

आयकर अपीलीय अधिकरण, मुंबई न्यायपीठ 'ई' मुंबई
IN THE INCOME TAX APPELLATE TRIBUNAL "E" BENCH, MUMBAI

श्री आर. सी. शर्मा, लेखा सदस्य, एवं श्री अमरजीत सिंह, न्यायिक सदस्य, के
समक्ष
BEFORE SHRI R.C.SHARMA, AM AND SHRI AMARJIT SINGH, JM

आयकर अपील सं/ I.T.A. No.1677/Mum/2014
(निर्धारण वर्ष / Assessment Year: 2006-07)

Ms. Somyashree Belur 501-502, Keshava CHS Ltd., Building No.2, Jaya Nagar, Linking Road, Dahisar(East) Mumbai - 400068	बनाम/ Vs.	Asst. Commissioner of Income Tax 20(3) Mumbai
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AHZPB5856D		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

Assessee by:	Shri Darshan Gandhi
Department by:	Shri Vikram Batra

सुनवाई की तारीख / Date of Hearing: 06.09.2016
घोषणा की तारीख /Date of Pronouncement:28.10.2016
आदेश / ORDER

PER AMARJIT SINGH, JM:

The assessee has filed the present appeal against the order dated 10.01.2014 passed by the Commissioner of Income Tax (Appeals) 32, Mumbai [hereinafter referred to as the "CIT(A)"] relevant to the

A.Y.2006-07 wherein the penalty levied by the Assessing Officer to the tune of Rs.19,82,477/- has been upheld.

2. The assessee has raised the following grounds:-

“1. On the facts and circumstances of the appellant’s case and in law the ld. CIT(A) erred in confirming the penalty of Rs.19,82,477/- levied by the ld. A.O. by invoking the provisions of Sec. 271(1)(c).

3. The brief the facts of the case are that the Assessing Officer made the addition of Rs.64,44,753/- on account of undisclosed income. The assessee declared only source of income in her return as STCG of Rs.64,44,753/- LTCG Rs.5,85,172/- and income from other sourced of Rs.1,49,359/- besides a minor amount of Rs.22,572/- as salary income. The Assessing Officer observed that the transactions of the purchase of shares by the assessee from the parties are bogus and in-genuine. Therefore, the said amount was treated as income. The commission upon the said transactions to the tune of Rs.3,22,238/- was also disallowed and was added to the income of the assessee. Since the assessee furnished the inaccurate particulars of income, therefore, the penalty proceedings u/s.271(1)(c) of the Income Tax Act, 1961 (in short “the Act”) was initiated and the penalty to the tune of Rs.19,82,477/- was levied by virtue of order dated 30.03.2012. Assessee filed an appeal before the CIT(A) but the

appeal of the assessee was dismissed, therefore the assessee has filed the present appeal before us.

4. We have heard the arguments advanced by the learned representative of the parties and perused the record. At the very outset the learned representative of the assessee has argued that the quantum order has been ordered to be set aside by the Income Tax Appellate Tribunal by virtue of order dated 09.10.2015 in ITA No.1490/Mum/2011. Therefore the present order is not liable to be sustainable in the eyes of law. The said order has been perused which speaks about the setting aside of quantum of order passed by the Assessing Officer which was confirmed by the CIT(A) in his order dated 25.11.2010. In the said order the addition to the tune of Rs.64,44,753/- as well as commission to the tune of Rs.3,46,933/- paid on share transactions has been order to be deleted. Since the very base to levy the penalty has been order to be deleted, therefore in the said circumstances the present penalty order is not liable to be sustainable in the eyes of law. Therefore, we set aside the order in question and delete the penalty.

5. In the result, the appeal filed by the **assessee is hereby Allowed.**

Order pronounced in the open court on 28th October, 2016.

Sd/-

(R.C.SHARMA)

लेखा सदस्य / ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated : 28th October, 2016

Sd/-

(AMARJIT SINGH)

न्यायिक सदस्य/JUDICIAL MEMBER

MP

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त (अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार / BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार / (Dy./Asstt.

Registrar)

आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai