

आयकर अपीलीय अधिकरण, मुंबई “एच” खंडपीठ

Income-tax Appellate Tribunal -“H” Bench Mumbai

सर्वश्री राजेन्द्र,लेखा सदस्य एवं रामलाल नेगी, न्यायिक सदस्य

Before S/Sh.Rajendra,Accountant Member and Ramlal Negi,Judicial Member

आयकर अपील सं./ITA.s./925-26/Mum/2015,निर्धारण वर्ष /Assessment Years. 2005-06&06-07

आयकर अपील सं./ITA.s./927 & 422/Mum/2016,निर्धारण वर्ष /Assessment Years.2007-08 & 08-09

Jayesh K Sampat, Block H,Shri Sadashiv CHS Ltd. 6 th Road,Santacruz(W),Mumbai-55 PAN:ADPKC7748Q	Vs.	DCIT Central Circle -46, 659,6 th floor,Aaykar Bhavan M K Road,Mumbai-400 020.
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(अपीलार्थी /Appellant)

(प्रत्यर्थी / Respondent)

राजस्व की ओर से / Revenue by: Shri M C Omi Ningshen -DR

अपीलार्थी की ओर से /Assessee by: Shri Mukesh Choksi

सुनवाई की तारीख / Date of Hearing: 14/02/2017 & 20.02.2017

घोषणा की तारीख / Date of Pronouncement: 23.02.2017

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 A.M.-

Challenging the orders dated 14/11/2014 of the CIT (A)-38,Mumbai, the assessee has filed the appeal for the above-mentioned Assessment Years(AY.s.).Assessee,an individual,is part of group of cases of Mehul Choksi Group.The Assessing Officer (AO),while computing the income of the assessee for the above years had made certain addition in the quantum proceedings. Besides,he also initiated penalty proceeding,u/s.271(1)(c)of the Act,for filing inaccurate particulars of income.Issue involved in all the appeals are common,so,we are disposing off the appeals by passing a single common order.

ITA/924/Mum/2015-AY.2005-06:

2.Effective ground of appeal is levy of penalty.The AO,while deciding the issue of levy of penalty u/s.271(1)(c),held that the assessee had furnished inaccurate particulars and thus had evaded tax.He levied a penalty of Rs.5 lakhs,vide his order 22.03.2013.The assessee preferred an appeal before the First Appellate Authority(FAA),who confirmed the order of the AO.

3.It was brought to our notice that in assessee’s own case the Tribunal had,vide order dated 28/10/2016(ITA.s.1000-1003&1005/Mum/2013-AY.s.2005-06 to 2007-08 & 2010-11)had partly allowed the quantum appeal filed by the assessee and that for the AY.2004-05& 2009-10(ITA.s/924&928/Mum/2015,dtd.28.10.2016) penalty levied u/s.271(1)(c) of the Act was also cancelled.

4. We find that in quantum appeals, the Tribunal in above order, held as under:

“6. We have heard the rival submissions, perused the orders of the authorities below. The Ld. Counsel for the assessee submitted that no proper opportunity was given and hence assessment should be set aside to the Assessing Officer for fresh adjudication and he further submitted that issue in appeal is squarely covered by various decisions of the coordinate benches wherein it was held that commission income from the business of accommodation entries should be assessed at 0.15% as against 2% assessed by the assessing officer. Taking note of all the decisions and submissions of the Ld. Departmental Representative, we are of the view that the Assessing Officer should examine all these submissions of the Ld. Departmental Representative and the case laws relied on by the Ld. Counsel for the assessee and decided the issue afresh in accordance with law. Thus, we restore the assessments to the file of the Assessing Officer to decide afresh in accordance with the law after providing adequate opportunity of being heard.

7. In the result, the appeals filed by the assessee for the Assessment Years 2005 – 06 to 2007-08 and 2010 – 11 are allowed for statistical purposes”

4.1. The Tribunal, deleting the penalty for the AY.2004-05 and 2009-10, referred to the case of Alpha Chemical Trade Agencies Private Limited (ITA/698 & 709/Mumbai/2015) i.e. on the group case and reproduced the order of that case as follow:

“
XXXXXXXX
6. We have carefully considered the rival submissions. It is abundantly clear that modus operandi and the nature of income on by the assessee, which has been subjected to penal provisions of section 271(1)(c) of the act in the instant case, are similar to those considered by the Co-ordinate Bench in the case of Mihir Agencies Private Ltd., & Mukesh Choksi (supra). It is also abundantly clear that in the present case also the variation in quantum of income assessable between assessee and the revenue is on account of estimation only, and identical situation which has been considered in the aforesaid precedents, which have been rendered in similar circumstances, we hereby set aside the order of the CIT (A) and direct the Assessing Officer to delete the penalty imposed under section 271(1)(c) of the Act. Thus, on this aspect, assessee succeeds.”
7. Respectfully following the aforesaid decision, we delete the penalty levied under section 271(1)(c) in these cases, as the facts and circumstances being identical, as the commission income assessable in the hands of the assessee has been on estimate basis, no penalty is attracted on the additions, disallowance is made on estimate basis.”

Respectfully following the said order, we delete the penalty levied under section 271(1)(c) of the Act in these cases also.”

Following the above orders of the Tribunal, we decide the effective ground of appeal in favour of the assessee. As the matter has been remanded back to the file of the AO, in the quantum appeal, for fresh adjudication, so, the penalty would not survive for the year under appeal.

ITA.s./926,422 & 927/Mum/2015 AY.s.2006-07 to 2008-09

Following our order for the AY.2005-06, we delete the penalty levied by the AO and confirmed by the FAA for the above mentioned three AY. Effective ground stands decided in favour of the assessee.

As a result, all the appeals filed by the assessee stand allowed.
फलतः निर्धारिती द्वारा दाखिल की गई सभी अपीलें मंजूर की जाती हैं।

Order pronounced in the open court on 23rd February, 2017.
आदेश की घोषणा खुले न्यायालय में दिनांक 23 फरवरी, 2017 को की गई।

Sd/-

(रामलाल नेगी/ Ramlal Negi)

न्यायिक सदस्य / JUDICIAL MEMBER

मुंबई Mumbai; दिनांक/Dated : 23.02.2017.

Jv. Sr. PS.

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 "H" Bench, ITAT, Mumbai /विभागीय प्रतिनिधि, खंडपीठ, आ.अ.न्याया.मुंबई

6. Guard File/गार्ड फाईल

सत्यापित प्रति //True Copy//

Sd/-

(राजेन्द्र / Rajendra)

लेखा सदस्य / ACCOUNTANT MEMBER

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार Dy./Asst. Registrar

आयकर अपीलीय अधिकरण, मुंबई /ITAT, Mumbai.