



।आयकर अपीलीय अधिकरण "एस एम सी" न्यायपीठ पुणेमें।
IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCHES "SMC" :: PUNE

BEFORE DR.DIPAK P. RIPOTE, ACCOUNTANT
MEMBER AND
SHRI VINAY BHAMORE, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.1450/PUN/2024
निर्धारण वर्ष / Assessment Year: 2018-19

Nikhil Vijendra Jain, 319, East Wing, Arrora Towers, 3 rd Floor, M.G.Road, Camp, Pune – 411001. PAN: AFLPJ9744G	V s	The Income Tax Officer, Ward-7(1), Pune.
Appellant/ Assessee		Respondent / Revenue

Assessee by	Shri Suhas P Bora – AR
Revenue by	Shir Manish Mehta – Addl.CIT(DR)
Date of hearing	04/12/2024
Date of pronouncement	12/12/2024

आदेश/ ORDER

PER DR. DIPAK P. RIPOTE, AM:

This is an appeal filed by the assessee against the order of
ld.Commissioner of Income Tax(Appeals)[NFAC] for Assessment
Year 2018-19 dated 14.02.2024 passed u/sec.250 of the Income tax
Act, 1961. The Assessee has raised the following grounds of
appeal :

"1. On the facts and circumstances of the case. Ld. CIT(A) has erred in law and on facts in confirming the action of Ld. A.O. in levying penalty u/s 271AAC(1) of the Act without appreciating the



facts of the case of the appellant, and without providing sufficient opportunity to the appellant, which is against the principle of natural justice.

2. *On the facts and circumstances of the case. Ld. CIT(A) further erred in levying penalty only on the basis of the conclusion by the Id AO in the assessment order as well as in the penalty order on the ground that the appellant did not furnish his reply and satisfactory explanation on the said addition of unsecured loan of Rs.37,54,170/- during the course of penalty proceedings.*

3. *The learned CIT(A) erred in confirming the action of the AO of levying penalty without appreciating that the Penalty Order passed u/sec.271AAC(1) of the Act is bad in law and void ab initio as the same has been passed without considering the fact that the appellant has preferred an appeal before the CIT(A)-NFAC, Delhi against the assessment order u/sec. r.w.s. 143(3) r.w.s. 1448 of the Act on 11.08.2021 and the penalty order has been passed on 25.11.2021 WHICH IS BEFORE THE PASSING OF Order by CIT(A) which is not justified in law.*

4. *The appellant craves leave to add, alter, amend or delete any of the above grounds of appeal.”*

Submission of Id.AR :

2. Ld.AR submitted that the quantum addition has been set-aside by the ITAT in ITA No.684/PUN/2024 for A.Y.2018-19 dated 05.08.2024. Ld.AR submitted that hence no penalty is maintainable. Ld.AR filed petition for condonation of delay.

Condonation of Delay :

2.1 We have perused the submission of the assessee and are convinced that there was sufficient cause for delay. Accordingly, Delay is condoned.

**Findings and Analysis :**

3. In this case, ITAT Vide order in ITA No.684/PUN/2024 has set-aside the additions of Rs.37,54,170/- to the Assessing Officer for denovo adjudication. Thus, at this juncture, there are no additions regarding concealment of income or filing inaccurate particulars. Once the quantum addition is set-aside there are no legs for penalty to stand. However, it is also observed that quantum addition has been set-aside to the AO for denovo adjudication, therefore, we set-aside the penalty order to the AO for denovo adjudication. The Assessing Officer shall provide opportunity of hearing to the assessee. Assessee shall file necessary documents before the Assessing Officer. Accordingly, grounds of appeal raised by the assessee are allowed for statistical purpose.

4. In the result, appeal of the assessee is allowed for statistical purpose.

Order pronounced in the open Court on 12th December, 2024.

Sd/-
(VINAY BHAMORE)
JUDICIAL MEMBER

Sd/-
(DR. DIPAK P. RIPOTE)
ACCOUNTANT MEMBER

पुणे / Pune; दिनांक / Dated : 12th Dec, 2024/ SGR*



आदेशकीप्रतिलिपिअग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A), concerned.
4. The Pr. CIT, concerned.
5. विभागीयप्रतिनिधि, आयकर अपीलीय अधिकरण, "एस एम सी" बेंच, पुणे / DR, ITAT, "SMC" Bench, Pune.
6. गार्डफ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// TRUE COPY //

Senior Private Secretary
आयकर अपीलीय अधिकरण, पुणे/ITAT, Pune.