

**IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH, MUMBAI
BEFORE SHRI G.S.PANNU, AM AND SHRI RAVISH SOOD, JM**

ITA No.3261/Mum/2014
(निर्धारण वर्ष / Assessment Years:2009-10)

Shri Akbar Bawa Patel, Gala No. A-18, Monarch Manor Co-op. Hsg. Soc. 90 Feet Road, Sakinaka, Andheri (E) Mumbai 400072	बनाम/ Vs.	ACIT-15(2) Mumbai
स्थायी लेखा सं./जीआइआर सं./PAN No.		AKSPP3514C
(अपीलार्थी / Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थी की ओर से / Appellant by	:	None
प्रत्यर्थी की ओर से / Respondent by	:	Shri Rajesh Kumar Yadav, D.R

सुनवाई की तारीख / Date of Hearing	:	21.03.2018
घोषणा की तारीख / Date of Pronouncement	:	25.05.2018

आदेश / O R D E R

PER RAVISH SOOD, JUDICIAL MEMBER:

The present appeal filed by the assessee is directed against the order passed by the CIT(A)-26, Mumbai, dated 22.04.2014 which in itself arises from the order passed by the A.O under Sec. 271(1)(c) of the Income Tax Act, 1961 (for short 'Act'), dated 21.06.2012 for A.Y 2009-10. The assessee

assailing the order of the CIT(A) had raised before us the following grounds of appeal:-

- “1. *The CIT (Appeal) has erred in upholding the order of penalty passed by assessing officer levying a penalty of Rs.5,40,475/- on the ground of concealment of income. The assessee has made full disclosure of facts before the assessing officer at the time of assessment. The assessee has received advances from parties of Rs.15,88,838/-. All the details such as Name, Address and Confirmation letters were submitted during the course of assessment. The advances of Rs.15,88,838/- have been disallowed on the ground that these parties have not submitted their return of income. The CIT (Appeal) failed to appreciate that the transaction and parties are genuine even when parties have not submitted their IT returns and CIT (Appeal) has erred in law and fact in confirming the penalty order passed by assessing officer. Therefore, the penalty levied be deleted completely.*
2. *Appellant craves, leave to alter, add amend or modify any of above referred ground of appeal.*

2. Briefly stated, the facts of the case are that the assessee who is running three proprietary concern, viz. (1) M/s Bawa Earthmovers; (2) M/s Bawa Infrastructure; and (3) M/s Bawa Transport, had filed his return of income for A.Y 2009-10 on 30.09.2009, declaring total income of Rs. 30,17,770/-. The case of the assessee was taken up for scrutiny assessment under Sec. 143(2) of the Act. During the course of the assessment proceedings, it was noticed by the A.O that the assessee claimed to have taken advance in cash amounting to Rs.15,88,838/- from various parties, on account of sale of old vehicles. As the assessee during the course of the assessment proceedings failed to substantiate the genuineness of his claim of having received the aforesaid amounts by furnishing any evidence in support of identity of the creditors, genuineness of the transactions and creditworthiness of the parties, therefore, the A.O made an addition of the aforesaid sum of Rs.15,88,838/- as unexplained cash credit under Sec.68 of the Act in the hands of the assessee. The assessee did not carry the matter in further appeal before the CIT(A), and the same attained finality.

3. The A.O after the culmination of the assessment proceedings called upon the assessee to show cause as to why penalty under Sec. 271(1)(c) may

not be imposed on him. The assessee in his reply submitted that the addition in respect of the credit balance was made for want of confirmations from the aforementioned parties. It was the contention of the assessee that now when the disallowance in itself was made on an estimate basis, the same could not be held as suppression of information in the return of income. The assessee on the basis of his aforesaid submissions claimed that now when it was not established that he had either concealed his income or furnished inaccurate particulars of income, therefore, no penalty under Sec. 271(1)(c) was liable to be imposed in his hands. The A.O after perusing the reply of the assessee was however not persuaded to be in agreement with the same. The A.O holding a conviction that the assessee had concealed his income of Rs.15,88,838/-, thus imposed a penalty under Sec.271(1)(c) of Rs.5,40,045/- in the hands of the assessee.

4. Aggrieved, the assessee assailed the penalty imposed by the A.O under Sec. 271(1)(c) in appeal before the CIT(A). The assessee reiterated the submissions which were made by him during the course of the penalty proceedings before the A.O. It was submitted by the assessee that in order to fortify the fact that he was in receipt of an amount aggregating to Rs.15,88,838/- against sale of old vehicles, the confirmation letters from the said respective parties were placed on record with the A.O during the course of assessment proceedings. The assessee during the course of hearing of the appeal also placed on record the copies of the confirmation letters before the CIT(A). The assessee further rebutted the observation of the A.O that the receipt of advances were not to be held as genuine for the reason that the parties from whom the advances received were not filing their income tax returns. The assessee further claimed before the CIT(A) that as the Income tax Act nowhere placed any restriction on acceptance of deposits or advances from non-assessees, therefore, the aforesaid observations of the A.O were liable to be vacated.

