

IN THE INCOME TAX APPELLATE TRIBUNAL
“D” Bench, Mumbai
Before Shri B.R. Baskaran (AM)& Pawan Singh (JM)

I.T.A. No. 7616/Mum/2014
(Assessment Year 2010-11)

Smt. Devyani Bharat Desai C/o. Shah and Company Legal Advisor & Tax Consultant 201/211, Princess Street Kesar Building First Floor, Room No. 11 Mumbai-400 002.	Vs.	ITO Ward-14(3)(1) 6 th Floor R.No. 608 Earnest House Nariman Point Mumbai-400 021.
(Appellant)		(Respondent)

PAN No.AABPD2297F

Assessee by	Shri Ashwin Kumar
Department by	Shri B.S. Bist
Date of Hearing	27.7.2016
Date of Pronouncement	27.7.2016

ORDER

Per B.R. Baskaran (AM) :-

The assessee has filed this appeal challenging the order dated 7.4.2014 passed by learned CIT(A)-25, Mumbai and it relates to A.Y. 2010-11.

2. The assessee is aggrieved by the decision of learned CIT(A) in confirming the penalty of ₹ 2,65,740/- levied by the Assessing Officer u/s. 271(1)(c) of the Act.

3. Learned counsel appearing for the assessee submitted that the impugned penalty has been levied on the addition of ₹ 11,90,000/- relating to cash deposits found in the bank account of the assessee. Learned counsel submitted that the assessee has challenged the said addition by filing the appeal before learned CIT(A) and thereafter before the Tribunal. Learned Counsel submitted that the SMC bench of the Tribunal has restricted the addition of ₹ 1,00,000/- by making an estimate out of the addition of ₹

11,90,000/- made by the Assessing Officer, vide its order dated 11.3.2016 passed in ITA No. 366/Mum/2015. Learned Counsel submitted that substantial portion of addition has since been deleted by the Tribunal and the remaining amount of ₹ 1,00,000/- has also been sustained by the Tribunal on estimated basis. Accordingly, learned AR prayed that the penalty levied u/s 271(1)(c) of the Act may be deleted.

4. On the contrary, learned Departmental Representative supported the order passed by learned CIT(A).

5. Having heard the rival submissions, we find merit in the contentions put forth by learned AR. Out of the addition of ₹ 11,90,000/-, the Tribunal has already deleted the addition to the extent of ₹ 10,90,000/- and the remaining amount of ₹ 1,00,000/- has been sustained on estimated basis by the Tribunal. Under these set of facts, we are of the view that the penalty will not be leviable on the addition so sustained on estimated basis. Accordingly, we set aside the order of learned CIT(A) and direct the Assessing Officer to delete the impugned penalty.

6. In the result, appeal filed by the assessee is allowed.

Order has been pronounced in the Court on 27.7.2016

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

Sd/-
(B.R.BASKARAN)
ACCOUNTANT MEMBER

Mumbai; Dated : 27/7/2016

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai
6. Guard File.

//True Copy//

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai

PS