

IN THE INCOME TAX APPELLATE TRIBUNAL  
"E" BENCH, MUMBAI

BEFORE SHRI B.R. BASKARAN (AM) & SHRI AMIT SHUKLA (JM)

I.T.A. NO. 6273/MUM/2013  
(Assessment Year 2007-2008)

Shri Sanjay R. Gupta Bungalow No. 91/101, SVP Nagar, MHADA, Off Four Bungalow, Andheri (W), Mumbai 400 053.	Vs.	D.C.I.T, Central Circle-47, Mumbai.
(Appellant)	..	(Respondent)

PAN No.AABPG8751F

Assessee by :	Shri Sanjiv M. Shah
Department by :	Shri A.K. Nayak (DR)
Date of Hearing :	12.04.2016
Date of Pronouncement :	04.05.2016

ORDER

PER B.R. BASKARAN, AM :

The appeal filed by the assessee is directed against the order dt. 14.8.2013 passed by CIT(A) – 38, Mumbai and relates to Assessment Year 2007-08 wherein he has confirmed the penalty of Rs.1,74,240/- levied by the Assessing Officer u/s 271(1)(c) of the Income Tax Act, 1961.

2. We heard the parties and perused the record. The Assessing Officer disallowed interest on housing loan of Rs.2,58,826/- claimed by the assessee, since the housing loan did not relate to the business

activity of by the assessee. Penalty was levied on the above said addition. Before the Assessing Officer, the assessee submitted that the assessee had engaged a Chartered Accountant to file his return of income and the said Chartered Accountant firm omitted to make disallowance of interest expense, even though it related to the loan taken for personal housing purpose. Accordingly, it was pleaded the assessee has not committed any mistake deliberately or intentionally and deduction has been claimed by oversight. The said explanation did not find favour with the Assessing Officer and accordingly he levied penalty of Rs.1,74,240/-, calculated at 200% of the tax sought to be evaded. The Ld. CIT(A) also confirmed the same and hence the assessee has filed this appeal before us.

3. The Ld. Counsel for the assessee reiterated the submissions made before the Assessing Officer. On the contrary, the Ld. DR submitted that the assessee has failed to substantiate the explanations furnished by the assessee before the Assessing Officer.

4. We find merit in the contentions made by the Ld. DR. Even though the assessee has claimed that mistake was committed by the Chartered Accountant firm who prepared the return of income, yet no proof or material was furnished to substantiate the said claim. Further, the assessee has also failed to point out the name of the professional firm which has prepared the return of income of the assessee nor any letter from the C.A firm about the mistake committed was filed. Thus, the assessee has failed to substantiate its explanation in terms of Explanation 1 to sec. 271(1)(c) of the Act and accordingly we are of the view that the assessee has failed to discharge the onus placed on him under the above said Explanation. However, we are of the view

that the penalty levied at 200% is on the higher side. Accordingly, we modify the order of the Ld. CIT(A) and direct the Assessing Officer to sustain penalty at 100% of the tax sought to be evaded.

5. In the result, appeal filed by the assessee is partly allowed.

Order pronounced in the open court on 4<sup>th</sup> May, 2016.

Sd/-  
(AMIT SHUKLA)  
JUDICIAL MEMBER

Mumbai; Dated : 4<sup>th</sup> May, 2016

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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//

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

BY ORDER,

(Dy./Asstt. Registrar)  
ITAT, Mumbai