

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

**SHRI AMARJIT SINGH, ACCOUNTANT MEMBER  
SHRI RAHUL CHAUDHARY, JUDICIAL MEMBER**

**ITA No. 2482/MUM/2024  
(Assessment Year: 2011-2012)**

**Paras Poonamchand Gandhi**

B-23/2, Yamuna Bhuvan, Dr. R.P. Road,  
Mulund (W), Mumbai - 400080.

Maharashtra

[PAN:AAZPG4319F]

..... **Appellant**

**Income Tax Officer Ward 29(2)(5),**

Room No.419, 4<sup>th</sup> Floor,  
Kautilya Bhavan, Bandra Kurla Complex,  
Mumbai - 400051, Maharashtra.

Vs

..... **Respondent**

**Appearance**

For the Appellant/Assessee : Smt. Radha Halbe Deodhar

For the Respondent/Department : Shri H. M. Bhatt

**Date**

Conclusion of hearing : 02.09.2024

Pronouncement of order : 21.11.2024

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**ORDER**

**Per Rahul Chaudhary, Judicial Member:**

1. The present appeal preferred by the Assessee is directed against the order, dated 10/03/2024, passed by the National Faceless Appeal Centre (NFAC), Delhi, [hereinafter referred to as 'the **CIT(A)**'] under Section 250 of the Income Tax Act, 1961 [hereinafter referred to as 'the **Act**'] whereby the Ld. CIT(A) had dismissed the appeal against the Assessment Order, dated 28/12/2018, passed under Section 144 read with Section 147 of the Act for the Assessment Year 2010-2011.

2. The Assessee has raised following grounds of appeal :

"1. *In the facts and circumstances of the case and in law, the Ld. Commissioner of Income Tax (Appeals) [through the National Faceless Appeals Centre] has erred in confirming the action of*

*the Ld. Assessing Officer in levying penalty amount to Rs.43,59,971/- under section 271(1)(C); desregarding the factual and legal matrix of the case.*

2. *In the facts and circumstances of the case and in law, the Ld. Commissioner of Income Tax (Appeals) [through National Faceless Appeals Centre] has erred in confirming the action of the Ld. Assessing Officer in levying penalty amount to Rs.43,59,971/- under section 271(1)(c); without deciding the quantum appeal filed by the Appellant."*
3. The relevant facts in brief are that the order, dated 28/06/2019, passed by the Assessing Officer levying penalty of INR.43,59,971/- under Section 271(1)(c) of the Act was confirmed by the CIT(A) vide order dated 10/03/2024. Therefore, the Appellant has preferred the present appeal before the Tribunal.
4. We have considered the rival submissions, perused the material on record and examined the position in law. On perusal of the order impugned we find that the CIT(A) has dismissed the appeal preferred against the penalty order holding as under:
  - "4.1 *It is reiterated that had the assessee's case not been selected for scrutiny, incorrect. claims by the assessee would have been accepted leading to a substantial loss to the revenue. Therefore, it is clear that provisions under section 271(1)(c) of the Act are attracted in the case of assessee. Keeping in view the facts and issue involved in the case, I am of the opinion that the assessee has intentionally tried to evade tax. The assessee has not furnished accurate particulars of its income, hence, I am satisfied that this is a fit case for imposition of penalty for furnishing inaccurate particulars in respect of its income as per the provision of Sec. 271(1)(c) of the Act.*
  - 4.2 *The penalty imposed is upheld, there is no contrary decision by the higher judicial authorities in the taxpayers case. It is not known whether taxpayer has preferred an appeal before ITAT. Since the Penalty order is passed on 28/6/2019 and there is no information forthcoming, the Penalty levied @ Rs.43,59,971 is upheld."*
5. On perusal of record we find that the vide Assessment Order dated 28/12/2018 was passed under Section 144 read with Section 147 of

the Act wherein an addition of INR.1,45,33,237/- was made in the hands of Appellant under Section 68 of the Act in respect of unexplained cash deposits of INR.1,45,33,237/-. Whereas in paragraph 4.1 of the order impugned the CIT(A) has noted that had the case of the Appellant not been selected for scrutiny, the incorrect claim of the Assessee would have been accepted leading to a substantial loss of revenue. Clearly, in the present case, the penalty under Section 271(1)(c) of the Act was not levied on account of rejection of incorrect claim made by the Appellant. Thus, the order confirming the penalty has been passed by the Ld. CIT(A) on incorrect understanding of facts. During the course of hearing it has been submitted by the Learned Authorized Representative for the Appellant that the appeal preferred against the quantum additions made vide Assessment Order, dated 28/12/2018, passed under Section 144 read with Section 147 of the Act was pending adjudication before the CIT(A). We note that the Ld. CIT(A) has in paragraph 4.2 of the order impugned, proceeded on the premise that the appeal preferred by the Assessee against the quantum additions has been dismissed and therefore it has been stated in paragraph 4.2 of the order impugned – *"It is not known whether taxpayer has preferred an appeal before ITAT"*. We also note the fact statements given in the 'Statements of Facts' filed before the CIT(A) have been incorrectly considered as grounds of appeal by the CIT(A). Further, while the Appellant has been proceeded ex-parte by the CIT(A), on perusal of the order impugned it cannot be said that a reasonable opportunity of being heard was granted to the Appellant. Thus, keeping in view the totality of the facts of the present case order, dated 10/03/2024, passed by the CIT(A) is set aside with the direction to CIT(A) to decide the appeal afresh after granting the Appellant a reasonable opportunity of being heard. The Appellant is also directed to place a copy of the appeal filed in the quantum proceedings before the CIT(A) alongwith its current status for record and consideration. The Appellant is

directed to be vigilant and track the proceedings over ITBA portal. It is clarified that in case the Appellant fails to enter appearance before the CIT(A) or fails to file relevant documents/details/submissions, the CIT(A) would be at liberty to decide the appeal on merits on the basis of material on record. In terms of aforesaid Ground No.1 and 2 raised by the Appellant is allowed for statistical purposes.

6. In result, the appeal preferred by the Assessee is allowed for statistical purposes.

Order pronounced on 21.11.2024.

**Sd/-**  
**(Amarjit Singh)**  
**Accountant Member**

**Sd/-**  
**(Rahul Chaudhary)**  
**Judicial Member**

मुंबई Mumbai; दिनांक Dated :21.11.2024  
Milan,LDC

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

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

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

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