

**IN THE INCOME-TAX APPELLATE TRIBUNAL “B” BENCH,
MUMBAI
BEFORE SHRI NARENDER KUMAR CHOUDHRY, JUDICIAL
MEMBER
&
SMT. RENU JAUHRI, ACCOUNTANT MEMBER**

**ITA No. 4388/MUM/2023
(A.Y. 2009-10)**

Nirmal M. Mulchandani 303, Vrajdeep, Chandawarka, R. Road, Eksar, Mumbai-400092	v/s. बनाम	ITO 25(1)(4), Mumbai 220, 2 nd Floor, Kautilya Bhavan, BKC, Bandra(East), Mumbai-400051
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: AFLPMO757K		
Appellant/अपीलार्थी	..	Respondent/प्रतिवादी

Appellant by :	Shri Vijay Shah
Respondent by :	Shri Laxmi Kant

Date of Hearing	29.10.2024
Date of Pronouncement	27.11.2024

आदेश / O R D E R

PER RENU JAUHRI [A.M.] :-

This appeal is filed by the assessee against the order of the Learned Commissioner of Income-tax (Appeals), Mumbai-35/National Faceless Appeal Centre, Delhi [hereinafter referred to as “CIT(A)”] dated 19.09.2014 passed u/s. 250 of the Income-tax Act, 1961 [hereinafter referred to as “Act”] for Assessment Year [A.Y.] 2009-10.

2. The assessee has raised following grounds of appeal:

“1. The Learned CIT (A) erred in confirming the penalty by assuming and primarily estimating commission income on total credits in bank account

2. *The Learned CIT (A) erred in not giving proper opportunity to be heard to the appellant*
3. *The Learned CIT(A) erred in not allowing basic expenses for the survival and administration of the company.”*

3. The brief facts of the case are that the assessee had filed return declaring income of Rs. 2,00,970/- whereas the assessment was completed at an income of Rs. 6,91,295/- vide order u/s 143(3) dated 29.12.2011 after making following additions/disallowances:

- | | | |
|------|---|------------------|
| i. | Business income after disallowing expense | - Rs. 3,87,728/- |
| ii. | On account of interest expenses | - Rs. 82,600/- |
| iii. | On account of explained cash credit | - Rs. 20,000/- |

4. The penalty u/s 271(1)(c) for furnishing inaccurate particulars of income Ld. AO levied penalty of Rs. 1,10,510/- after observing that the assessee was not able to produce requisite supporting documents in support of expenses claimed by him and was also unable to explain source of cash deposits. He, therefore, held that the assessee had furnished inaccurate particulars of his income with the sole intention of evaded the tax and accordingly it was a fit case for imposition of the penalty u/s 271(1)(c) of the Act.

5. Aggrieved with this order, the assessee filed an appeal before Ld. CIT(A). Vide order dated 19.09.2014, Ld. CIT(A) allowed part relief to the assessee with the following observations.

“5. I have gone through the facts of the case and the nature of the additions made. With regard to the addition made of Rs.3,87,728/- the fact is that the appellant has submitted before the AO that some of the documents were misplaced during travelling and he made police complaint on 25-08-2010. A copy of which was provided to the AO. The AO has however not accepted the explanation and has therefore made disallowance. I find that the appellant had credible evidence to substantiate as to why he was not in a position to support the claim of some of the



expenses. While he has accepted the addition for lack of inability to submit the evidence it cannot be taken that intentional concealment of income or furnishing of inaccurate particulars. The additions on account of interest paid towards interest earned is also not an addition which qualifies as concealment of income. The only addition left regarding deposit of unexplained cash credit exceeding of Rs.20,000/- during FY 2008-09 in Ratnakar Bank saving bank account. Since this was a very specific deposit and the appellant has not been able provide any evidence of the same and has accepted the addition. On the amount exceeding of Rs.20,000/- imposition of penalty is upheld”

6. Aggrieved with the order of the Ld. CIT(A), the assessee is in appeal before us. However, it is noticed that there has been an undue delay in filing of appeal which is late by 2908 days. The assessee explained the cause of delay with the help of an affidavit as reproduced below:

4. That I was advised by my erstwhile Chartered Accountant not to file an appeal before the Hon'ble ITAT for relief after confirming the penalty order of Assessing Officer thus the appeal has already become barred by time limitation. At present, I am filing an appeal with CIT(A) for A.Y. 2015-16 with another Senior Chartered Accountant.

5. That I also further state that my wife and I was suffering from heart disease for report from the doctors and medical bills are attached for requesting condone the delay in filing the appeal. this is another reason besides the reason mentioned earlier affidavit filed by me with ITAT. That I also further state that I visited new chartered accountant for another year appeal for the asst. year 2015-16. During the course of discussion he also advised to file appeal against the CIT (A) appeal order for asst. year 2009-10.

6. That I am advised by new Chartered Accountant to file an appeal for A.Y.2009-10 as he is confident of winning the appeal. Hence, I am filing present appeal before Hon'ble ITAT on 01-11-2023 accompanied by an application for condonation of delay as provided under section 5 of the limitation Act, 1963.

7. In the absence any evidence regarding hospitalizing of assessee or his wife on account of heart decease as claimed, we are not inclined to condone the inordinate delay of more than 8 years in filing of appeal. However, it is seen that the appeal has been filed under the mistaken belief that the penalty of Rs. 1,10,510/- levied by the AO has been confirmed by the Ld. CIT(A). In this regard, it is seen that the penalty relating to various additions made has been only partly



confirmed. Ld. CIT(A) has held that the addition made on the account of disallowance of Rs. 3,87,728/- out of expenses due to lack of supporting evidences cannot be regarded as intentional concealment of income/furnishing of inaccurate particulars of income. Similarly, addition on account of disallowance of interest paid is also not an addition which is liable to be treated as concealment of income. Thus, on both these grounds, Ld. CIT(A) has allowed relief to the assessee. The penalty has been confirmed only to the extent of addition relating to unexplained cash credit amounting to Rs. 20,000/-. Thus, penalty with regard to the disallowance of business expenses (Rs. 3,87,728/-) and interest expenses (Rs. 82,600/-) stands deleted by Ld. CIT(A).. After the relief allowed by the Ld. CIT(A), amount of concealed income stands reduced to Rs. 20,000/- and hence Ld. AO is directed to give effect to the order of Ld. CIT(A) and recompute the penalty @100% on this amount, since penalty @100% has been imposed by the AO.

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

Order pronounced in the open court on 27.11.2024.

Sd/-

Sd/-

NARENDER KUMAR CHOUDHRY

RENU JAUHRI

(न्यायिक सदस्य/JUDICIAL MEMBER)

(लेखाकार सदस्य/ACCOUNTANT MEMBER)

Place: मुंबई/Mumbai

दिनांक /Date 27.11.2024

अनिकेत सिंह राजपूत/ स्टेनो



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.

