

**IN THE INCOME TAX APPELLATE TRIBUNAL “B” BENCH, MUMBAI**  
**BEFORE SHRI R.C. SHARMA, AM AND SHRI SANDEEP GOSAIN, JM**

आयकर अपील सं./I.T.A. No.3075 &3076/Mum/2015  
(निर्धारण वर्ष / Assessment Year: 2010-11 & 2011-12)

Rupen Patel 5-D A.K. Patel Bunglow, Linking Roadm Dadbhoy Road, Santacruz (W), Mumbai-400 054.	<b>बनाम/ Vs.</b>	DCIT-CC 25, Aayakar Bhavan, MK Road, Mumbai.
स्थायी लेखा सं./जीआइआर सं . /PAN/GIR No.		AACPP 8986C
(अपीलार्थी /Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थी की ओर से / Appellant by	:	Shri B.K. Vatsaraj
प्रत्यर्थी की ओर से/Respondent by	:	Shri Neil Philip

सुनवाई की तारीख / <b>Date of Hearing</b>	:	20/07/2016
घोषणा की तारीख / <b>Date of Pronouncement</b>	:	03/08/2016

**आदेश / ORDER**

Per R.C. SHARMA, A. M.:

These are the Appeals filed by the Assessee directed against the Order by the Commissioner of Income Tax (Appeals)- 51, Mumbai ('CIT(A)' for short) dated 04.02.2015 for the assessment year (A.Y.) 2011-12.

**ITA No.3076/Mum/2015**

2. Rival contentions have been heard and record perused. The facts of the case are that there was an action under section 132 of the Income Tax Act 1961 on

16.12.2010 in the case of M/s Patel Engineering Ltd. group of cases and the assessee was inter-alia covered in the search operation. During the course of search, cash of Rs.6.5 lakhs was seized from the residence of the assessee. It was the explanation of the assessee before the AO that the cash in hand on 16.12.2012 was on account of withdrawal of Rs.7.75 lakhs from HDFC Bank Account held by himself, his wife and his son and also on account of withdrawal by son Shri Ryan Patel of Rs.2 lakhs on 13.5.2008. The AO held that it is not possible to give credit for the sum of Rs.2 lakhs for the reason that it is improbable that the cash withdrawn on 13.05.2008 would still remain with the assessee. Taking these aspects into consideration, the AO accepted Rs.5.75 lakhs as explained and added back Rs.75,000/- as the unaccounted income of the assessee. Aggrieved by the said addition the assessee appeal has been filed before the CIT(A).

3. By the impugned order CIT(A) confirmed the action of AO against which assessee is in further appeal before us.

4. We have considered rival contentions and found that as on date of search assessee was having cash in hand of Rs.6.50 lacs out of withdrawals of Rs.7.75lakhs was from HDFC Bank Account held by assessee, his wife and his son. There was also withdrawal from son Shri. Ryan Patel of Rs.2 lakhs. Cash

withdrawal was found to be much more than the cash-in-hand as on date of search. All cash found during search was duly explained and statement was also recorded u/s 132(4). Accordingly we do not find any merit for the addition of Rs.75,000/- so made by AO.

5. In the result, the appeal of assessee is allowed.

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6. Assessee is aggrieved for penalty imposed u/s 271(1)(c) of Rs.24,280/- in respect of addition of deemed let out value of property situated at Karjat. Property was not actually let-out nor assessee was in receipt of any rent. However, by applying the deeming provisions the AO made an addition of notional value of rent.

7. We have considered rival contentions and found that penalty was levied with respect to the addition made on account of deemed rent of said house property. We found that the said property was situated 8kms of the municipal limits and since it was exempt from wealth tax and that assessee was under a bonafide belief that such property was not taxable under the income tax as well, no income under the head House property was declared. We found that both the House properties were disclosed by the assessee in the Balance Sheet and that being so the penal provision of section 271(1)(c) cannot be invoked as there was no deliberate attempt to furnish inaccurate particulars of income.

8. In view of the above discussion we do not find any merit for the penalty of Rs.,24,280/- with respect to the above addition.

9. In the result, appeal of the assessee is allowed.

*Order pronounced in the open court on 03/08/ 2016*

Sd/-

(SANDEEP GOSAIN)

न्यायिक सदस्य / Judicial Member

Sd/-

(R.C. SHARMA)

लेखा सदस्य / Accountant Member

मुंबई Mumbai; दिनांक Dated : 03.08.2016

Ps. Ashwini

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. आयकर आयुक्त(अपील) / The CIT(A)
4. आयकर आयुक्त / CIT - concerned
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard File

**आदेशानुसार/ BY ORDER,**

**उप/सहायक पंजीकार (Dy./Asstt. Registrar)**

**आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai.**