

IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD %SMC+BENCH

**Before: Shri Rajpal Yadav, Judicial Member
And Shri Amarjit Singh, Accountant Member**

**ITA No. 2045/Ahd/2015
Assessment Year 2005-06**

Shri Tushar Hasmukhbhai Soni, Prop. Sainath Jewellers, Chpwad, Kansara Bazar, Petlad-388001 PAN: AZTPS6277K (Appellant)	Vs	The ITO, Ward-1, Anand (Respondent)
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**Revenue by: Shri Mudit Nagpal, Sr. D.R.
Assessee by: Shri Sunil Talati, A.R.**

Date of hearing : 12-03-2018
Date of pronouncement : 27-04-2018

आदेश/ORDER

PER : AMARJIT SINGH, ACCOUNTANT MEMBER:-

This assessee's appeal for A.Y. 2005-06, arises from order of the CIT(A)-4, Vadodara dated 01-05-2015, in proceedings under section 271(1)(c) of the Income Tax Act, 1961; in short %the Act+.

2. The assessee has raised following grounds of appeal:-

"Your appellant being dissatisfied with the order passed by the Hon'ble CIT(A)-4, Baroda in appeal no. CAB/4-294/2014-15 dated 01.05.2015 confirming the penalty of Rs.125042/- levied by the AO by invoking the provisions of section 271(1)(c) of the Act. Your appellant presents this appeal against the said order on the following amongst other grounds:-

1. The order passed by the Hon'ble CIT (A) is bad in law, contrary to legal pronouncements and same be quashed. The additions/disallowances made are unwarranted and same be deleted now.

2. The Hon'ble CIT(A) has erred in confirming the penalty of Rs. 1,25,042/- levied by the AO u/s. 271(1)(c) on the tax payable on the following additions made by him aggregating to Rs.10,88,010/- :

i) Cash credit	Rs.3,76,502/-
ii) Difference in stock valuation	Rs.5,61,508/-
iii) Disclosed income	Rs.1,50,000/-
	<u>Rs.10,88,010/-</u>

Your appellant submits that the necessary details as called for by the AO have been submitted from time to time and it is therefore submitted that the appellant has neither concealed any income nor filed any inaccurate particulars of income. It is therefore submitted that the penalty initiated by the AO is unjust and uncalled for and same be deleted now.

3. The Hon'ble CIT(A) has erred in confirming the levy of penalty on so called unexplained cash credit of Rs. 3,76,502/- without appreciating the facts submitted by the appellant. It is therefore submitted that mere addition does not amount to concealment so as to attract the provisions of section 271(1)(c) of the Act. It be held so now and penalty levied by the CIT (A) be deleted.

4. The Hon'ble CIT(A) has erred in confirming the levy of penalty on value of difference in stock of Rs. 5,61,508/- without appreciating the facts submitted by the appellant. It is therefore submitted that addition made on estimated basis without appreciating the facts would not amount to concealment so as to attract the provisions of section 271(1)(c) of the Act. It be held so now and penalty levied by the CIT (A) be deleted.

5. The Hon'ble CIT(A) has erred in confirming the levy of penalty on disclosed income of Rs. 1,50,000/-. Your appellant submits that the penalty levied is unjust and uncalled and therefore be deleted now.”

3. The brief facts is that return of income for the year under consideration was filed on 31st October, 2005 declaring total loss at Rs. 4,42,707/-. Thereafter, assessment u/s. 143(3) of the act was made on 28th December, 2007 on total income at Rs. 5,07,180/-. In this case, survey u/s. 133A of the act was carried out at the business premises of the assessee on 14th March, 2005 and on the basis of material found, the assessing officer has made following addition:-

The assessing officer made addition of Rs. 3,76,502/- as cash credit u/s. 68 of the act. This addition was made on the ground that assessee has failed to prove the genuineness and credit worthiness of the transaction as per condition laid down u/s. 68 of the act. The assessing officer has made other addition of Rs. 5,61,508/- on account of difference in stock. Further, the assessing officer had made addition on the basis of income disclosed during the course of survey by the assessee of Rs. 1,50,000/-. Thereafter, the assessing officer has initiated

penalty proceedings u/s. 271(1)(c) of the act and levied penalty to the amount of Rs. 1,25,042/- on the ground that assessee has concealed particulars of income.

