

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ ।
IN THE INCOME TAX APPELLATE TRIBUNAL,
"B" BENCH, AHMEDABAD
BEFORE SHRI RAJPAL YADAV, JUDICIAL MEMBER
AND
SHRI AMARJIT SINGH, ACCOUNTANT MEMBER

आयकर अपील सं./ ITA.No.3469/Ahd/2014
निर्धारण वर्ष/ Asstt. Year: 2006-07

Shri Kuldipkumar D. Kaura 106, Shrirang Apartment Nr.Kuber Bhavan Kothi Road Baroda 390 001. PAN : AFVPK 8712 R	Vs	DCIT, Cir.8 Baroda.
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अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)
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Assessee by :	Shri Milan Mehta, AR
Revenue by :	Shri Mudit Nagpal, Sr.DR

सुनवाई की तारीख/Date of Hearing : 13/09/2017
घोषणा की तारीख /Date of Pronouncement: 09/10/2017

आदेश/O R D E R

PER RAJPAL YADAV, JUDICIAL MEMBER:

Assessee is in appeal before the Tribunal against order of Id.CIT(A)-III, Baroda dated 29.10.2014 passed for the Asstt.Year 2006-07.

2. Solitary grievance of the assessee is that the Id.CIT(A) has erred in confirming the penalty of Rs.4,45,272/- imposed by the AO under section 271(1)(c) of the Income Tax Act, 1961.
3. Brief facts of the case are that the assessee at the relevant time was CEO of Sterlite Industries. He has also COO of Vendanta Resources. He has

filed his return of income declaring total income at Rs.2,12,75,910/-. On scrutiny of the accounts, it revealed to the AO that the assessee has claimed deduction of Rs.16,19,940/- under section 10(13A) of the Income Tax Act, 1961. On scrutiny of the accounts, it came to the notice of the AO that the assessee had been provided an accommodation from the company, and therefore, he was not entitled for rent. Accordingly, he disallowed claim of the assessee and initiated penalty proceedings.

4. On appeal, the Id.CIT(A) deleted this disallowance, but on further appeal by the Revenue to the Tribunal, the disallowance was restored vide ITA No.437/Ahd/2010. In response to the show cause notice issued under section 271(1)(c) r.w.s. 274, the assessee contended that he has not concealed any particulars. He has disclosed all the details in the return as well as in the assessment proceedings. The AO has disallowed exemption claimed under section 10(13A). But such claim was made on the basis of Form no.16 issued to him. According to the assessee, there was no deliberate attempt to conceal the particulars of income. The AO was not satisfied with the explanation of the assessee. He imposed penalty at Rs.4,45,272/-. The appeal to the Id.CIT(A) did not bring any relief to the assessee.

5. Before us, the Id.counsel for the assessee contended that against the order of the Tribunal dated 15.6.2012 passed in ITA No.437/Ahd/2010 the assessee filed tax appeal bearing no.788 of 2012 before the Hon'ble High Court. The Hon'ble High Court has admitted the appeal on the following question of law:

“Whether in the facts and circumstances of the case the Income-tax Appellate Tribunal was right in law in reversing the order of CIT(A) and confirming addition of HRA of Rs.16,19,940/- by denying exemption u/s.10(13A)?

6. The Id.counsel for the assessee contended that since Hon’ble High Court has admitted the above question of law, therefore, it is quite debatable whether the exemption claimed by the assessee under section 10(13A) is admissible or not. He, therefore, prayed that appeal of the assessee be allowed and penalty be deleted.

7. On the other hand, the Id.DR relied upon the order of the Id.CIT(A).

8. We have duly considered rival contentions and gone through the record carefully. The case of the assessee is that he has disclosed all particulars correctly on the strength of form no.16 issued by his employer. According to the assessee, there is no deliberate attempt to furnish inaccurate particulars or concealed particulars of income. He has claimed deduction on the strength of form no.16 given to him. The AO has disallowed this claim, but on appeal, Id.CIT(A) has allowed this claim. The Tribunal has reversed the order of the Id.CIT(A) and restored the disallowance, but again in further litigation by the assessee, Hon’ble Gujarat Court has admitted question about the admissibility of such claim. This development had gone through different levels of adjudicatory process which indicated that there were some debatable issues involved in it, and there could not be any firm conclusion about additions or exemption of the claim disallowed to the assessee under section 10(13A) of the Act. Therefore, in this view of the matter, we are of the view that assessee

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does not deserves to be visited with penalty. We allow appeal of the assessee and delete penalty.

9. In the result, the appeal of the assessee is allowed.

Order pronounced in the Court on 9th October, 2017 at Ahmedabad.

**Sd/-
(AMARJIT SINGH)
ACCOUNTANT MEMBER**

**Sd/-
(RAJPAL YADAV)
JUDICIAL MEMBER**