

IN THE INCOME-TAX APPELLATE TRIBUNAL “D” BENCH,
MUMBAI

BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER
&
SHRI PRABHASH SHANKAR, ACCOUNTANT MEMBER

ITA No.5074/MUM/2024
(A.Y. 2015-16)

Shri Mangesh D. Gaikar , Ground Floor, Mangeshi Sahara, Near Chhatri Bungalow, Chikanghar, Kalyan West - 421301, Maharashtra	v/s. बनाम	Assistant Commissioner of Income Tax, Central Circle – 2, Thane, 6 th Floor, A- Wing, Ashar IT Park, Road No. 16Z, Wagle Indl. Estate, Thane(W) – 400 604, Maharashtra
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No: AFAPG5995H		
Appellant/अपीलार्थी	..	Respondent/प्रतिवादी

Appellant by :	None
Respondent by :	Shri Uma Shankar Prasad, CIT-DR

Date of Hearing	18.06.2025
Date of Pronouncement	19.06.2025

आदेश / ORDER

PER PRABHASH SHANKAR [A.M.] :-

The present appeal is preferred by the assessee against the order passed by the Learned Commissioner of Income-tax, Appeal [hereinafter referred to as “CIT(A)”] pertaining to a Penalty Order u/s. 271(1)(c) of the Income-tax Act, 1961 [hereinafter referred to as “Act”] dated 26.03.2022 as passed by the DCIT, CC-2, Thane, for the Assessment Year [A.Y.] 2015-16. In the only ground of appeal, it is pleaded that the *Ld. CIT Appeals erred in confirming the Penalty U/s 271(1)(c) of the Income*



Tax Act, 1961 on sum of Rs.43,72,141/- being "On Money Receipt" declared in Return of Income filed in response to Notice U/s 153A of the Income Tax Act, 1961.

3. Brief facts of the case are that a search and seizure action u/s 132 of the Act was carried out in the case of the assessee on 25.10.2017 who is in the business of TDRs and Real Estate. During the search operation, **documents indicating that the assessee had received 'on-money' of Rs 43,72,141/-on certain projects were seized. In the statement recorded u/s. 132(4) of the Act, the assessee accepted receiving of unaccounted 'on-money' for the year under consideration.** Subsequently, return u/s. 153A of the Act was filed by him declaring total income of Rs. 16,39,09,540/-. Thus, in the return filed u/s. 153A of the Act, the assessee declared following additional income:-

Additional income declared on account of 'on-money'	Rs. 43,72,141/-
Additional income under the head 'house property'	Rs.5,72,709/-
Total additional income	Rs.49,44,850/-

3.1 While completing the assessment u/s. 143(3) r.w.s 153A of the Act, the AO accepted the income declared in the return filed u/s. 153A of the Act. Thus, the income was assessed at Rs. 16,39,09,540/-. However, the AO initiated penalty proceedings u/s. 271(1)(c) of the Act. As regard



the additional income of Rs.43,72,141/-, the assessee contended that the documents found during the search were unsigned and undated and did not carry any evidentiary value. The declaration of Rs.43,72,141/- was voluntary and therefore no penalty on this additional income should be levied. However, the AO held the assessee guilty of concealment of income which was also admitted by way of return filed in response to section 153A of the Act.

3.2 In the subsequent appeal, the Id.CIT(A) upheld the penalty observing that the additional income of Rs.43,72,141/- was discovered during the search operation and was declared by the assessee in the return filed in response to notice u/s. 153A of the Act. Further, for the year under consideration, in the original return of income the said income of Rs.43,72,141/- was not included, therefore Explanation 5A was applicable to this additional admitted income of Rs.43,72,141/-. As per this Explanation, even though the assessee had declared this income in the return filed u/s. 153A of the Act, he would be deemed to have furnished inaccurate particulars of income to the extent of Rs.43,72,141/-. Therefore, the penalty levied u/s. 271(1)(c) of the Act on this amount of Rs.43,72,141/- which was not declared in the original return of income, was upheld.



4. When the case was called for hearing before this Bench, none was present nor any adjournment application was made. Therefore, we proceed to adjudicate the appeal filed by the assessee, based on materials available and also in the light of submissions of the Id. Departmental Representative. For ready reference, we reproduce Explanation 5A to [section 271\(1\)\(c\)](#) as under:

"Explanation 5A. -- Where, in the course of a search initiated under [section 132](#) on or after the 1st day of June, 2007, the assessee is found to be the owner of--

(i) any money, bullion, jewellery or other valuable article or thing (hereafter in this Explanation referred to as assets) and the assessee claims that such assets have been acquired by him by utilising (wholly or in part) his income for any previous year; or

(ii) any income based on any entry in any books of account or other documents or transactions and he claims that such entry in the books of account or other documents or transactions represents his income (wholly or in part) for any previous year, which has ended before the date of search and,--

(a) where the return of income for such previous year has been furnished before the said date but such income has not been declared therein; or

(b) the due date for filing the return of income for such previous year has expired but the assessee has not filed the return, then, notwithstanding that such income is declared by him in any return of income furnished on or after the date of search, he shall, for the purposes of imposition of a penalty under clause (c) of sub-section (1) of this section, be **deemed to have concealed** the particulars of his income or furnished inaccurate particulars of such income.]"

4.1 As observed by the AO in the penalty order, based on certain incriminating materials unearthed during search operation, it was noticed that the assessee had earned on-money by way of cash which was admitted by the assessee u/s 132(4) statement as also in the subsequent return filed in responses to proceedings u/s 153A of the Act. Therefore, the provisions of [section 271\(1\)\(c\)](#) explanation 5A are squarely



applicable to the case of the assessee as there was a specific material found in the course of search in respect of the assessee. In pursuance of notice issued u/s 153A, the assessee filed return of income admitting taxable income including the undisclosed income as additional income which the AO accepted. In light of these undisputed facts, the provisions of Explanation 5A are clearly attracted in the instant case.

4.2 The Explanation 5 was specifically inserted in the statute to deal with the situation where higher income was disclosed in the return filed consequent to a search operation, This also flows from the language of Explanation 5 itself, wherein the words used by the Legislature are “be deemed to have concealed the particulars of his income”, which shows that there is a deeming fiction by virtue of which such additional income is considered as concealment. We are unable to subscribe to the view that in the instant case, since there was voluntary disclosure in good faith to buy piece and avoid litigation as subscribing to such a view would make Explanation 5A otiose which has been specifically invoked in the instant case.

4.3 In light of above discussion and in the entirety of facts and circumstances of the case, we do not find any infirmity in the appellate



order and hereby uphold the levy of penalty under the deeming provisions of Explanation 5A to [section 271\(1\)\(c\)](#) of the Act.

4. In the result, the appeal is **dismissed**.

Order pronounced in the open court on **19.06.2025**.

Sd/-

PAWAN SINGH

(न्यायिक सदस्य / JUDICIAL MEMBER)

Sd/-

PRABHASH SHANKAR

(लेखाकार सदस्य / ACCOUNTANT MEMBER)

Place: मुंबई / Mumbai

दिनांक / Date 19.06.2025

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.

