

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

श्री आर. सी. शर्मा, लेखा सदस्य, एवं श्री अमरजीत सिंह, न्यायिक सदस्य, के समक्ष  
BEFORE SHRI R.C.SHARMA, AM AND SHRI AMARJIT SINGH, JM

आयकर अपील सं/ I.T.A. No.6550/Mum/2008  
(निर्धारण वर्ष / Assessment Year: 2005-06)

M/s. Marathon Developers Marathon House, Devidayal Road, Mulund(W) Mumbai - 400080	<b>बनाम/</b> Vs.	Dy.Commissioner of Income Tax Central Circle-38 Aayakar Bhavan, Mumbai
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAAFM1737A		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

Assessee by:	Shri J. P. Bairagra
Department by:	Shri Sumit Kumar

सुनवाई की तारीख / Date of Hearing: 18.03.2016  
घोषणा की तारीख /Date of Pronouncement: 22.06.2016  
आदेश / ORDER

**PER AMARJIT SINGH, JM:**

The assessee has filed present appeal against the order dated 11.09.2008 passed by the Commissioner of Income Tax (Appeals) Central VI, Mumbai [hereinafter referred to as the "CIT(A)"] relevant to the A.Y.2005-06 wherein the assessee has challenged the

confirmation of the penalty order dated 28.06.2007 passed by the Assessing Officer.

2. The facts of the case are that the assessment of the appellant was completed u/s.143(3) r.w.s.153B of the Income Tax Act, 1961 (in short "the Act") on 08.12.2006 determining the total income to the tune of Rs.47,38,360/- as against the returned income of Rs.40,93,810/- showed by the assessee in his return of income filed on 31.10.2005. On 02.12.2004 search action u/s.132 of the Act was initiated and some loose sheets were found and seized. On the basis of two loose papers, the addition to the tune of Rs.6,44,550/- was made. After finalizing of the assessment the Assessing Officer initiated action against the assessee u/s.271(1)(c) of the Act and levied penalty to the tune of Rs.2,35,858/-. The action of the Assessing Officer was confirmed by the learned CIT(A). Therefore the assessee has filed the present appeal before us.

4. We have heard the arguments advanced by the learned representative of the parties and perused the record carefully. At the very outset the learned representative of the assessee has argued that the learned CIT(A) has wrongly confirmed the penalty to the tune of Rs.2,35,858/- which is not based upon non-furnishing of an inaccurate particulars and nor concealment of any particular of income. It is also argued that the Assessing Officer made addition of Rs.6,44,550/- on the basis of two loose papers which were not connected with any

record of the assessee, therefore, the same is not liable to be considered in accordance with law and the same is not a reasonable ground to impose the penalty upon the assessee. It is also argued that the explanation to section 271(1)(c) of the act was not applicable to the case of the appellant because it is not a case whether no explanation was offered or whether the explanation offered by the appellant was found false.

5. On the other hand the learned representative of the department has strongly relied upon the order passed by the CIT(A) in question and it is also argued that the assessee did not file an appeal against the substantive order of assessment, therefore, the assessment order has become final hence the CIT(A) has rightly confirmed the order in question. Keeping in view of the argument advanced by the parties and perusing the record carefully, it came into notice that the Assessing Officer made the addition in the assessment order dated 08.12.2006 on the basis of two loose papers found in the premises of the assessee. Before discussing further it is necessary to advert the contents of loose paper on record. The contents of these documents and the explanation given by the appellant in respect of these documents are as follows:

“Page No.1. This page contains hand written note amounting to Rs.2,47,950/- reduced by Rs.38,000/- and Rs.2,09,950/- shown as balance. There is also mention of

M. Max, Mrs. Sanama Shetty, Unit No.509 and area : 551 x 450. The assessee explained that the noting pertained to estimates given for extra work / furniture work and about 15% discount offered by Shri Chetan R. Shah as party was referred by Director's close friend but the proposal did not materialized.

Page No.4 This page contains hand written equations of 661 x 600 amounting to Rs.3,96,600/- reduced by Rs.50,000/- and Rs.3,46,600/- shown as receivable. There is also mention M. Max, Mr. B. Gosh, Unit No.508, - 2.5 S.K.Paper and – 1.0 Abhay Shah. The assessee explained that the nothing pertained to estimate given for extra work / furniture work along with estimated amount of expenses to be incurred for the same out of which Rs.50,000/- was towards light fittings to Northlight (supplier). As regards – 2.5 S.K. Paper and - 1.0 Abhay Shah, the assessee stated that as per the notings on this page, out of balance of Rs.3.5 lacs, Rs.2.5 lacs were to be given to SK Paper for work to be carried out and Rs.1.00 lac to be paid to architect Shri Abhay Shah. The assessee stated that the proposal did not materialize.”

Now it is to be seen whether these loose papers are related to the assessee or not. Assessee denied the contents of the loose papers and also explained the matter of the loose paper before the Assessing Officer while making his statement. The reply has also been mentioned above. No doubt, while completing the assessment u/s.143(3) dated 08.12.2006, the addition was made to the tune of Rs. Rs.6,44,550/-. The said amount was added to the income of the assessee. The order dated 08.12.2006 nowhere speaks about this fact that these loose papers were corroborated with any other documents relating to the assessee. The Assessing Officer nowhere tallied the figure mentioned in the loose papers with the accounts books of the assessee. The Assessing Officer also nowhere issued the notice to the parties to prove or disprove the statement. Since the loose papers were recovered by the authority and the assessee denied the figure mentioned therein as his income, therefore it is necessary on the part of the department to link the document with the ledger / account books of the assessee. Merely saying that the assessee gave the evasive reply, is not itself sufficient to arrive at this conclusion that the said amount which was written on the loose papers was the income of the assessee. It also came into notice that it is nowhere on record that the Assessing Officer has proved this fact that the assessee had made the false statement before him. It is not in dispute that the amount which was written on the loose papers and added to the income of the assessee nowhere reflected in the return of the assessee

but the said amount nowhere found connected with the assessee with any record of him. It is therefore, there is no case to furnish the inaccurate particulars and concealment of particular of income. In view of the above said peculiar facts and circumstances of the case, we are of the view that the CIT(A) has wrongly confirmed the order passed by the Assessing Officer, therefore we set aside the order in question and delete the penalty in question.

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

Order pronounced in the open court on 22<sup>nd</sup> June, 2016.

Sd/-  
(R.C.SHARMA)

लेखा सदस्य / ACCOUNTANT MEMBER

Sd/-

(AMARJIT SINGH)

न्यायिक सदस्य/JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated : 22<sup>nd</sup> June, 2016

*MP*

**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)-
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**