

**IN THE INCOME TAX APPELLATE TRIBUNAL “SMC” BENCH, MUMBAI  
BEFORE SRI MAHAVIR SINGH, JM**

**ITA No.1653/Mum/2015**

**ITA No.1654/Mum/2015**

(A.Y:2010-11)

Smt. Priyanka Manohar Rao, C/o. S.L. Jain Tax Consultant, 1302/3, Navjivan Commercial Premises, Lamington Road, Mumbai-400008 <b>PAN : AADPR7550H</b>	Vs.	ITO-20(2)(3), Mumbai
<b>Appellant</b>	..	<b>Respondent</b>
<b>Assessee by</b>	..	None
<b>Revenue by</b>	..	Vishwas S. Jadhav, Jt, CIT
<b>Date of hearing</b>	..	<b>31-10-16</b>
<b>Date of pronouncement</b>	..	<b>04-11-16</b>

**ORDER**

**PER MAHAVIR SINGH, JM:**

These two appeals by assessee are arising out of same order of CIT (A)-31, Mumbai in appeal No CIT (A)-31/IT-140/20(2)(3)/12-13 vide order dated 28.08.14. The assessment was framed by ITO ward 26 (2)-4, Mumbai for the assessment order 2010-11 vide order dated 08-03-13 u/s 143(3) of the Income Tax Act, 1961 (hereinafter ‘the Act’). The penalty under dispute was levied by ITO ward 20 (2) -3, Mumbai u/s 271 (1) (b) of the Act vide order dated 03-12-12.

2. At the outset it is noticed that both these appeals were filed against the same order and hence only this one appeal can be filed by the assessee and not two appeals. Hence, the other appeal has to be treated as infructuous.

3. I find from the case records that the assessee was not allowed reasonable opportunity of being heard while levying penalty u/s 271(1) (b) of the Act and only once notice was issued. In my view, it is not clear whether the same was served or not and accordingly, I restore this penalty back to the file of AO for afresh adjudication after allowing reasonable opportunity of being heard. This appeal is allowed for statistical purpose.

4. **In the result, the appeal of the assessee in ITA No. 1654/Mum/2015 is allowed for statistical purpose and appeal in ITA No. 1653/Mum/2015 is dismissed as not maintainable.**

Order pronounced in the open court on 04-11-2016.

Sd/

(MAHAVIR SINGH)  
JUDICIAL MEMBER

Mumbai, Dated 04-11-2016  
*Sudip Sarkar/Sr.PS*

**Copy of the Order forwarded to:**

1. The Appellant
2. The Respondent.
3. The CIT (A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file. //True Copy//

BY ORDER,

Assistant Registrar  
**ITAT, MUMBAI**