

आयकर अपीलीय अधिकरण "H" न्यायपीठ मुंबई में।

**IN THE INCOME TAX APPELLATE TRIBUNAL "H" BENCH, MUMBAI**

**BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER  
AND SHRI AMARJIT SINGH, JUDICIAL MEMBER**

आयकर अपील सं./I.T.A. No.6589/Mum/2017

(निर्धारण वर्ष / Assessment Year : 2006-07)

M/s. Kamdar Private Ltd., Ground Floor, Industrial Assurance Building, J Tata Road, Churchgate, Mumbai 400020	<b>बनाम/</b>  v.	DCIT 1(2), 5 <sup>th</sup> Floor, Ayakar Bhavan, Mumbai 400020
स्थायी लेखा सं./PAN: AAACK3308G		
(अपीलार्थी / <b>Appellant</b> )	..	(प्रत्यर्थी / <b>Respondent</b> )
Assessee by:		Shri. J.P Vairagi
Revenue by:		Shri. Manoj Kumar Singh (DR)

सुनवाई की तारीख /**Date of Hearing** : 27.03.2019

घोषणा की तारीख /**Date of Pronouncement** : 03.06.2019

आदेश / ORDER

**PER SHAMIM YAHYA, Accountant Member:**

This appeal by the assessee is directed against order of learned CIT-A dated 21.09.2017 and pertains to assessment year 2006-07.

2. The grounds for appeal is that the learned CIT-A erred in sustaining the penalty of Rs. 7,83,991/- under section 271(1)(c) of the income tax act.

3. Brief facts of the case leading to the levy of penalty are that penalty was levied on two counts. One issue was the claim of depreciation on the premises which was let out. Assessee's submission

in this regard was that the said premises was also partly used by the assessee for godown. This was rejected by the assessing officer, and assessee's appeal against the above was sustained by the learned CIT-A. Another issue was claim of the assessee that it was not liable to taxation under MAT provisions under section 115JA was rejected on the ground that assessee's case was falling under section 115 JB. Inasmuch as assessee was not situated in a notified Special Economic Zone.

4. Penalty u/s 271(1)(c) was also levied on the above issues. The learned CIT-A also sustained the penalty on the ground that the claim of the assessee was patently dubious.

5. Against above order assessee is in appeal before us. We have heard both the counsel and perused the records. As regards the claim of depreciation on which penalty has been levied, we find that assessee's claim, that assessee was also using the said let out premises as godown has been rejected. This aspect has to be looked from the point of view that the said prices was let out to the assessee's wife itself. Hence the assessee claim that the said prices was also being partly used for godown purposes cannot be said to be ex facie bogus. In our considered opinion assessee's conduct in this regard cannot be said to be contumacious warranting levy of penalty.

6. As regards the levy of penalty on account of tax under section 115 JB under MAT is concerned, we find that assessee's claim was that it was falling under 115 JA. This claim was also supported by the certificate of the auditors. In this view of the matter assessee's conduct cannot be said to be contumacious warranting levy of penalty. If the claim was wrong the responsibility was that of the auditor who duly certified the same. Hence it was a mistake on the part of the auditor and the assessee cannot be visited with penalty for the mistake of its consultant.

7. In the background of aforesaid discussion and precedent in our considered opinion the assessee need not be visited with the rigours of penal provisions under section 271(1)(c).

8. In this regard we draw support from the larger bench of honourable apex court in the case of Hindustan Steel vs. State of Orissa 83 ITR 26, wherein it was held that the authorities may not levy the penalty if the conduct of the assessee was not contumacious.

9. In the background of aforesaid discussion and precedent we set aside the order's of authorities below and delete the levy of penalty.

10. In the result appeal filed by the assessee stands allowed

Order pronounced in the open court on 03.06.2019.

आदेश की घोषणा खुले न्यायालय में दिनांक: 03.06.2019 को की गई

Sd/-

(AMARJIT SINGH)  
JUDICIAL MEMBER

Sd/-

(SHAMIM YAHYA)  
ACCOUNTANT MEMBER

Mumbai, dated: 03.06.2019

*Nishant Verma*  
*Sr. Private Secretary*  
copy to...

1. The appellant
2. The Respondent
3. The CIT(A) – Concerned, Mumbai
4. The CIT- Concerned, Mumbai
5. The DR Bench,
6. Master File

// Tue copy//

BY ORDER  
DY/ASSTT. REGISTRAR  
ITAT, MUMBAI