

IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD “B” BENCH AHMEDABAD

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

ITA No. 3405/Ahd/2015
(Assessment Year: Block Period: 01.04.95 to 27.09.01)

Jyotindra Ochhavlal Shah (Deceased),
Legal Heir Hansaben J. Shah,
31, Shantinagar Society, Vadaj,
Ashram Road, Ahmedabad – 380 013

Appellant

Vs.

Income Tax Officer,
Ward – 2(2)(2), Ahmedabad

Respondent

PAN: AINPS8418H

आवेदक की ओर से/By Assessee : Shri Himanshu C. Shah, A.R.
राजस्व की ओर से/By Revenue : Shri Mudit Nagpal, Sr. D.R
सुनवाई की तारीख/Date of Hearing : 10.01.2018
घोषणा की तारीख/Date of
Pronouncement : 15.01.2018

ORDER

PER S. S. GODARA, JUDICIAL MEMBER

This assessee’s appeal for Block Period: 01.04.95 to 27.09.01 arises against the CIT(A)-10, Ahmedabad’s order dated 12.10.2015 in case no. CIT(A)-10/DCIT Cir.9/93/14-15, upholding Assessing Officer’s action imposing penalty pertaining to quantum disallowances/additions of salary and depreciation amounting to Rs.56,150/-, in proceedings u/s.158 BFA(2) r.w.s. 158 BFA(3) of the Income Tax Act, 1961; in short “the Act”.

Heard both the parties. Case file perused.

2. We notice at the outset that the instant lis emanates from a search action dated 27.09.2001 carried out in M/s. Nirma group cases. This assessee worked as the purchase manager of the said entity. His residential premises was also covered in the above search. The said action culminated in Section 158BC proceedings. The assessee filed his return on 28.11.2002 for the above block period stating undisclosed income of Rs.61lacs. The Assessing Officer completed a regular assessment inter alia making various additions including the two in question i.e. salary paid to Accountant and depreciation involving sums of Rs.16,000/- and Rs.40,150/-; respectively. He further initiated the impugned penalty proceedings u/s.158BFA(2) of the Act. There is no dispute that the CIT(A) as well as this tribunal confirmed the same in orders dated 24.09.2004 & 23.07.2010; respectively.

3. We now advert to the impugned penalty proceedings. The assessee's case therein was that the said two disallowances did not amount to concealment of any undisclosed income from being assessed. The Assessing Officer brushed aside the same in his penalty order dated 28.03.2011. He strongly reiterated the relevant quantum proceedings to levy the impugned penalty of Rs.98,031/- in respect of various issues (including the two hereinabove). The CIT(A) affirms the same.

4. We have given our thoughtful consideration to rival contentions. We notice first of all that the CIT(A) has not discussed correctness of the impugned penalty appeal qua the instant two issues in page 8 para 1 of the lower appellate order. Learned Departmental Representative submits that the impugned penalty imposed u/s.158BFA(2) stands on an entirely different footing than the one u/s.271(1)(c) of the Act. There can hardly be any dispute about the said distinction. The hon'ble jurisdictional high court in CIT v. Becharbhai P. Parmar (2012) 341 ITR 499 (Guj) holds that the impugned penalty u/s. 158BFA(2) is not to be mandatorily imposed. We proceed in this legal backdrop to notice that the assessee had claimed to have paid salary to his Accountant Shri Bharat Trivedi amounting to Rs.16,000/-. He could not prove any services rendered by the said payee. Same appears to be the case regarding depreciation. The assessee's case

was that he had returned undisclosed income of Rs.61lacs and claimed corresponding depreciation in question as an admissible deduction. We are of the opinion in these peculiar facts that both the said two instances of quantum disallowance/addition would not amount to a case of undisclosed income inviting the impugned penal action. We accept assessee's arguments therefore to delete the impugned penalty.

5. This assessee's appeal is allowed.

[Pronounced in the open Court on this the 15th day of January, 2018.]

Sd/-
(PRAMOD KUMAR)
ACCOUNTANT MEMBER
Ahmedabad: Dated 15/01/2018

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 ।