



आयकर अपीलीय अधिकरण "सी" न्यायपीठ मुंबई में।
**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "C", MUMBAI**

श्री अमित शुक्ला, न्यायिक सदस्य एवं
श्री राजेश कुमार, लेखा सदस्य के समक्ष।

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER
AND SHRI RAJESH KUMAR, ACCOUNTANT MEMBER**

ITA No. : 7590/Mum/2014
(Assessment year: 2009-10)

प्रकाश के शाह Prakash K Shah, 26, 2 nd Floor, 234 Omniwas R A Kidwai Raod, Wadaa, Mumbai -400 031 PAN: AAKPS 5648 G	Vs	ITO -17(2)(1), Piramal Chambers, Mumbai -400 013
अपीलार्थी (Appellant)		प्रत्यर्थी (Respondent)
Appellant by		श्री संजय आर पारिख Shri Sanjay R Parikh
Respondent by		श्री वैभव जैन Shri Vaibhav Jain

सुनवाई की तारीख /Date of Hearing : 06-10-2016
घोषणा की तारीख /Date of Pronouncement : 06-10-2016

आदेश
ORDER

श्री अमित शुक्ला, न्यायिक सदस्य
PER AMIT SHUKLA, J.M.:

The aforesaid appeal has been filed by the assessee against impugned order passed by Ld. CIT(Appeals)-29,

Mumbai, in relation to the penalty proceeding under section 271(1)(c) of the Act.

2. The assessee is aggrieved by the levy of penalty of Rs.11,47,176/- u/s 271(1)(c) on account of addition made as unexplained cash credit of Rs.34 lakhs and disallowance of interest expenditure thereupon of Rs.7,40,587/-.

3. Before us, the Ld. Counsel for the assessee, at the outset, submitted that in the quantum proceedings, the Tribunal has set aside the impugned additions to the file of the Assessing Officer for fresh adjudication and accordingly, the penalty arising out of the present assessment order cannot be sustained.

4. Ld. DR admitted that these issues have been set aside by the Tribunal to the file of the Assessing Officer and accordingly, he submitted that the penalty should also be set aside.

5. After considering the aforesaid submissions and on perusal of the material placed on record, we find that the subject matter of penalty is on account of addition made by the Assessing Officer on account 'unexplained cash credit' of Rs.34 lakhs and disallowance of interest expenses of Rs.7,40,587/, thereupon. In the quantum proceedings, the Tribunal has set aside this issue to the file of the Assessing Officer for fresh adjudication after observing and holding as under:-

"5. We have heard the rival submissions and perused the material before us. We find that the assessee had taken a loan of Rs.34 lakhs from MGS, that the assessee had filed confirmation before the AO, that AO had recorded the

statement of the lender and made an addition of the principle amount and interest amount to the income of the assessee, that he did not supply the copy of the statement of MGS to the assessee before making addition, that only after the directions of the FAA the AO complied with the principles of natural justice, that the FAA had mentioned that opportunity of proper cross examination was not provided to the assessee. We have gone through the statements recorded by the AO of MGS and the assessee in pursuance of the directions of the FAA (page no.55-56 of paper book). We find that it is the AO who is asking the questions to both of them. In our opinion no meaningful purpose was served by it. It appears that in the name of alleged cross examination the AO had completed a formality-there was no effective cross examination. The assessee should have been allowed to questions MGS about the disputed transaction and after that if the AO had some doubt he should have clarified it. Instead of following the valid course of cross examination the AO short -circuited it for namesake.

As a representative of the Sovereign, the AO is authorized to collect due taxes only and he had to follow a procedure, as envisaged by the Act, to determine taxability of an assessee. As the AO had failed to afford a fair chance to the assessee for cross examining MGS, so, in our opinion, in their interest of justice, matter deserves to be remitted back to the file of the AO for fresh adjudication. The AO is directed to afford an effective and meaningful opportunity of cross examination to the assessee of MGS, as mentioned by us, in the earlier part of our order. Reversing the order of the FAA, we decide both the grounds in favour of the assessee, in part. As a result, appeal filed by the assessee stands partly allowed”.

Once the very addition has been set aside to the file of the Assessing Officer for deciding it afresh, then penalty proceedings arising out of the said quantum order cannot be sustained and hence, the same is directed to be deleted. In the set aside proceedings, the Assessing Officer if required under law and facts may initiate the penalty proceedings subject to fulfillment of the conditions. Accordingly, the grounds raised in the impugned appeal filed by the assessee stands allowed.

6. In the result, appeal of the assessee stands allowed.

Order pronounced in the open court on 6th October, 2016.

Sd/-
(राजेश कुमार)
लेखा सदस्य
(RAJESH KUMAR)
ACCOUNTANT MEMBER

Sd/-
(अमित शुक्ला)
न्याईक सदस्य
(AMIT SHUKLA)
JUDICIAL MEMBER

Mumbai, Date: 6th October, 2016.

प्रति/Copy to:-

- 1) अपीलार्थी /The Appellant.
 - 2) प्रत्यर्थी /The Respondent.
 - 3) The CIT (Appeal) -29, Mumbai.
 - 4) The CIT-17, Mumbai
 - 5) विभागीय प्रतिनिधि "सी", आयकर अपीलीय अधिकरण, मुंबई/
The D.R. "C" Bench, Mumbai.
 - 6) गार्ड फाईल \
- Copy to Guard File.

आदेशानुसार/By Order

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उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण, मुंबई
Dy./Asstt. Registrar
I.T.A.T., Mumbai

*चव्हाण व.नि.स

*Chavan, Sr.PS