IN THE INCOME TAX APPELLATE TRIBUNAL "D" BENCH, MUMBAI

BEFORE SHRI SHAMIM YAHYA, AM AND SHRI AMARJIT SINGH, JM

ITA Nos. 6639 to 6641/Mum/2017
(Assessment Year: 2009-10 to 2011-12)

Modi Motors Agencies Private Limited Shop No. 8, Raviraj Oberoi Complex, Off New Link Road, Andheri (W), Mumbai-400 053	Vs.	Dy. CIT-10(2)(2) Room No. 209, Aaykar Bhavan, M. K. Road, New Marine Lines, Mumbai-400 020
PAN/GIR No. AADCM 2447 H		
(**Appellant**)	:	(**Respondent**)

Appellant by	:	None
Respondent by	:	Shri D. G. Pansari

Date of Hearing	:	07.02.2019
Date of Pronouncement	:	27.02.2019

O R D E R

Per Bench:

These are appeals by the assessee against the respective orders of the learned Commissioner of Income Tax (Appeals)-17, Mumbai ('ld.CIT(A) for short) dated 29.06.2017 and pertains to the assessment year (A.Y.) 2009-10, 2010-11 and 2011-12, wherein penalty levied u/s. 271(1)(b) of the Income Tax Act, 1961 for the following amount has been confirmed:

A.Y. 2009-10	Rs.20,000/-
A.Y. 2010-11	Rs.30,000/-
A.Y. 2011-12	Rs.30,000/-

2. We find that in this case, the assessment was reopened on account of information received that the assessee is indulging in bogus purchases from hawala operators. Upon receipt of reopening notice, the assessee requested for reasons for reopening and also requested that return filed earlier should be accepted as return filed in response to notice u/s.148. Thereafter, the A.O. issued notices to the assessee *inter alia* asking the assessee

to produce the parties. In absence of any response from the assessee/non production of the parties, the entire amount was added as income of the assessee. Penalty was also levied for non-response to the notice u/s.271(1)(b) of the Act.

3. Against this order, the assessee is in appeal before us.

4. We have heard the ld. Departmental Representative (ld. DR for short). None appeared for and on behalf of the assessee despite notice sent. The notice sent has returned unserved. Hence, we proceeded to adjudicate the issue by hearing the ld. Departmental Representative and perusing the records.

5. Upon careful consideration, we note that in response to notices for reopening, the assessee has duly responded and submitted that the return filed earlier should be accepted as return filed pursuant to notice u/s.148. The reopening related to information that assessee has received accommodation entries for purchases. Since that assessee was not able to produce these parties pursuant to notices, the entire amount has been added.

In these circumstances, when the non response has already led to addition of the entire amount and the very purpose of the notice was to ask the assessee to produce the parties, in our considered opinion, penalty levied for non-response by the assessee in this regard will amount to double prejudice. In our considered opinion, the same is not sustainable. Hence, we set aside the orders of the authorities below and delete the levy of penalty.

6. In the result, all these appeals filed by the assessee stand allowed.

Order pronounced in the open court on 27.02.2019

Sd/- Sd/-

(Amarjit Singh)
Judicial Member

(Shamim Yahya)
Accountant Member

Mumbai; Dated : 27.02.2019
Roshani, Sr. PS

<u>Copy of the Order forwarded to</u> :

1. The Appellant
2. The Respondent
3. The CIT(A)
4. CIT - concerned
5. DR, ITAT, Mumbai
6. Guard File

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai