

आयकर अपीलीय अधिकरण "बी" न्यायपीठ पुणे में ।
IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH, PUNE

(Through Virtual Court)

BEFORE SHRI R.S.SYAL, VP AND
SHRI PARTHA SARATHI CHAUDHURY, JM

आयकर अपील सं. / ITA Nos. 692, 693 & 694/PUN/2018

निर्धारण वर्ष / Assessment Year : 2008-09

Pradip Maruti Powar
2073, 13th Lane,
Rajarampuri, Kolhapur,
PAN : AJAPP8749E

.....अपीलार्थी / Appellant

बनाम / V/s.

The Income Tax Officer,
Ward-2(2), Kolhapur.

.....प्रत्यर्थी / Respondent

Assessee by : None

Revenue by : Shri Sudhendu Das

सुनवाई की तारीख / Date of Hearing : 01.07.2021

घोषणा की तारीख / Date of Pronouncement : 01.07.2021

आदेश / ORDER

PER PARTHA SARATHI CHAUDHURY, JM:

These three appeals preferred by the common assessee emanates from the common order of the Ld. CIT(Appeal)-2, Kolhapur dated 11.01.2018 for the assessment year 2008-09 as per the following common grounds of appeal on record :

"1. On the facts and in the circumstances of the case and in law the penalty levied of Rs.10,000/- in each of the appeals is not justified considering the facts of the case and reasonable cause for non-attendance by the assessee. The penalty levied be quashed.

2. The appellant craves to leave, add/amend or alter any of the above grounds of appeal.”

2. The only grievance raised in all these appeals is with regard to levy of penalty of Rs.10,000/- in each of the appeals u/s.271(1)(b) of the Income Tax Act, 1961 (hereinafter referred to as ‘the Act’).

3. At the time of hearing, neither the assessee nor his authorized representative was present. The submissions of the Ld. DR were recorded and the cases were considered on merits.

4. That on perusal of the order of the Ld. CIT(Appeal) in respect of all these appeals, it is observed that he has not dealt with the merits of the case since before him the grounds of appeals raised by the assessee as enclosed in Form-35 pertained to quantum addition issues but not in respect of the levy of penalty u/s.271(1)(b) of the Act. Since the grounds of appeal did not emanate from penalty orders, the Ld. CIT(Appeal) had dismissed them in limine. That therefore, the Ld. CIT(Appeal) has not adjudicated upon the rights and liabilities of the parties herein. We also observe that the assessee who was served notice u/s.142(1) of the Act by the Assessing Officer requesting him to attend the hearing, there was no response from the assessee and he had failed to attend the same. The assessee had also not provided any reasonable cause before the Revenue Authorities for such non-compliance. That however, we always consider the fact that Income Tax Act is welfare legislation and not penal legislation. Therefore, as far as possible opportunity should be given to the assessee to represent his case on merits before the Quasi-Judicial Authorities. We are of the considered view, therefore

that the cases of the assessee must be dealt with on merits by the Ld. CIT(Appeal).

5. The Ld. DR fairly conceded to this observation of the Bench. In view thereof, we set aside the order of the Ld. CIT(Appeals) and remand the matters back to his file to adjudicate whether penalty u/s.271(1)(b) of the Act would be leviable in the cases of the assessee on merits as per law. At the same time, the assessee is directed to rectify the defects in the grounds of appeal in Form 35 and file proper grounds of appeal along with necessary documents /evidences to represent his cases on merits. The appeals are allowed for statistical purposes as indicated hereinabove.

6. In the result, **all the appeals of the assessee are allowed for statistical purposes.**

Order pronounced on 01st day of July, 2021.

Sd/-
R.S.SYAL
VICE PRESIDENT

Sd/-
PARTHA SARATHI CHAUDHURY
JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 01st July, 2021.

SB

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(Appeal)-2, Kolhapur.
4. The Pr. CIT-2, Kolhapur.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "बी" बेंच, पुणे / DR, ITAT, "B" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

निजी सचिव / Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.

		Date	
1	Draft dictated on	01.07.2021	Sr.PS/PS
2	Draft placed before author	01.07.2021	Sr.PS/PS
3	Draft proposed and placed before the second Member		JM/AM
4	Draft discussed/approved by second Member		AM/JM
5	Approved draft comes to the Sr. PS/PS		Sr.PS/PS
6	Kept for pronouncement on		Sr.PS/PS
7	Date of uploading of order		Sr.PS/PS
8	File sent to Bench Clerk		Sr.PS/PS
9	Date on which the file goes to the Head Clerk		
10	Date on which file goes to the A.R		

11	Date of dispatch of order		
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