

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'एस.एम.सी' अहमदाबाद ।
IN THE INCOME TAX APPELLATE TRIBUNAL
“SMC” BENCH, AHMEDABAD

सर्वश्री एन.के. बिल्लैया, लेखा सदस्य एवं महावीर प्रसाद, न्यायिक सदस्य के समक्ष ।
BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER And
SHRI MAHAVIR PRASAD, JUDICIAL MEMBER

आयकर अपील सं./I.T.A. No. 996/Ahd/2016
(निर्धारण वर्ष / Assessment Year : 2008-09)

M/s. Shailee Developers, 19-A, Panghat, Govindrao Park Society, Ajwa Raod, Baroda – 390 019	बनाम/ Vs.	Income Tax Officer Ward 5(1), 504, Aayakar Bhawan, Race Course Circle, Baroda – 390 007
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAZFS 4117 R		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी ओर से/ Appellant by :	Shri Anil R. Shah, A.R.
प्रत्यर्थी की ओर से/Respondent by :	Shri James Kurian, Sr. D.R.

सुनवाई की तारीख / Date of Hearing	31/08/2017
घोषणा की तारीख/Date of Pronouncement	28/09/2017

आदेश / ORDER

PER SHRI MAHAVIR PRASAD, JUDICIAL MEMBER :

This is an appeal by the assessee against the order of the Commissioner of Income Tax(Appeals)-I, Vadodara, dated 04/02/2016 for the Assessment Year (AY) 2008-09, on the following grounds:

- i. *The CIT(A) has erred both in law and in fact in confirming levy of penalty of Rs.2,07,808/- levied by the Assessing Officer u/s.271(1)You're your Appellant has concealed in any income or furnished inaccurate particulars of such income and therefore Penalty u/s.271(l)(c) is not leviable.*

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- ii. *Without prejudice to above, your Appellant submits that the Show Cause Notice issued by the Assessing Officer dated 22/12/2010 was vague unclear capable of two views and was not certain as to whether the said Notice was issued for "concealment of income" or "for furnishing inaccurate particulars of such income" and therefore in view of Gujarat H.C. judgement in the case New Sorathiya Engineering Co. Ltd. vs. CIT 282 ITR page 642 Penalty be cancelled.*
- iii. *Without prejudice to your Appellant submits that for Addition of alleged unaccounted receipts and undisclosed Income and not accepting Explanation of the assessee does not amount to Concealment of Income and Penalty is not leviable it is therefore submitted that the Penalty of Rs.2,07,808/- levied u/s. 271(1)(c) be cancelled.*

2. The relevant facts as culled out from the materials on record are as under:-

In this case, the appellant filed its return of income for Asst. Year 2008-09 on 30/09/2008 declaring total income at Rs.59,860/-. Assessment u/s.143(3) of the I.T. Act was completed on 22/10/2010 at total income of Rs.6,59,860/- after making additions of Rs.6,00,000/- on account of unaccounted receipts. Penalty proceedings u/s.271(1)(c) of the I.T. Act were also initiated on account of this addition. The appellant had filed an appeal before the CIT(A)-V, Baroda against the order u/s.143(3) of the I.T. Act. The CIT(A)-V decided the appeal vide No.CAB/(A)V-216/10-11 dated 28/12/2013, in which the appeal was dismissed and income was enhanced by Rs.92,000/- on account of undisclosed income from Sai Avenue land. The AO provided fresh opportunities of being

heard to the appellant, but no submission was made on behalf of the appellant. Hence the AO has levied penalty u/s.271(l)(c) of the Act of Rs.2,07,808.

3. Against the said order assessee filed an appeal before the learned CIT(A) who dismissed the appeal of the assessee.

4. Now appellant's appeal is before us.

5. We have gone through the relevant record and impugned order. In quantum proceedings, our Co-ordinate Bench decided the matter in favour of the assessee and deleted the addition.

5.2 Learned AR also cited a judgment of our Co-ordinate Bench in ITA No.1909 & 1910/Ahd/2010 for asst. year 2007-08. The relevant portion of the order is reproduced hereunder:

“14. A perusal of the afore-stated decisions show that any disclosure made during the course of survey proceedings does not have any evidentiary value. Therefore, the impugned additions made in the cases of the aforementioned two appellants do not stand and deserve to be deleted. However, we find that the assessee has admitted the disclosed amount their respective return of income for A.Y.2009-10 and have paid tax accordingly. Therefore, in our considered opinion, these returns should not be disturbed. The ld. Senior Counsel fairly conceded to this. Setting aside the findings of the ld. CIT(A), we direct the A.O. to delete the additions for A.Y. 2006-07,2007-08 & 2008-09 in the case of M/s.Shailee Developers and delete the additions from A.Y.2005-06, 2007-08 & 2008-09 in the case M/s.Swaraj Construction. The disclosure made in A.Y.2009-10 of Rs.76 lacs in the case of M/s. Shailee

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Developers and Rs.50 lacs in the case M/s. Swaraj Construction will stand. We order accordingly.

6. In view of the above said deletion we delete the penalty against the assessee and allow the appeal of the assessee.

7. In the result, appeal filed by the assessee is allowed.

This Order pronounced in Open Court on	28/09/2017
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Sd/-
एन.के. बिल्लैया
(लेखा सदस्य)
(N.K. BILLAIYA)
ACCOUNTANT MEMBER

Sd/-
महावीर प्रसाद
(न्यायिक सदस्य)
(MAHAVIR PRASAD)
JUDICIAL MEMBER

Ahmedabad; Dated 28/09/2017

Priti Yadav, Sr.PS

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)-I, Vadodara.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER.

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad