

आयकर अपीलीय अधिकरण, मुंबई "ई" खंडपीठ
Income-tax Appellate Tribunal -"E"Bench Mumbai

सर्वश्री राजेन्द्र,लेखा सदस्य एवं सी. एन. प्रसाद,न्यायिक सदस्य

Before S/Sh.Rajendra,Accountant Member and C.N. Prasad,Judicial Member

आयकर अपील सं./I.T.A./4408/Mum/2015,निर्धारण वर्ष /Assessment Year: 2007-08

Intiaz Husain Shaikh 75/5-B, Mittal Indl Estate Andheri Kurla Road,Andehri(E) Mumbai-400 059 PAN: AAVPS 1424 R	V s.	Income tax Officer-20(1)-3 Mumbai.
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(अपीलार्थी /Appellant)

(प्रत्यर्थी / Respondent)

Revenue by: Shri N. Sathya Moorthy -DR

Assessee by: None

सुनवाई की तारीख / **Date of Hearing: 20.07.2016**

घोषणा की तारीख / **Date of Pronouncement: 20.07.2016**

आयकर अधिनियम,1961 की धारा 254(1)के अन्तर्गत आदेश

Order u/s.254(1)of the Income-tax Act,1961(Act)

लेखा सदस्य राजेन्द्र के अनुसार PER RAJENDRA, AM-

Challenging the order,dated 25.05.2015 of CIT(A)-31,Mumbai,the Assessee has filed the present appeal.Assesse-an individual, deriving income from offset and job work, filed its return of income on 29.10.2007,declaring total income at Rs.76,744/-.The Assessing Officer (AO)completed the assessment order u/s. 143(3) of the Act, was passed on 14.12.2009, determining the total income of the assessee at Rs.34.72/- lakhs. The said income was adjusted against the brought forward losses of earlier years and the assessment was completed at total income of Rs.76,740/-. While completing the assessment the AO made addition under the head liability ceased to exist (Rs.29.50 lakhs).

2. The AO asked the assessee to explain the genuinity of the transaction and directed him to showcause as to why the liability in question should not be considered as ceased to exist as per the provisions of section 41(1) of the Act. The addition made by the AO travelled up to the Tribunal and the stand taken by the AO was confirmed by both the appellate authorities.

3.Meanwhile,the AO initiated penalty proceedings as per the provisions of section 271(1)(c) of the Act vide notice dt.14.12.2009 . Further, a showcause notice was issued on 21.11.13 asking the assessee to file his explanation as to why penalty u/s. 271(1)(c) should not be levied.As per the AO the assessee was given time up to 08.02.2013,but he did not file any

explanation in that regard. Therefore, the AO levied penalty of Rs.9.36 lacs for concealing particulars of invoking provisions of section 271(1)(c) of the Act.

4. Aggrieved by the order of the AO, the assessee preferred an appeal before the First Appellate Authority (FAA). As per the FAA notice of hearing was issued to the assessee but no one attended the appellate proceedings. The FAA upheld the levy of penalty.

5. During the course of hearing before us, none appeared on behalf of the assessee nor was any application filed for adjourning the matter. The Departmental Representative (DR) supported the order of the FAA.

6. We are deciding the appeal on the basis of available material and after hearing the DR. We find that the penalty was levied by the AO without hearing the assessee. The AO has mentioned that he had given time to the assessee up to 08.02.2013. He has not mentioned as to whether the penalty notice was served upon the assessee or not. Similar is the case with the FAA. He had mentioned that notice for hearing was issued, but nothing is mentioned about service of the said notice. Thus, both the authorities have decided the issue without hearing the assessee. In our opinion, before levying penalty not only show cause notice is to be issued, it has to be properly served upon the assessee. In the case under consideration only one stage of levy of penalty is proved i.e. issue of notice. The FAA should have ensured the service of hearing notice before confirming the penalty order. By not adhering to the principle of natural justice, the FAA had adversely affected a valuable right of the assessee. Therefore, we are of the opinion, that in the interest of justice matter should be restored back to the file of FAA. He is directed to afford a reasonable opportunity of 'Effective hearing' to the assessee. Effective Ground of appeal raised by the assessee is allowed in part.

As a result, appeal filed by the assessee stands partly allowed

फलतः निर्धारिती द्वारा दाखिल की गई अपील अंशतः मंजूर की जाती है.

Order pronounced in the open court on 20th, July, 2016.

आदेश की घोषणा खुले न्यायालय में दिनांक 20 जुलाई, 2016 को की गई।

Sd/-

(सी. एन. प्रसाद / C.N. Prasad)

न्यायिक सदस्य / JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated : 20.07.2016.

Jv.Sr.PS.

Sd/-

(राजेन्द्र / Rajendra)

लेखा सदस्य / ACCOUNTANT MEMBER

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

- 1.Appellant /अपीलार्थी
2. Respondent /प्रत्यर्थी
- 3.The concerned CIT(A)/संबद्ध अपीलीय आयकर आयुक्त, 4.The concerned CIT /संबद्ध आयकर आयुक्त
- 5.DR "G " Bench, ITAT, Mumbai /विभागीय प्रतिनिधि, खंडपीठ,आ.अधि.मुंबई
- 6.Guard File/गार्ड फाईल

सत्यापित प्रति //True Copy//

आदेशानुसार/ **BY ORDER,**

उप/सहायक पंजीकार **Dy./Asst. Registrar**
आयकर अपीलीय अधिकरण, मुंबई /ITAT, Mumbai.