

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

ITA no.2015/Mum./2014
(Assessment Year :2008-09)

Anil Kumar Shroff,
228-231 Kalindas Udyog Bhavan,
Century Bazar Lane, Prabhadevi
Mumbai 400 025
PAN AAJPS1929B

..... Appellant

v/s

ITO 2(2)(3),
Mumbai.

..... Respondent

Assessee by : None
Revenue by : Shri. Rajesh Kumar Yadav

Date of Hearing -07.03.2017

Date of Order – 16.03.2017

ORDER

PER: SHAMIM YAHYA

This appeal by the assessee is directed against order of Ld. CIT-A dated. 27.12.2013 and pertains to assessment year 2008-09.

2. The grounds of appeal read as under:

1. On the facts of the case and correct construction of Law Ld. CIT-A erred in upholding the order of the assessing officer levying penalty of Rs. 1,81,043/- u/s. 271 (1)(c). The A.O. while passing order u/s. 271 (1)(c), ignored the fact that addition was made on disputed point

of share of profit exempt in the hand of partner u/s. 10(2A) and the appeal against the said point is pending before Hon'ble ITAT.

2. On the fact of the case and correct construction of law Ld. CIT-A erred in upholding the order of A.O. stating that Appellant has furnished inaccurate particulars of his income, as none of the facts were concealed nor any inaccurate particulars were submitted by the Appellant.

3. The Appellate craves leave to add and/or amend all or any of the above grounds of appeal.

3. In this case assessee is a partner in the partnership firm. He has claimed the income from the partnership firm as exempt. However, the A.O. noted that assessee has claimed income from the firm exempt in excess of what was permissible u/s. 10 (2) A. The A.O. observed that it was the share of profit that was exempt and not other incomes of the firm. Hence the A.O. made a disallowance of Rs. 5,32,638/-. Upon this addition penalty was also levied amounting to Rs. 1,81,043/-. In the penalty order the A.O. did not bother to bring on record assessee's submissions. He held that assessee submissions have been considered and were not acceptable. Up on assessee's appeal Ld. CIT-A confirmed the levy of penalty.

4. Against above order assessee is in appeal before us. We have heard the Ld. DR. None appeared on behalf of the assessee. However, in our considered opinion the issue can be adjudicated upon hearing the Ld. DR and perusing the records.

5. We find that in this case addition has been made due to the reason that assessee has claimed exemption for the entire share of income of the partnership firm. However, the revenue has found that the act only postulates exemption of the share of profit of the firm. Hence, assessee's claim of exemption qua the rental income of the firm was denied. In this factual scenario we are of the considered opinion that assessee can be considered to be under a bona fide belief that the entire income from the firm is exempt. Such a belief of the assessee cannot be held to be contumacious warranting levy of penalty u/s. 271 (1) C. For this proposition we place reliance upon the decision of a larger bench of the Hon'ble Apex Court in the case of a Hindustan Steel Ltd. vs. State of Orissa 83 ITR 26

6. In the background of aforesaid discussion and precedent we set aside the order's of authorities below and delete the levy of penalty.

In the result this appeal filed by the assessee stands allowed

Order pronounced in the Open Court on 16.03.2017

Sd/-

**RAVISH SOOD
JUDICIAL MEMBER**

Sd/-

**SHAMIM YAHYA
ACCOUNTANT MEMBER**

MUMBAI, DATED: 16.03.2017

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.*

Nishant Verma
Sr. Private Secretary

By Order

(Dy./Asstt.Registrar)
ITAT, Mumbai