

IN THE INCOME TAX APPELLATE TRIBUNAL  
AHMEDABAD "SMC" BENCH AHMEDABAD

BEFORE SHRI PRAMOD KUMAR, ACCOUNTANT MEMBER,  
AND SHRI S. S. GODARA, JUDICIAL MEMBER.

ITA No. 2669/Ahd/2013  
(Assessment Year: 2009-10)

Shri Swapnil Bharat Shah  
3-River Colony, Opp. St. Xaviers  
College, Navrangpura, Ahmedabad 380009

Appellant

Vs.

Income Tax Officer,  
Ward-10(4), Ahmedabad

Respondent

PAN: AKRPS3532Q

आवेदक की ओर से/By Assessee : Arti N. Shah, A.R.  
राजस्व की ओर से/By Revenue : Shri Roopchand, Sr. D.R.  
सुनवाई की तारीख/Date of Hearing : 12.09.2017  
घोषणा की तारीख/Date of  
Pronouncement : 26.09.2017

**ORDER**

**PER S. S. GODARA, JUDICIAL MEMBER**

This assessee's appeal for assessment year 2009-10 arises against the CIT(A)-XVI, Ahmedabad's order dated October 14<sup>th</sup>, 2013, in case no. CIT(A)-XVI/ITO/WD.10(4)/101/12-13, upholding penalty of Rs.5,77,433/- in respect of quantum addition of unexplained addition by way of cash deposited amounting

to Rs.95,55,500/- made in assessment order dated 05.12.2011, in proceedings u/s. 271(1)(c) of the Income Tax Act, 1961; in short “the Act”.

Heard both sides. Case file perused.

2. Relevant facts are in a narrow compass. This assessee is assessed as an individual. He derives profit as a partner in firms M/s. National Textiles Industries and M/s. National Metal Cast. He also earns speculation profit and interest on deposits. Assessee filed return on 30.03.2010 stating income of Rs.1,81,290/-. The same stood processed. The Assessing Officer thereafter framed a regular assessment adding the above cash deposits in his savings account maintained with ICICI Bank, Bank of Baroda and Oriental Bank of Commerce. The peak thereof as on 21.03.2009 amounted to Rs.19,55,500/- submitted as assessee’s behest was found to be correct as there were corresponding withdrawals also indicated therein. The Assessing Officer thereafter initiated the impugned penalty proceedings u/s.271(1)(c) of the Act alleging concealment as well as furnishing of inaccurate particulars of income. The assessee did not file any appeal against the said quantum addition.

3. We now advert to the impugned penalty proceedings. The assessee filed his written response on 01.12.2012 and 28.05.2012 strongly contesting the penalty inter alia on the ground that he had duly co-operated in the course of assessment resulting in nil income. He also quoted his earlier reply dated 04.11.2011 disputing to have concealed any taxable income. The Assessing Officer rejected the same in penalty order dated 29.06.2012. He quoted above quantum fact that the above cash deposits of Rs.25,50,500/- would not have come to light except for CASS scrutiny. He therefore treated the impugned instance to be that of both concealment as well as furnishing of inaccurate particulars of income qua the peak quantum addition of Rs.19.55lacs (supra) to

levy the penalty in question of Rs.5,77,433/- as upheld in lower appellate proceedings.

4. We have heard both the parties. Learned counsel's first argument is that the assessee had co-operated/voluntarily surrendered the cash deposits in question in the course of scrutiny. It is therefore not a case of pressing into operation the impugned penal provision u/s.271(1)(c) of the Act since the total income assessed reads nil figure. A fine distinction thereafter is sought to be drawn between quantum and penal proceedings in view of hon'ble apex court's landmark decision CIT vs. Reliance Petroproducts 322 ITR 158 (SC) that the latter penal action does not come into play in each and every quantum disallowance/addition. We find no merit in all these arguments. There can hardly be any dispute about the above judicial precedent. The fact however remains that what amounts to concealment as well as furnishing of inaccurate particulars depends upon the relevant circumstances in each and every case. It is not in dispute that the assessee did not tender any explanation at all much less a satisfactory one as envisaged in Section 271(1)(c) of the Act. Factual position is very much the same in quantum proceedings as well wherein he did not file even a single letter explaining source of the total cash deposits. Hon'ble apex court's decision MAK Data (P) Ltd. Vs. CIT 358 ITR 593 (SC) upholds hon'ble Delhi high court's judgment restoring an identical penalty in absence of such a tenable explanation. The assessee's further argument of having assessed nil income is also without any merit since the impugned deemed income; although in the nature of unexplained investment addition stood made in course of assessment, the final assessable income read nil figure only as the assessee had derivative loss to be adjusted at Rs.23,13,863/-. The same however does not absolve him from the impugned penal consequence since arising on standalone basis only. We therefore see no reason to interfere with

both the lower authorities' conclusion imposing the impugned penalty. Same is therefore confirmed.

5. This assessee's appeal is accordingly dismissed.

[Pronounced in the open Court on this the 26<sup>th</sup> day of September, 2017.]

Sd/-  
(PRAMOD KUMAR)  
ACCOUNTANT MEMBER  
Ahmedabad: Dated 26/09/2017

Sd/-  
(S. S. GODARA)  
JUDICIAL MEMBER

True Copy

S.K.SINHA

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. राजस्व / Revenue
2. आवेदक / Assessee
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद /  
DR, ITAT, Ahmedabad
6. गार्ड फाइल / Guard file.

By order/आदेश से,

उप/सहायक पंजीकार  
आयकर अपीलीय अधिकरण, अहमदाबाद ।