

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCHES "J", MUMBAI**

**BEFORE SHRI R.C.SHARMA (AM) AND SHRI RAM LAL NEGI (JM)**

**ITA No. 3750/MUM/2014  
Assessment Year: 2007-08**

Smt. Jaya Patel. Kanchanjunga, Ground Floor, 72, Peddar Road, Mumbai- 400026.  PAN: AGSPP5745M	<b>Vs.</b>	The ACIT, Central Circle 42, Mumbai.
<b>(Appellant)</b>		<b>(Respondent)</b>

Appellant by : Shri. Vishal Salgia  
Respondent by : Shri. Alok Johri

Date of Hearing: 28/04/2016  
Date of Pronouncement: 29/04/2016

**ORDER**

**PER RAM LAL NEGI, JM**

The present appeal has been filed by the assessee against order dated 05/03/2014 passed by the Ld. CIT(A)-38, Mumbai, for the Asst. year 2007-08.

2. The sole grievance of the assessee is that the Ld. CIT(A) has erred in law and in facts in upholding the order passed by the Assessing Officer u/s 271(1)(c) of the Act, whereby penalty of Rs. 8,74,33,100/- was levied u/s 271(1)(c) of the Act.

3. At the outset, the Ld. Counsel for the assessee brought to our notice that ITAT has restored the ground of appeal pertaining to addition of Rs. 25,54,60,000/-in quantum appeal of the assessee, to the file of the AO for

fresh adjudication. The Ld. Counsel also placed on record the copy of order dated 08/08/2014 passed by the Co-ordinate Bench in assessee's quantum appeal ITA No. 2324/M/2011 for assessment year 2007-2008.

4. We have gone through the material placed before us including the order of the Co-ordinate Bench passed in quantum appeal in the light of the submissions made by the assessee. We have noticed that the Ld. CIT(A) has confirmed penalty on Rs. 25,54,60,000/- calculated by AO as the total value of paintings in question and on Rs. 1,08,000/- (foreign currency worth 1,08,000/- found during the search), however, deleted penalty imposed on addition of Rs. 2,16,500/- made on account of low withdrawals. The ITAT Mumbai has allowed the ground of appeal pertaining to confirmation of addition of Rs. 25,54,60,000/- for statistical purposes. The ITAT has restored back the said issue to the file of AO for fresh adjudication holding as under:-

*“3. We have heard the rival submissions and perused the material before us. The undisputed facts of the case are that during the course of action u/s.132(1) of the Act at the residential premises of the assessee 275 paintings were found, that valuation of the painting was done by two valuers, that the assessee was provided with the inventory of the paintings and the value estimated by the valuers, that J J school of Arts team and Ashish Nagpal had valued the paintings at different prices, that valuers of J J School were of the opinion that certain paintings could not be valued as same were of not renowned artists, that the assessee had not sold any painting, that in 1975 she had made some disclosure, that the AO had admitted that at least 19 paintings were possessed by her at the time of birthday celebration of her father, that she had produced some bills/documents about some of the paintings, that she had objected that one of the paintings was fake and has filed an affidavit*

*11 ITA No. 2324 Mum 2011 Jaya P.Patel in this regard, that the AO made an addition of Rs.25.54 Crores to the income of the assessee, that while adopting the value he had taken the higher range or higher valuation. In our opinion, there was no justification to adopt the market value i.e. value of the painting on the date of search, for determining the investment made by the assessee.AO has not given any reason as to how he had arrived at the conclusion that investment in all the paintings was made during the year under consideration. We are not aware as whether any material in this regard was found during the search or not. At least the AO has not incorporated such material in his order. Secondly, the assessee had claimed that one of the paintings (SN.240) was fake and one of the valuers had not valued it whereas the other valuer had valued it at Rs.95 lakhs. We find that AO and the FAA has not dealt the issue. Whether the painting was fake or not should have been referred to third valuer. Alleged morphing of pictures could easily be detected with scientific investigation. Therefore, without any base to hold or to suggest that there was morphing of pictures is not proper. We find that the AO had accepted the authenticity of the album produced by the assessee to a certain extent i.e. for 19 paintings. But, for rejecting the claim made by the assessee for other paintings in form of other evidences, no reason has been given. In these circumstances, we are of the opinion that in the interest of justice, matter should be restored back to the file of the AO for fresh adjudication. He is directed to afford a reasonable opportunity of hearing to the assessee.”*

5. In view of the order passed by the co-ordinate Bench of ITAT, Mumbai in quantum appeal of the assessee, the amount of penalty is required to be determined afresh after adjudicating the issue regarding confirmation of addition of Rs 25,54,60,000/- made under section 69 of the Act as per

direction issued by the ITAT in quantum appeal. We, therefore, restore the impugned order to the file of AO for deciding the quantum of penalty afresh after adjudicating the issue in terms of order dated 08.08.2014 passed by the ITAT. Since, the assessee has not challenged the penalty with reference to addition on foreign currency recovered, we confirm the penalty so imposed thereon by the AO.

6. In the result appeal of the assessee for A.Y. 2007-08 is partly allowed.

Order pronounced in the open court 29<sup>th</sup> April, 2016.

Sd/-

(R.C.SHARMA)

ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated: 29/04/2016

Sd/-

(RAM LAL NEGI)

JUDICIAL MEMBER

**आदेश 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
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR,  
ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

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

*Pramila*