

IN THE INCOME TAX APPELLATE TRIBUNAL
"A" BENCH, MUMBAI
BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER AND
SHRI RAVISH SOOD, JUDICIAL MEMBER

ITA no.5488/Mum./2015
(Assessment Year :2004-05)

Jayantilal C. Jain,
Prop Rajguru Jewellery Mart,
621, Cotton Exchange Bldg. 6th Floor,
Kalabadevi Road, Mumbai 400 002
PAN ABOPJ3987G

..... Appellant

v/s

ITO 15(1)(1)
Mumbai

..... Respondent

Assessee by : Shri. Darshan Gandhi
Revenue by : Shri. Rajesh Kumar Yadav

Date of Hearing -02.03.2017

Date of Order - 07.03.2017

ORDER

PER: SHAMIM YAHYA

This appeal by the assessee is directed against order of learned CIT-A dated 22/6/2015 wherein he has confirmed the levy of penalty of Rs.2,06,993/- u/s. 271 (1) C of the income tax act, which pertains to assessment year 2004-05

2. At the outset in this case learned counsel of the assessee submitted that the issue in the quantum appeal has been set aside

by the ITAT. Hence he pleaded that this penalty order also needs to be set aside. Per Contra learned departmental representative submitted that a part of the issues which led to the levy of penalty has also been confirmed by the ITAT. Hence he submitted that the entire penalty need not be set aside. In rejoinder Ld. Counsel of the assessee submitted that the issue on which ITAT has confirmed the addition only relates to adhoc /estimated addition which doesn't warrant levy of penalty.

3. Up on careful consideration we note that this ITAT in ITA no. 7190 and others void order dated 27/4/2016, has adjudicated the merits of the issues on which penalty was levied. We find that a major part of the addition related to addition under section 68 of the income tax act. The amount involved was Rs.6,06,600/- being unsecured loan and Rs. 27,109/- interest thereon. While adjudicating this issue ITAT had restored the issue to the file of the assessing officer for fresh examination. Another issue on which the penalty was levied related to ad hoc disallowance of telephone expense amounting to Rs. 2,385. This issue was decided by the ITAT in favour of the revenue. On this issue it is the contention of the Ld. Counsel of the assessee that since the issue relates to ad hoc disallowance assessee cannot be held guilty of concealment or furnishing of inaccurate particulars.

4. Up on careful consideration we find that except for the issue of ad hoc disallowance of Rs. 2,385/- the ITAT has restored the issues to the file of the assessing officer for fresh examination. In these circumstances in

our considered opinion the issue relating levy of penalty also needs to be considered afresh by the assessing officer after adjudication up on the merits as restored by the ITAT in the order on merits as referred above. Accordingly, the issue raised in this appeal is remitted to the file of the assessing officer. The assessing officer shall consider the issue of levy of penalty afresh after adjudication up-on the merits of the issue as remitted above.

In the result this appeal by the assessee stands allowed for statistical purposes

Order pronounced in the Open Court on 07.03.2017

Sd/-

**RAVISH SOOD
JUDICIAL MEMBER**

Sd/-

**SHAMIM YAHIYA
ACCOUNTANT MEMBER**

MUMBAI, DATED: 07.03.2017

Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The CIT(A);*
- (4) *The CIT, Mumbai City concerned;*
- (5) *The DR, ITAT, Mumbai;*
- (6) *Guard file.*

Jayantilal C. Jain
ITA no.5488/Mum./2015

By Order

Nishant Verma
Sr. Private Secretary

(Dy./Asstt.Registrar)
ITAT, Mumbai