

आयकर अपीलीय अधिकरण, मुंबई न्यायपीठ "बी" मुंबई
IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH, MUMBAI

BEFORE S/SHRI B.R.BASKARAN, AM AND AMARJIT SINGH, JM

आयकर अपील सं./I.T.A. No.445/Mum/2012
(निर्धारण वर्ष / Assessment Year:2005-06)

Income Tax Officer Ward 2(2)(4), Room No.542, 5 th floor, Aayakar Bhavan, M K Road, Mumbai-400020.	बनाम/ Vs.	Smt.Manisha Ajay Doshi, C-21, Maker Tower, G D Somani Marg, Cuffe Parade, Mumbai-400005.
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

स्था यी लेखा सं./जीआइआर सं./PAN. :AADPD8395E

अपीलार्थी ओर से / Appellant by	Shri S K Mishra
प्रत्यर्थी की ओर से/Respondent by	Shri Shashi Tulsian

सुनवाई की तारीख / Date of Hearing : 31.12.2015
घोषणा की तारीख /Date of Pronouncement: 1.1.2016

आदेश / O R D E R

Per B R Baskaran, AM:

The assessee has filed this appeal challenging the order dated 24.10.2011 passed by Ld CIT(A)-37, Mumbai confirming the penalty of Rs.33,13,895/- levied by the AO u/s 271 (1)(c) of the Act.

2. The Id.counsel appearing for the assessee submitted that the assessment relating to the impugned penalty was completed u/s 153A of the Act consequent to the search operations conducted u/s 132 on 17.1.2007. During the course of search proceedings, the search team did not unearth any incriminating material relating to the year under consideration. The assessment of the year under consideration did not abate by virtue of search operations. Hence the assessee raised a legal

issue challenging the validity of the additions made in respect of a concluded assessment without there being any incriminating material in the appeal filed against the quantum assessment proceedings before Tribunal. The assessee placed his reliance on the decision rendered by the Special Bench of the Tribunal in the case of All Cargo Global Logistics Ltd V/s DCIT reported in 137 ITD 237. The Co-ordinate Bench of the Tribunal accepted the contentions of the assessee and accordingly, held that the addition cannot be made for the year under consideration in the absence of any incriminating material. Accordingly, the Id. AR submitted that the addition on which the impugned penalty has been levied stood vacated by the order dated 30.11.2015 passed by the Co-ordinate Bench in assessee's own case for the assessment year 2005-06 in ITA No.441/Mum/2010. Accordingly, the Id.AR submitted that the impugned penalty order is liable to be quashed.

3. The Id. DR did not object to the factual aspects presented by the Id. AR.
4. Since the addition, on which the impugned penalty has been levied, have since been deleted by the Tribunal, the impugned penalty is liable to be cancelled. Accordingly, we set aside the order of Id. CIT(A) and direct the AO to delete the impugned penalty.
5. In the result, the appeal filed by the assessee is allowed.

Pronounced accordingly on 1st Jan,2016.

घोषणा खुले न्यायालय में दिनांक: 1st Jan, 2016 को की गई ।

Sd
(AMARJIT SINGH)
JUDICIAL MEMBER

sd
(B.R. BASKARAN)
ACCOUNTANT MEMBER

मुंबई Mumbai: 1st Jan, 2015.

व.नि.स./ SRL , Sr. PS

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)- concerned
4. आयकर आयुक्त / CIT concerned
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई /
DR, ITAT, Mumbai concerned
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

True copy

सहायक पंजीकार (Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई /ITAT, Mumbai