

आयकर अपीलीय अधिकरण "जी" न्यायपीठ मुंबई में।

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

श्री डि. करुणाकर राव, लेखा सदस्य एवं

श्री अमित शुक्ला, न्यायिक सदस्य के समक्ष।

**BEFORE SHRI D. KARUNAKARA RAO, ACCOUNTANT MEMBER
AND SHRI AMIT SHUKLA, JUDICIAL MEMBER**

ITA No. : 7614/Mum/2013

(Assessment year :2006-07)

Y P Punj Family Trust, PSL Towers, 615, Makwana Road, Marol, Andheri (East), Mumbai -400 059 स्थयी लेखा सं.: PAN: AAATY 1077 D	Vs	Asst. Commissioner of Income Tax -15(2), Matru Mandir, Tardeo Road, Mumbai -400 007
अपीलार्थी (Appellant)		प्रत्यर्थी (Respondent)
Appellant by	:	Shri Vijay Mehta
Respondent by	:	Shri A K Kardam

सुनवाई की तारीख /Date of Hearing : 30-07-2015

घोषणा की तारीख /Date of Pronouncement : 30-10-2015

आदेश
ORDER

अमित शुक्ला, न्या. स.:

PER AMIT SHUKLA, JM:

The aforesaid appeal has been filed by the assessee against impugned order dated 31.10.2013 passed by CIT(A)-26, Mumbai-26, in relation to penalty proceedings u/s 271(1)(c) for the assessment year 2006-07. The assessee is mainly aggrieved by levy of penalty u/s 271(1)(c) for sum of Rs. 24,353/-. In this case, the penalty has been levied on the assessee on the addition made on protective basis. The substantive addition was made in the hands of Shri Y P Punj.

2. The brief facts of the case are that, the assessee is family trust which has taken the property on lease from Shri Y. P. Punj at monthly rent of Rs. 5,45,250/- from 01.07.2003 to 31.03.2006. The property so taken on lease has been sub-let to HDFC. As per

the sub-license agreement between the assessee trust and HDFC Bank dated 15.09.2004, the monthly lease rent of Rs. 2,24,640/- plus Rs. 1,49,768/- for 33 months with an advance deposit of Rs. 22,46,400/- for a Total area 2340 sq. ft. and other property was given on rent to Sony Mony Electronics Ltd. for a monthly rent of Rs. 3,52,800/- and advance deposit of Rs. 35,28,000/-. The AO held that, this trust is nothing but a colourable device of transferring the income from the hands of Y P Punj to the family trust. He thus added the income on substantive basis in the hands of Shri Y P Punj and in the case of assessee, i.e. Y.P. Punj Family Trust on the protective basis.

3. Before us, it has been submitted that in the case of Y.P. Punj, the trust income has already been clubbed u/s 64 and rental income has been offered on substantive basis in his hand. Once that is so, we are unable to understand why the penalty on protective assessment has been levied. There can be protective assessment but there cannot be protective penalty, because there is no assessed income which can be treated as concealed income or furnishing of any inaccurate particulars of income. Before us, the Ld. Counsel has cited following decision in support of the contention no penalty can be levied on protective basis :-

CIT v Super Steel (Sales) Co.	178 ITR 451(Cal)
Metal Stores vs CIT	186 ITR 612(Gau)
ITO vs Miss Vasudha Bajoria	40 ITD 414(ITAT-Kol)
CIT v Smt. Durgawati Singh	234 ITR 249(All)

Whereas, the Ld. DR has strongly relied upon the order of the CIT(A).

4. On the perusal of the impugned order and facts and materials on record, we find that both the authorities have discussed in detail, the colourable device but failed to understand that, once an income has already been offered and assessed on

substantive basis in the case of the individual assessee, then how it becomes concealment of income or furnishing of inaccurate particulars of income in the case of a person where income has been assessed on a protective basis. Thus, penalty levied on protective basis in the case of the assessee stands deleted.

5. In the result, appeal of the assessee is allowed.

Order pronounced in the open court on 30th October, 2015.

Sd/-

(डि. करुणाकर राव)

लेखा सदस्य

**(D. KARUNAKARA RAO)
ACCOUNTANT MEMBER**

Sd/-

(अमित शुक्ला)

न्याईक सदस्य

**(AMIT SHUKLA)
JUDICIAL MEMBER**

Mumbai, Date: 30th October, 2015

प्रति/Copy to:-

- 1) अपीलार्थी /The Appellant.
 - 2) प्रत्यर्थी /The Respondent.
 - 3) The CIT(A) -26, Mumbai.
 - 4) The CIT -15, Mumbai.
 - 5) विभागीय प्रतिनिधि "जी", आयकर अपीलीय अधिकरण, मुंबई/
The D.R. "G" Bench, Mumbai.
 - 6) गार्ड फाईल \
- Copy to Guard File.

आदेशानुसार/By Order

// True Copy //

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण, मुंबई
Dy./Asstt. Registrar
I.T.A.T., Mumbai

*चव्हान व.नि.स

*Chavan, Sr.PS