

ITNS 55

IN THE OFFICE OF THE
COMMISSIONER OF INCOME TAX
(APPEALS)-40, MUMBAI

		Date of Order: 16.04.2012
		Appeal Number: CIT(A)-40/ DCCC 23/38/08-09
1.	Date of Institution of Appeal	30.07.2008.
2.	Assessing Officer who made the assessment order	Mr. Shishir Sriastava , DCIT, Central Circle 23, Mumbai.
3.	Assessment Year	1993-94
4.	Name & address of the Appellant	Late Shri Harshad S. Mehta, 32, Madhuli, Dr. Annie Besant Road, Worli, Mumbai 400 018.
5.	PANO.	ABAPM1848F
5.	Income Assessed	-
6.	Penalty/Fine/Interest demanded	₹.937,04,57,790/-
7.	Section under which the order appealed against was made	U/s.271(1)(c) of the I.T. Act, 1961
	Date of Hearing	As per order sheet
	Present for the Appellant	Mr. Dharmesh Shah & Mr. Nilesh Mehta, C.As.
	Present for the Department	None

APPELLATE ORDER AND GROUNDS OF DECISION

This appeal arises from the penalty order dated 26.09.2003 passed by DCIT, Central Circle -23, Mumbai u/s.271(1)(c) of the I.T. Act, 1961.

2. The case was fixed for hearing where Mr. Dharmesh Shah & Mr. Nilesh Mehta , C.As. and Authorized Representatives appeared, filed submissions and the case was heard.

3. The solitary grievance of the appellant in this appeal is levy of penalty u/s.271(1)(c) of I.T. Ac, 1961.

3.1 Vide order dated 26.09.2003, the learned Assessing Officer has levied penalty of ₹.937,04,57,790/- on the assessed income of ₹.1396,02,84,365/-.

3.2 The learned AR of the appellant claimed that since the appellant has not filed valid return of income for the year under consideration, no penalty can be levied by the Assessing Officer as per the provisions of section 271(1)(c) of I.T. Act. It was submitted that such penalty can be levied in a case where return of income was not filed only by virtue of Explanation 3 only i.e. if the assessee is not previously assessed to tax. The learned AR claimed that the identical issue had arisen in the case of DCIT Vs. M/s. Aatur Holdings P. Ltd. [1 SOT 101 (Mum)], which is a concern related to the appellant. It was also pointed out that this decision is confirmed by Hon'ble High Court of Bombay in Appeal No.1382 of 2008 dated 10.02.2009.



3.3 Vide submission dated 10.4.2012, the learned AR of the appellant pointed out that the Assessing Officer himself has dropped penalty proceedings in A.Y.1992-93 under the identical facts. The appellant's returns of income for A.Ys.1992-93 & 1993-94 were treated as invalid and thus, deemed to have never been filed. The learned AR enclosed order dated 30.09.2012 of the Assessing Officer wherein he has also accepted the ruling that where no return of income is filed, there cannot be any concealment of income. The learned Assessing Officer has correctly followed Hon'ble Supreme Court judgement in SLP (CC)/2007/2010 dated 15.02.2010 wherein the Hon'ble Apex Court held that "in this case, the assesseees were notified parties under Special Court (TORTS) Act, 1992, hence they could not file return of income. On facts, section 271(1)(c) of the I.T. Act, 1961 will not apply". The Hon'ble jurisdictional High Court has also held that "no penalty u/s.271(1)(c) of the I.T. Act, 1961 could be levied where assessee did not file any return of income but previously assessed to tax".

3.4 Considering the universal opinion expressed by jurisdictional High Court and the Apex Court and that too in the appellant's group case itself, that no penalty u/s.271(1)(c) of I.T. Act could be levied in the absence of return of income, except for new assesseees, the learned Assessing Officer is directed to delete the penalty levied u/s.271(1)(c) of ₹.937,04,57,790/-.


4. In the result, the appeal is allowed.

(PRAVIN KUMAR)
COMMISSIONER OF INCOME-TAX
(APPEALS) -40, MUMBAI.

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1. The CCIT-Central-II, Mumbai
2. The C.I.T., Central-II, Mumbai.
3. The A.O.
4. The Appellant.
5. Master File.12.




(PRAVIN KUMAR)
CIT(A) - 40, MUMBAI.