

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "I", MUMBAI**

**BEFORE SHRI G.S. PANNU, ACCOUNTANT MEMBER AND
SHRI AMARJIT SINGH, JUDICIAL MEMBER**

ITA NO. 4894/MUM/2015 : (A.Y : 2010-11)

Kamal J. Gupta
16A, Andheri Industrial Estate,
Veera Desai Road, Andheri (W),
Mumbai 400 058 (Appellant)
PAN : AAEPG9892N

Vs. ACIT, Central Circle-39,
Mumbai (Respondent)

**Assessee by : Shri Vijay Kothari
Revenue by : Shri Deepak Ripote**

Date of Hearing : 20/07/2016

Date of Pronouncement : 24/08/2016

ORDER

PER G.S. PANNU, AM :

The captioned appeal by the assessee is directed against the order of CIT(A)-54, Mumbai dated 22.06.2015, pertaining to the Assessment Year 2010-11, which in turn has arisen from the order passed by the Assessing Officer, Mumbai dated 22.06.2012 under section 271AAA of the Income Tax Act, 1961 (in short 'the Act').

2. In this appeal, the only issue raised by the assessee relates to the action of CIT(A) in sustaining penalty of Rs.7,85,400/- imposed by the Assessing Officer u/s 271AAA of the Act.

3. At the time of hearing, the learned representative for the assessee pointed out that the CIT(A) has sustained the levy of penalty in an *ex parte* manner where the say of the assessee was not on record. In this context, it has been pointed out that the CIT(A) has proceeded to dispose of the appeal *ex parte* on the ground that on the appointed date of hearing, i.e., on 18.6.2015, neither assessee attended and nor was any adjournment sought. It was pointed out that on this basis CIT(A) concluded that assessee was not interested in prosecuting the appeal. Before us, it has been pointed out that the assessee was very much interested in prosecuting the appeal, but the appellant could not attend on the appointed date for unintended reasons. It was also pointed out that the CIT(A) has chosen to merely affirm the order of Assessing Officer without considering the defence sought to be put up by the assessee, which was also available from the relevant discussion in the order of Assessing Officer. It was, therefore, contended that the assessee would be satisfied, for the present, if the appeal is restored back to the file of CIT(A) for adjudication afresh on merits.

4. On the other hand, the Ld. DR appearing for the Revenue has not seriously opposed the plea of the assessee for remanding the matter back to the file of CIT(A) for adjudication afresh.

5. We have carefully considered the rival submissions. In the present case, the controversy is with regard to penalty imposed u/s 271AAA of the Act with respect to assessment of undisclosed income as a consequence of search and seizure action. Insofar as merits of the levy is concerned, the same is not being addressed by us at this stage.

The CIT(A) has upheld the levy primarily reiterating the discussion made by the Assessing Officer in the penalty order. Ostensibly, CIT(A) did not have the benefit of the explanations from the side of the assessee as the order has been passed *ex parte* noticing absence of the assessee. Considering the plea of the assessee before us, in our view, it would be in the fitness of things that the matter is restored back to the file of CIT(A) for adjudication afresh after allowing assessee a reasonable opportunity of being heard and as per law. Thus, without going into the merits of the controversy, appeal is restored back to the file of CIT(A) for passing an order afresh in accordance with law.

6. In the result, appeal of the assessee is treated as allowed for statistical purposes.

Order pronounced in the open court on 24th August, 2016.

Sd/-

(AMARJIT SINGH)
JUDICIAL MEMBER

Mumbai, Date : 24th August, 2016

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Copy to :

- 1) The Appellant
- 2) The Respondent
- 3) The CIT(A) concerned
- 4) The CIT concerned
- 5) The D.R, "I" Bench, Mumbai
- 6) Guard file

Sd/-

(G.S. PANNU)
ACCOUNTANT MEMBER

By Order

Dy./Asstt. Registrar
I.T.A.T, Mumbai