

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर

IN THE INCOME TAX APPELLATE TRIBUNAL,

INDORE BENCH, INDORE

BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER

AND SHRI MANISH BORAD, ACCOUNTANT MEMBER

ITA No.900/Ind/2018

Assessment Year: 2006-07

| | | | |
|---|-------------------------------------|-----|-----------------------------------|
| M/s.Unique Management Private Limited, 103-104, Bhopal Plaza, Hamidia Road, Bhopal (Appellant) | Ways Service Plaza, Bhopal | Vs. | ACIT-4(1) Bhopal (Revenue) |
| PAN No.AAACU4719K | | | |

| | |
|-----------------------|------------------------|
| Appellant by | None |
| Revenue by | Shri K.G. Goyal, Sr.DR |
| Date of Hearing | 13.03.2020 |
| Date of Pronouncement | 18.03.2020 |

ORDER

PER MANISH BORAD, AM.

The above captioned appeal filed at the instance of assessee pertaining to Assessment Year 2006-07 is directed against the orders of Ld. Commissioner of Income Tax (Appeals)-1 (in short 'Ld.CIT(A)'], Bhopal dated 07.09.2018 which is arising out of the

order u/s 271(1)(c) of the Income Tax Act 1961(In short the 'Act') dated 21.03.2016 framed by ACIT-4(1), Bhopal.

2. Assessee has raised following grounds of appeal;

“That Ld. CIT(A) erred in confirming penalty of Rs.103870/- u/s 271(1)(c) of the Act.

3. When the case was called no one on behalf of the assessee attended the hearing. It was decided to hear the appeal with the assistance of Ld. DR and available records. On perusal of the order of Ld. CIT(A) we find that the assessee did not appear before him also. During the course of penalty proceedings assessee did not appear. The sole grievance of the assessee is levy of penalty u/s 271(1)(c) of the Act at Rs. 1,03,870/-

4. Ld. Departmental Representative vehemently argued supporting orders of both the lower authorities.

5. We have heard Ld. DR and perused the records placed before us. We observe that the assessee filed Income Tax Return on 13.11.2006 for Assessment year 2006-07 declaring total income of Rs.3,89,297/- and also claimed exempt income of Rs.71,33,689/- . Case selected for scrutiny and assessment completed u/s 143(3) of

the Act on 28.11.2008 accepting the returned income. It shows that complete details were examined in the first round of assessment proceedings and there was no observation against the assessee that the assessee has concealed particulars of income or furnished inaccurate particulars of income. Subsequently notice u/s 148 of the Act was issued and the assessment u/s 147 of the Act was completed on 19.3.2012 assessing total income at Rs,6,94,894/-. The net disallowance was Rs. 3,05,597/- which too was on account of estimated expenses not disallowed by the assessee for earning the exempt income at Rs.71,33,689/-. The Ld. A.O made proportionate disallowance of Rs.3,05,597/- u/s 14A in respect of finance charge debited in the Profit & Loss account. On this disallowance u/s 14A of the Act penalty proceedings were initiated which finally reached to the level of levy of penalty at Rs.1,03,807/-

6. Assessee has shown all the expenses in the Profit & Loss account and there is no dispute about the particulars provided in the books of accounts nor the Ld. A.O has rejected the book results since no such finding is appearing in the penalty order as well as appellate order. There is no mandatory rule that for earning

exempt income assessee has to incur any expenditure. It is only when the Ld. A.O is satisfied about the type and amount of expenses which have been incurred specifically for earning the exempt income and has been debited to Profit & Loss account for claiming expense against the revenue liable to be taxed. In the instant case the disallowance u/s 14A is on estimated basis made proportionately out of the finance charges. There is no case of concealment of particulars of income or furnishing of inaccurate particulars of income since the amount has been duly debited as expenses in Profit & Loss account. Since no bonafide intention or *mensura* on the part of the assessee is appearing on the face of the record placed before us we are of the considered view that Ld. A.O was not justified in levying the penalty u/s 271(1)(c) of the Act at Rs.1,03,870/- Therefore in the given facts and circumstances of the case we set aside the finding of Ld. CIT(A) and delete the penalty of Rs.1,03,870/- levied u/s 271(1)(c) of the Act.

7. In the result appeal of the assessee is allowed.

The order pronounced in the open Court on 18.03.2020.

Sd/-
(KUL BHARAT)
JUDICIAL MEMBER

Sd/-
(MANISH BORAD)
ACCOUNTANT MEMBER

नांक /Dated : 18 March, 2020

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Copy to: The Appellant/Respondent/CIT concerned/CIT(A)
concerned/ DR, ITAT, Indore/Guard file.

By Order,
Asstt Registrar, I.T.A.T., Indore