4. Aggrieved assessee filed appeal before the Id. CIT(A). The Id. CIT(A) has sustained the penalty levied by the assessing officer stating that assessee has failed to substantiate his claim regarding source of credit and with regard to income on which the addition made by the assessing officer.

During the course of penalty proceedings before us, the learned counsel submitted that quantum addition in the case of the assessee of Rs. 5,61,508/- on account of shortage in stock was restricted to Rs. 56,150/- by the SMC Bench vide ITA no. 1804/Ahd/2011 dated 5th October, 2016. and contended that this addition was made on estimated basis. Further in respect of addition made u/s. 68 of the act, the Id. counsel has referred various judicial pronouncements stating that it might be a valid point for making addition u/s. 68 of the act but it could not lead to levy of penalty u/s. 271(1)(c) of the act. He has also contended that Rs.150,000/ was disclosed as business income which was fully reflected in the return of income and there was no basis of concealment of any particulars of income. He has also placed reliance on the following judicial pronouncements:-

For making addition made u/s 68 of the Act :-

- A. *National Textiles Vs. CIT [2001] 114 TAXMAN 203 (GUJ.)*
- B. *Vikram Bhatia Vs. Income Tax Officer [2014] 47 taxmann.com 365 (Lucknow -Trib.)*
- C. *ACIT Vs. Manish Organics India Ltd [2012] 17 taxmann.com 25 (Ahd.-Trib.)*

Addition on estimate basis:-

- A. *Navjivan Oil Mills Vs. CIT [2002] 124 TAXMAN 392 (GUJ.)*
- B. *Income Tax Officer Vs. C. Chhotalal Textiles (P.)(LTD)[2006] 150 TAXMAN 33(MUM.)(MAG.)*
- C. *Vijaykumar Mavjibhai Dodiya Vs. ITO ITA NO.187/RJT/2017*
- D. *Arya Hybrids Seeds Ltd Vs. DCIT ITA NO.291/PUN/2013*

Voluntarily disclosed income during survey:-

- A. *CIT Vs Surest Chandra Mittal [2001] 119 TAXMAN 433(SC)*
- B. *CIT Vs SAS Pharmaceuticals [2001] 11 TAXMAN.COM 207(DELHI)*
- C. *ACIT Vs Jupiter Distillery [2012] 23 TAXMAN .COM 303 (AHD-TRIB.)*

On the other hand, Id. departmental representative supported the order of Id. CIT(A).

5. We have heard the rival submissions and perused the material on record carefully. The difference in stock was restricted to Rs. 56,150/- by the SMC Bench vide ITA no. 1804/Ahd/2011 dated 5th October, 2016 and as per facts on records the addition was made on estimated without establishing that there was concealment of any particular of income or furnishing of inaccurate particular of income. Similarly Rs.150,000/ was disclosed as business income which was fully reflected in the return of income and the assessing officer has not demonstrated any specific material to establish that there is a case of furnishing of inaccurate particular of income or concealment of particular of income. In respect of unsecured loan we have noticed that assessee has obtained unsecured loan in the of the amount of less than Rs.20,000/ from 15 depositors totaling to the amount of Rs. 3,76,502/- . Looking to the smallness of the amount the assessee has filed PAN numbers of all the depositors before the assessing officer. The assessing officer has not disproved the genuineness of the PAN number of 15 depositors who have individually provided loan in meager range of amount as reported at page number 3 of the assessment order. We observe from the record that in order to test check the other aspects of the loan amount the assessing officer has neither directed the assessee to produce any of such depositors nor issue any summons to any of such party. Looking to the above facts and smallness of the amount we consider that it might be valid point for making addition u/s 68 of the act but not to lead to levy of penalty u/s 271(1)(c) as the assessing officer has not carried further basic steps as elaborated supra in this order. In view of the above we are not inclined with the decision of Ld.CIT(A), therefore, the appeal of the assessee is allowed.

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

Order pronounced in the open court on 27-04-2018

Sd/-
(RAJPAL YADAV)
JUDICIAL MEMBER

Sd/-
(AMARJIT SINGH)
ACCOUNTANT MEMBER

Ahmedabad : Dated 27/04/2018

आदेश क० तालम अ० षत / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलार्थ आधिकरण,
अहमदाबाद