5. The CIT(A) after deliberating on the contentions advanced by the assessee in the backdrop of the facts of the case, was however not

persuaded to subscribe to the same. It was observed by the CIT(A) that the assessee had failed to establish the identity of the creditors from whom the advances had been received, genuineness of the transactions and also the creditworthiness of the said parties. Adverting to the uncertified xeroxed copies of confirmations which were placed on record by the assessee, it was noticed by the CIT(A) that though the said confirmations revealed advances from (i) Aslam Mohd. Patel: Rs.3,97,800; (ii) Rahman Rukum Patel: Rs.4,21,400/-; (iii) Wasim Salim Patel: Rs.3,93,500/-; and (iv) Rafiq Mohiuddin Patel: Rs.3,74,168/- on various dates, however in the said respective confirmations neither there was any mention of the PAN No., nor the addresses of the respective creditors. Still further, while for the advances were shown by the assessee to have been received regularly from April, 2008 to March 2009, however all the confirmations were dated April 1, 2009. The CIT(A) in the backdrop of the aforesaid facts was of the view that the documents placed on record by the assessee did neither inspire any confidence, nor evidenced the identity of creditors; genuineness of transactions; and creditworthiness of creditors in support of the said respective advances. It was further noticed by the CIT(A) that though it was claimed by the assessee that the advances were received for sale of second hand vehicles to the aforementioned persons, but no vehicle was shown to have been sold to either of these persons. The CIT(A) on the basis of his aforesaid observations concluded that neither the assessee had been able to substantiate his claim by placing on record any tangible and verifiable evidences, nor the explanation tendered by him was found to be bonafide. The CIT(A) on the basis of his aforesaid deliberations concluded that the A.O had rightly imposed penalty under Sec. 271(1)(c) in the hands of the assessee and dismissed the appeal.

6. The assessee being aggrieved with the order of the CIT(A) had carried the matter in appeal before us. During the course of hearing of the appeal, as the appellant who was duly put to notice as regards the date of hearing of the appeal had neither put up any appearance before us, nor any application seeking an adjournment was filed by him, therefore, being left

with no other option, we proceed with as per Rule 24 of the Appellate Tribunal Rules, 1963. The Id. Departmental Representative (for short 'D.R') relied on the orders of the lower authorities and submitted that the penalty under Sec. 271(1)(c) had rightly been imposed by the A.O and thereafter sustained by the CIT(A). We have heard the Id. D.R, perused the orders of the lower authorities and the material available on record. We find from the orders of the lower authorities that it remains as a matter of fact that the assessee who had claimed that an amount of Rs.15,88,838/- was received by him as an advance from the aforementioned four parties, viz. (i) Aslam Mohd. Patel: Rs.3,97,800; (ii) Rahman Rukum Patel: Rs.4,21,400/-; (iii) Wasim Salim Patel: Rs.3,93,500/-; and (iv) Rafiq Mohiuddin Patel: Rs.3,74,168/-, had failed to establish his claim.

7. We have given a thoughtful consideration to the issue under consideration and find that it remains as a matter of fact that the assessee could neither establish the identity of creditors; genuineness of the transactions; and creditworthiness of the creditors in support of his claim that the said amounts were received by him as advances from the aforementioned respective parties. We are of the considered view that the confirmation letters filed before the lower authorities, being bereft of the income tax credentials as well as the addresses of the said respective parties, thus could not be accepted and acted upon by the lower authorities, and had rightly been declined to be admitted as an evidence in support of the aforesaid claim of the assessee. We further find that though the assessee had claimed to have received the aforesaid amounts as advance from the aforementioned parties, but the fact that no sale of second hand vehicles to the said respective persons were shown to have been made by the assessee, thus proves to the hilt that the claim of the assessee not being in order, thus did not merit acceptance. We have deliberated at length on the issue before us and are of the considered view that as the explanation offered by the assessee in respect of the nature and source of the aforesaid amounts aggregating to Rs.15,88,838/- was found to be false, therefore, the lower authorities had rightly imposed penalty under Sec. 271(1)(c), which

thereafter had been sustained by the CIT(A). We thus finding no infirmity in the order of the CIT(A) confirming the penalty imposed by the A.O under Sec. 271(1)(c), uphold the same.

7. The appeal filed by the assessee is dismissed.

Order pronounced in the open court on 25.05.2018

Sd/-

Sd/-

(G.S. Pannu)
ACCOUNTANT MEMBER

(Ravish Sood)
JUDICIAL MEMBER

मुंबई Mumbai; दिनांक 25.05.2018
Ps. Rohit

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई /
DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,
उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT,
Mumbai

