

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'C' BENCH
MUMBAI**

**BEFORE: SHRI BR BASKARAN, ACCOUNTANT MEMBER
&
SHRI SUNIL KUMAR SINGH, JUDICIAL MEMBER**

**ITA No. 4436/MUM/2023
(Assessment Year : 2009-10)**

Omprakash Purswani 902, Safal Heights-2, Moti Bhaug Opp: Union Park, Chembur (E), Mumbai.	Vs.	Commissioner of Income Tax(A), Ward-27(2)(1), Vasi Railway Station Building, Tower No. 6, New Mumbai.
PAN/GIR No. AHNPP2468B		
(Appellant)	..	(Respondent)

Assessee by	Shri. Dharan Gandhi
Revenue by	Shri. R. R. Makwana, Sr. DR
Date of Hearing	25/10/2024
Date of Pronouncement	06/11/2024

आदेश / ORDER

PER SUNIL KUMAR SINGH (J.M):

1. This appeal has been preferred against the impugned order dated 09.10.2023 passed in Appeal no. CIT(A), Mumbai-25/10154/2015-16 by the Ld. Commissioner of Income-tax(Appeals)/ National Faceless Appeal Centre (NFAC) [hereinafter referred to as the "CIT(A)"] u/s. 250 of the Income-Tax Act, 1961 [hereinafter referred to as "Act"] for the Assessment year [A.Y.] 2009-10. The assessee is aggrieved by

the decision of the Ld. CIT(A) in confirming the penalty levied u/s 271(1)(c) of the Act.

2. We heard the parties and perused the record. The AO has levied penalty u/s 271(1)(c) of the Act on the following two additions made in this year:-

(a) Addition made u/s 50C of the Act

(b) Agreed addition on account of negative cash in the books.

The Ld. CIT(A) confirmed the penalty and hence the assessee has filed this appeal.

3. With regard to the addition made u/s 50C of the Act, we notice that the assessee had sold a shop located in Chembur during the year under consideration. It was noticed by the AO that the stamp duty value determined by the stamp authorities was more than the value of sale consideration. Accordingly, the AO invoked the provisions of sec.50C of the Act and added the difference between the stamp duty value and sale consideration as deemed income of the assessee. The penalty was also levied on this addition and it was confirmed by the Ld.CIT(A).

4. We notice that this addition has been made by the AO u/s 50C of the Act, wherein the difference between the stamp duty value and the actual consideration is deemed as the income of the assessee. The question as to whether the penalty u/s 271(1)(c) of the Act could be levied on this kind of addition made on account of deeming fiction came to be examined by the Hon'ble Kolkata High Court in the case of CIT vs. Madan

Teatres Ltd. (2014)(42 taxmann.com 26) (Calcutta), wherein it was held that the addition made on account of deeming fiction would not lead to levy of penalty u/s 271(1)(c) of the Act, when the assessee has not actually received any money over and above the sale consideration declared in the sale deed. The facts prevailing in this case are identical with the facts of the above said case. There is no finding that the assessee has actually received any money over and above the actual sale consideration declared in the sale deed. Accordingly, the impugned addition has been made on account of deeming fiction only Hence, following the decision of the Hon'ble Kolkata High Court (referred supra), we hold that the penalty u/s 271(1)(c) of the Act is not leviable on this addition. Accordingly, we set aside the order passed by the Ld.CIT(A) on this issue and direct the AO to delete the penalty levied on this addition.

5. The next addition on which penalty was levied was on the addition made on agreed basis. The AO noticed that the assessee has deposited cash of Rs.6.00 lakhs on 04-04-2008 into his bank account. However, the cash balance available in books on that date was only Rs.27,976/-, resulting in negative cash balance of Rs.5,72,024/- When questioned about the same, the assessee agreed to offer the above said amount as his income with a request not to levy penalty on the above said addition. However, the AO levied penalty u/s 271(1)(c) of the Act on the above said addition. The Ld.CIT(A) also confirmed the addition.

6. We notice that this addition has been made on account of negative cash balance found in the books of account. We further notice that the assessee could not offer any explanation with regard to the cash deposited into the bank account over and above the cash balance available in the books of account. The Hon'ble Supreme Court has held in the case of MAK Data P Ltd (352 ITR 1) (SC) that voluntary disclosure does not release the assessee from mischief of penalty proceedings u/s 271(1)(c) of the Act. However, in this case, the surrender was after being found out that there was negative cash balance. Hence, it cannot be said that it was a case of voluntary surrender of income. Hence, it is a clear case of warranting addition. Since the assessee has failed to offer any plausible explanation for the negative cash balance, we are of the view that the penalty u/s 271(1)(c) of the Act was rightly levied by the AO and confirmed by the Ld. CIT(A).
7. In the result, the appeal of the assessee is partly allowed.

Order pronounced in the open court on 06.11.2024.

Sd/-
(BR BASKARAN)
ACCOUNTANT MEMBER

Sd/-
(SUNIL KUMAR SINGH)
JUDICIAL MEMBER

Mumbai; Dated 06/11/2024
Anandi Nambi, *Steno*

Copy of the Order forwarded to:

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai