

**IN THE INCOME-TAX APPELLATE TRIBUNAL "K(SMC)"
BENCH, MUMBAI**

**BEFORE SMT. BEENA PILLAI, JUDICIAL MEMBER
&
SHRI PRABHASH SHANKAR, ACCOUNTANT MEMBER**

**ITA No.4175/MUM/2024
(A.Y. 2009-10)**

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| Madan Mohan Mishra, R88C Industrial Area MIDC Rabale, Navi Mumbai 400067, Maharashtra | v/s. बनाम | The Income Tax Officer, 10(3)(3), Ayakar Bhavan 6th Floor, Mumbai 400020, Maharashtra |
| स्थायी लेखा सं./जीआइआर सं./ PAN/GIR No: AABPM3701B | | |
| Appellant/अपीलार्थी | .. | Respondent/प्रतिवादी |

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| Appellant by : | None |
| Respondent by : | Shri Kiran Unavekar (Sr. DR) |

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| Date of Hearing | 13.11.2024 |
| Date of Pronouncement | 19.11.2024 |

आदेश / ORDER

PER PRABHASH SHANKAR [A.M.] :-

The present appeal arising from the appellate order dated 29.12.2017 is filed by the assessee against the order passed by the Learned Commissioner of Income-tax (Appeals)-17, Mumbai [hereinafter referred to as "CIT(A)"] pertaining to assessment order passed u/s. 271(1)(c) of the Income-tax Act, 1961 [hereinafter referred to as "Act"] dated 23.04.2015 as passed by the Income Tax Officer-10(3)(3), Mumbai for the Assessment Year [A.Y.] 2009-10.

2. The grounds of appeal are as under:-

- 1) That the order dated 29.12.2017 levying penalty under section 271(1)(c) of the Income Tax Act, 1961, passed by the assessing officer is against the law and facts on the file in, as much as, he was not Justified to impose a penalty of Rs. 6,08,625/- for alleged finishing in accurate particulars of income, without considered the fact and circumstances of the case and the prevailing legal position on the issue.
- 2) That the order dated 29.12.2017 levying penalty under section 271(1)(c) of the Income Tax Act, 1961, passed by the Ld. assessing officer is against the law and facts on the file in, as much as, he was not justified to impose a penalty of Rs. 6,08,625/- for alleged concealment of income / furnishing inaccurate particulars of income without clearing specifying the limb of section 271(c) of the Act, under which the penalty proceedings has been initiated and penalty levied.
- 3) That the appellant craves to add, amend, alter, modify or delete any of the grounds of the appeal or at the time of hearing.

3. In this case, assessee had furnished his return of income declaring total income of Rs. 9,86,721/-which comprised of following :

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| Salary income from prama instruments | 10,99,108/- |
| Income from House Property | 1,55,400/- |
| Income from other sources | 30,146/- |
| Assessee suffered a net loss of Rs. under the head of Business Income | 16,93,105/- |
| Exempted Income and deduction under Chapter VIA | 15,90,600/- |

The Assessing officer made additions as below:



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| Agricultural Income under section 68 | 15,90,600/- |
| House Property Income | 55,230/- |
| Disallowance of Expenses | 4,74,345/- |

3.1 The assessment in the case of the assessee was completed vide order dated 25/11/2011 of the passed under section 143(3) of the Income Tax Act, 1961 by Ld. assessing officer at an income Rs. 15,99,337/- against the return income of Rs. 9,86,721/- after making an addition of Rs. 15,99,340/- under section 68 of the act 1961 etc. The appellant filed an appeal before the Hon. Commissioner of Income Tax (Appeals) vide order dated 16/11/2013 granted partial relief of Rs. 2,00,000/- (Two lakh) out of expenses claimed. The appellant filed an appeal before the Hon. Income Tax Appellate Tribunal and granted partial real if of Rs. 1,00,000/- one lakh out of expenses. Subsequently, the learned assessing officer, has imposed a penalty under section 271(1)(c) of the act of Rs. 6,08,625/-, being 100% of the allegedly should to be evaded, for alleged furnishing inaccurate particulars of income. The learned CIT(A) upheld the penalty.

4. In the course of hearing of the case before us, it was pointed out by the Ld. Authorised representative of the assessee that co-ordinate Bench of ITAT, Mumbai while dealing with the quantum appeal in its order in **ITA No.871/M/2014 dated 19.08.2019** vide para 6 to 8 of the order has set aside the addition in respect of the agricultural income of Rs 15,90,600/-



for reconsideration afresh to the Assessing officer allowing the appeal for statistical purposes. The Bench has followed the coordinate bench of Tribunal in assesses own case for AY 2010-11 in **ITA No.4180/Mum/2015 dated 16.06.2016** on the issue of agriculture income. Rest of the disallowances made on estimate basis have been reduced substantially.

5. Since the penalty imposed is basically w.r.t. the agriculture income treated as income from Undisclosed sources and the addition made is already restored to the AO for de novo consideration and decision, the present penalty order evidently does not survive. It appears that neither of the lower authorities have taken due note of this vital fact before resorting to levying penalty and upholding it.

6. On due consideration of all the relevant facts as stated above, we hold that the penalty imposed has no legs to stand which is therefore, **deleted**.

6.1 Appeal of the assessee is, therefore, allowed.

Order pronounced in the open court on 19/11/2024.

Sd/-

BEENA PILLAI

(न्यायिक सदस्य /JUDICIAL MEMBER)

Sd/-

PRABHASH SHANKAR

(लेखाकार सदस्य /ACCOUNTANT MEMBER)



Place: मुंबई/Mumbai
दिनांक /Date 19.11.2024
Lubhna Shaikh / Steno

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त / CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण DR, ITAT,
Mumbai
5. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//
आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण/ ITAT, Bench,
Mumbai.

