

आयकर अपीलीय अधिकरण, 'बी' खंडपीठ मुंबई  
**INCOME TAX APPELLATE TRIBUNAL, MUMBAI "B" BENCH**

सर्वश्री महावीर सिंह न्यायिक सदस्य एवं बी.आर.बास्करन, लेखा सदस्य  
**Before S/Sh. Mahavir Singh, JM & B.R. Baskaran, AM**

आयकर अपील सं./ITA No./7208/Mum/2012, निर्धारण वर्ष /Assessment Years: 2007-08

Mohammed Salim Yusuf Flat No.14, 1st Floor, ISAK Manzil, S.V. Road, Mumbai-400 020. <b>PAN:AAKPY 9942 K</b>	Vs.	DCIT-15(3) Aayakar Bhavan Mumbai-400 020.
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(अपीलार्थी /Appellant)

(प्रत्यर्थी / Respondent)

**Revenue by: None**

**Assessee by: S. Ravichandran-DR**

सुनवाई की तारीख / **Date of Hearing: 30.08.2016**

घोषणा की तारीख / **Date of Pronouncement: 30.08.2016**

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

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

**ORDER**

**न्यायिक सदस्य के अनुसार Per Mahavir Singh, JM :**

This appeal by the assessee is arising out of the order of CIT(A)-26, in Appeal No.CIT(A)-26/IT-17/DCIT.15(3)/2010-11 order dated 04.09.2012. Assessment was framed by DCIT-Circle-15(3), Mumbai, u/s. 143(3) of the Income tax Act, 1961 (hereinafter "the Act") for the assessment year 2007-08 vide his order dated 10.12.2009. The penalty under dispute was levied by DCIT, Circle-15(3), Mumbai, u/s. 271(1)(c) of the Act vide his order dated 20.05.2010.

2. The only issue in this appeal of the assessee is against levy of penalty u/s. 271(1)(c) of the Act on account of addition of cash credits and disallowance u/s. 40(a)(ia) of the Act. For this assessee has raised following grounds:-

*"1.The Ld.AO erred in levying penalty u/s. 271(1)(c ) for disallowance of cash credit of Rs.2,86,500/- and the ld. CIT(A) erred in confirming the same.*

*2. The Ld.AO erred in levying penalty for disallowance u/s. 40(a)(ia) of Rs.75,000/- and the ld. CIT(A) erred in confirming the same."*

3. Briefly facts are that the assessee is carrying on the business of a builder and developer. During the course of assessment proceedings, the AO on perusal of capital account of the assessee noticed that there has been capital accretion by a sum of Rs.2,86,500/- by way of cash introduction into capital account. It was explained before AO that cash introduction was made from the accumulated drawings of the assessee which has been indicated at Rs.26,50,000/- in the previous year. The AO in the absence of any evidence added this amount to the income of the assessee. Similarly, the Assessing Officer also disallowed the sum of Rs.75,000/- being Architect fee paid by the assessee without deduction of TDS u/s. 194J of the Act and thereby disallowance was made by invoking the provisions of section 40(a)(ia) of the Act. The AO on both the counts initiated penalty proceedings u/s. 271(1)(c) of the Act and finally levied penalty for furnishing of inaccurate particulars of income. The CIT(A) also confirmed the levy of penalty on both the counts and did not believe the explanation of the assessee. Aggrieved, now the assessee is in second appeal before the Tribunal.

4. We have heard the Id. Sr.DR and gone through the facts and circumstances of the case. We find that the assessee before the AO as well as before CIT(A) has filed explanation that the assessee during the relevant year introduced additional capital of Rs.2,86,500/-. The assessee submitted the details of income of assessment years and also drawings are as under:-

Year	Profit	Drawings
2004-05	7,79,347/-	6,36,218
2005-06	14,43,259/-	22,10,050
2006-07	17,10,299	26,50,000

It is explained before the CIT(A), by the assessee that this introduction of cash was made out of earlier years drawings which was reflected in the respective years accounts statements filed with return of income of the respective assessment years. It was explained that the assessee has withdrawn total withdrawals for these three years at Rs.54,96,268/- and out of which the assessee has saved as personal savings and this

was reintroduced in the capital account in the shape of cash. We find that the assessee is able to explain the accretion of cash/capital from past savings which has not been negated by the Revenue. The addition made by the AO was based on lack of evidence. Assessee's addition has been sustained but here the issue is of levy of penalty for concealment of income and assessee had filed explanation which is not negated by the Revenue. It seems that the explanation filed by the assessee for accretion of capital to the extent of Rs.2,86,500/- out of withdrawals of Rs.54,96,268/- over a period of three years, to be reasonable. Moreover, the Revenue could not controvert the above explanation or could not hold this to be a false explanation. In view of these facts we are of the view that the penalty levied by AO and sustained by CIT(A) deserves to be deleted. We order accordingly.

4.2 In respect of the penalty levied on disallowance u/s.40(a)(ia) of the Act for non deduction of TDS u/s. 194J of the Act for an amount of Rs.75,000/- being fee for professional charges paid, we find that this issue is covered by the co-ordinate Bench of this Tribunal in the case of Rushi Builders and Developers vs. ACIT (ITA No.6684/Mum/2012 , dated 04.03.2015), and the Tribunal has decided the issue in favour of the assessee with following observations :-

*"4. We have heard the rival contentions and have also gone through the records. In this case, the penalty has been levied for disallowance of expenditure u/s.40(a)(ia) of the A t. It is not a case of furnishing of inaccurate particulars of income or concealment of income. The failure to deduct the TDS on the part of the assessee has resulted in disallowance of expenditure. The assessee had not furnished any inaccurate particulars of income or expenditure. The assessee has already faced the consequences by way of disallowance of expenditure for non-deduction of TDS as per the provisions of section 194C of the Act. It is not the case of the Revenue that the assessee had not incurred the expenditure claimed or that the claim of expenditure was bogus or incorrect. The disallowance of expenditure was attracted due to non-deduction of TDS and it cannot be said to be a case of concealment of income or furnishing of inaccurate particulars of income. The levy of penalty u/s.271(1)(c) of the Act is not attracted in this case and the same is accordingly ordered to be deleted."*

Respectfully following the order of the co-ordinate Bench of the Tribunal, we delete the penalty on this count also.

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

Order pronounced in the open court on 30th August, 2016  
आदेश की घोषणा खुले न्यायालय में दिनांक 30 अगस्त, 2016 को की गई।

Sd/-

(बी.आर. बास्करन / **B.R. Baskaran**)  
**लेखा सदस्य / ACCOUNTANT MEMBER**

मुंबई/Mumbai, दिनांक/Date: 30.08.2016

व.नि.स.Jv.Sr.PS.

Sd/-

(महावीर सिंह / **Mahavir Singh**)  
न्यायिक सदस्य / JUDICIAL 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 A Bench, ITAT, Mumbai /विभागीय प्रतिनिधि, B  
खंडपीठ, आ.अ.न्याया.मुंबई 6.Guard File/गार्ड फाईल

सत्यापित प्रति //True Copy//  
आदेशानुसार/ **BY ORDER,**

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