [Para 8]*

*No substantial question of law arose. The appeal was to be dismissed [Para 9]”*

[2008] 174 Taxman 61 (Ker.) R. Bharathan, Abkari Conbacker v. CIT

*“So far as quantum of penalty is concerned, penalty is restricted to three items of addition, one pertaining to income from benami business carried on in the name of Sri Prakash, another attributable to undisclosed Bank deposits maintained by the assessee, where the Tribunal sustained the addition on peak credit. The last of the addition is the investment made in DKB & Co. which was also not brought to the notice of the department and only investigation of the department revealed these items of income. The facts stated above prove beyond doubt concealment and therefore, there is no scope for interference with the minimum penalty levied under section 271(1) (c) of the Income-tax Act. We, therefore, dismiss the appeal.”*

16. Thus in light of the above judicial pronouncement it is clear that the Assessee's case false under the ambit of Section 271(1) (c) of the Act. Therefore, **Ground 1 of the Assessee is dismissed. Ground 2 is generic in nature and need not be adjudicated upon.**

17. In these circumstances and facts on record we uphold the order passed by the Ld. CIT (A) and confirm the penalty of Rs. 3,25,000/- levied by the AO on addition of Rs. 8,00,000/- and Rs. 83,507/-.
18. **In the result, appeal of the assessee is dismissed.**

Order pronounced in the open court on 1st day of October 2024.

Sd/-

(ANIKESH BANERJEE)  
JUDICIAL MEMBER

Mumbai, दिनांक/Dated: 01/10/2024

*Sr. PS (Dhananjay)*

**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. गार्ड फाइल/Guard file.

Sd/-

(GAGAN GOYAL)  
ACCOUNTANT MEMBER

//True Copy//

BY ORDER,

(Asstt. Registrar)  
ITAT, Mumbai