

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

[Before Shri Pramod Kumar, Accountant Member]

ITA Nos. 2710 to 2713/Ahd/2016
Assessment Year : 2010-11 to 2013-14

Shri Sureshchandra M Shah

*Plot No.555/2, Sector No.21,
Mahadevnagar Society,
Gandhinagar – 382 021
[PAN – AFDPS 5557 E]*

.....Appellant

Vs.

**Income-Tax Officer
Ward-4, Gandhinagar**

.....Respondent

Appearances by:

MJ Shah *for the appellant*

Roopchand *for the respondent*

Date of concluding the hearing : 01.02.2018

Date of pronouncing the order : 02.02.2018

O R D E R

1. The short issue that I am required to adjudicate in these appeals is whether or not, on the facts and in the circumstances of the case, learned CIT(A) was justified in upholding the impugned penalties of Rs.4,43,143/-, Rs.4,67,820/-, Rs.4,31,892/- and Rs.3,04,788/-, imposed by the Assessing Officer under section 271(1)(c) of the Income Tax Act, 1961, for assessment years 2010-11 to 2013-14 respectively.

2. These appeals are time barred by 1 day, but the assessee has moved a petition seeking condonation of delay, on which I have heard both the parties. In order to explain the delay, the assessee has also filed an affidavit of Shri Kalpesh Patni, who is working as Clerk in the office of learned Counsel for the assessee Shri M.J. Shah. It has been deposed in the affidavit that due to oversight in calculating the days, as it had been wrongly recorded the last day of limitation in the Clerk's register, the delay in filing of the appeal is stated to have been caused. Having considered this explanation, affidavit and having heard learned Departmental Representative, I am inclined to condone the delay and proceed to take up the matter on merits. Accordingly, the delay is condoned.

3. On merits, the learned representatives fairly agree that the aforesaid issue is covered, in favour of the assessee, by the order dated 22.11.2017 passed by a division bench, in assessee's own case for the assessment year 2007-08, wherein the Tribunal has held as under:-

"6. We have heard both the sides and perused the material on record carefully. We noticed that assessee has shown investment in the KVP of Rs.

1 crore in the balance sheet as on 31st March, 2007. We have also noticed from the copy of assessment order pertaining to assessment year 2006-07 and 2005-06 enclosed in the paper book wherein no addition on interest accrual on KVP was made in the case of the assessee. The assessee has explained that KVP of Rs. 1 crore was considered as capital asset under 2(14) of the act, therefore, income, will be accounted for when approved after indexation. Under these circumstances, he has not offered the interest income on accrual basis because the KVP was not encashed. After considering all these facts, we observed that assessee has furnished the particulars pertaining to his income and it is not case of furnishing of inaccurate particular of income. In view of the facts elaborated as supra we are not inclined with the of Id. CIT(A), therefore, the penalty levied is deleted. Accordingly the appeal of the assessee is allowed.”

4. I see no reasons to take any other view of the matter than the view so taken by a division bench of this Tribunal. Respectfully following the views so taken by the division bench (supra) in assessee's own case for AY 2007-08 vide ITA No. 2138/Ahd/2014, I uphold the plea of the assessee and, accordingly, delete the impugned penalty levied by the Assessing Officer u/s 271(1)(c) of the Act for AYs 2010-11 to 2013-14.

5. In the result, all appeals are allowed. Pronounced in the open court today on the 2nd February, 2018.

Sd/-

Pramod Kumar
(Accountant Member)

Ahmedabad, the 2nd day of February, 2018

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Copies to: (1) The appellant
(2) The respondent
(3) Commissioner
(4) CIT(A)
(5) Departmental Representative
(6) Guard File

By order

TRUE COPY

Assistant Registrar
Income Tax Appellate Tribunal
Ahmedabad benches, Ahmedabad