

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ ।
IN THE INCOME TAX APPELLATE TRIBUNAL,
"SMC" BENCH, AHMEDABAD
BEFORE SHRI RAJPAL YADAV, JUDICIAL MEMBER

ITA No.1839/Ahd/2014

Asstt. Year : 2009-2010

Amrutbhai Jagmalbhai Desai 146/17/18, Chinubhainagar Bus Stand Singarwa Road Kathwada Ahmedabad 382 430.	Vs.	ITO, Ward-7(1) Ahmedabad.
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(Applicant)	(Responent)
Assessee by :	None – Written Submissions
Revenue by :	Ms.Sonia Kumar, Sr.DR

सुनवाई की तारीख/Date of Hearing : 11/10/2017

घोषणा की तारीख /Date of Pronouncement: 04/12/2017

आदेश/O R D E R

Assessee is in appeal before the Tribunal against order of Id.CIT(A)-XXI, Ahmedabad dated 24.2.2014 passed for Asstt.Year 009-10.

2. Grievance of the Assessee is the Id.CIT(A) has erred in confirming penalty of Rs.5,16,856/- imposed by the AO under section 271(1)(c) of the Income Tax Act, 1961.

3. None appeared on behalf of the assessee, however, filed written submissions. Therefore, we proceed to dispose of appeal of the assessee, after hearing the Id.DR and considering material available.

4. Brief facts of the case are that assessee has filed his return of income on 27.10.2010 declaring total income at Rs.1,42,358/- which was processed

under section 143(1) of the Act. Thereafter, return was selected for scrutiny assessment and notice under section 143(2) was issued on 27.8.2010 which was duly served upon the assessee. Thereafter, questionnaire was also issued u/s.142(1) of the Act on 27.6.2011. On scrutiny of the accounts, it was revealed to the AO that Sayaji Industries Ltd. deducted TDS for a payment made to the assessee. A confirmation from the said Sayaji Industries was received by the Department stating that assessee had purchased waste Bran and Burt coal ash from Sayaji Industries for Rs.9,27,571/-. Assessee has also received a sum of Rs.3,90,968/- from Sayaji Industries. These details were not reflected in the books of the assessee. Assessee failed to give satisfactory explanation to the AO in response to the show cause notice, accordingly, AO made an addition of Rs.13,18,539/- to the income of the assessee. Similarly, during the assessment proceedings, it revealed to the AO through AIR details that assessee has deposited an amount of Rs.31,55,500/- in cash with Punjab National Bank, which were not also reflected in the return. Assessee explained that this deposit would be out of sale proceeds done in individual capacity and not reflected in the return. The AO however calculated profit at the rate of 10.94% and initiated penalty. Quantum of additions has not been disputed or challenged by the assessee before appellate authorities.

5. In the penalty proceedings under section 271(1)(c), the Id.AO imposed penalty of Rs.5,16,856/-, which was confirmed by the Id.First Appellate Authority. The assessee is in appeal before the Tribunal against this imposition of penalty.

6. In the written submissions, though the assessee has admitted of unaccounted purchases of Rs.13,18,539/-, it was submitted that same was occurred due to mistake on the part of accountant, and that this figure was aggregate of past purchases and does not pertain to present assessment year

8. A bare perusal of this section would reveal that for visiting any assessee with the penalty, the Assessing Officer or the Learned CIT(Appeals) during the course of any proceedings before them should be satisfied, that the assessee has; (i) concealed his income or furnished inaccurate particulars of income. As far as the quantification of the penalty is concerned, the penalty imposed under this section can range in between 100% to 300% of the tax sought to be evaded by the assessee, as a result of such concealment of income or furnishing inaccurate particulars. The other most important features of this section is deeming provisions regarding concealment of income. The section not only covered the situation in which the assessee has concealed the income or furnished inaccurate particulars, in certain situation, even without there being anything to indicate so, statutory deeming fiction for concealment of income comes into play. This deeming fiction, by way of Explanation I to section 271(1)(c) postulates two situations; (a) first whether in respect of any facts material to the computation of the total income under the provisions of the Act, the assessee fails to offer an explanation or the explanation offered by the assessee is found to be false by the Assessing Officer or Learned CIT(Appeal); and, (b) where in respect of any fact, material to the computation of total income under the provisions of the Act, the assessee is not able to substantiate the explanation and the assessee fails, to prove that such explanation is bona fide and that the assessee had disclosed all the facts relating to the same and material to the computation of the total income. Under first situation, the deeming fiction would come to play if the assessee failed to give any explanation with respect to any fact material to the computation of total income or by action of the Assessing Officer or the Learned CIT(Appeals) by giving a categorical finding to the effect that explanation given by the assessee is false. In the second situation, the deeming fiction would come to play by the failure of the assessee to substantiate his explanation in respect of any fact material to the computation

of total income and in addition to this the assessee is not able to prove that such explanation was given bona fide and all the facts relating to the same and material to the computation of the total income have been disclosed by the assessee. These two situations provided in *Explanation 1* appended to section 271(1)(c) makes it clear that that when this deeming fiction comes into play in the above two situations then the related addition or disallowance in computing the total income of the assessee for the purpose of section 271(1)(c) would be deemed to be representing the income in respect of which inaccurate particulars have been furnished.

9. In the light of the above, if I examine facts of present case, then it would reveal that the assessee has made unaccounted purchases from M/s.Jayaji Industries Ltd. to the tune of Rs.13,18,539/- and unaccounted deposits of Rs.31,55,500/- in cash with Punjab National Bank. Admittedly, these transactions neither recorded in the books nor reflected in the return of income filed by the assessee. In the penalty proceedings, assessee was required to show cause why penalty under section 271(1)(c) should not be levied in this case. In response to the same the assessee failed to give satisfactory explanation to prove its case except a bald statement that transactions could not be recorded due to mistake on the part of accountant, and that the alleged deposits in cash with bank is aggregate of figure of earlier years. This explanation is not borne out from any record, and it is case of concealment of income. A perusal of the penalty order would indicate that penalty was imposed by the AO on account of concealment. The assessee has not disputed factum of unaccounted purchases and cash deposits with the bank. Before me also, the assessee has not brought any material to prove its case. Therefore, both the Revenue authorities below rightly appreciated facts of the case and visited the assessee with the penalty under section 271(1)(c) of

the Act, which require no interference. I uphold both orders of Revenue authorities and dismiss appeal of the assessee.

10. In the result, appeal of the assessee is dismissed.

Order pronounced in the Court on 4th December, 2017 at Ahmedabad.

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