

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ - अहमदाबाद /

**IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD - BENCH 'C'**

**BEFORE SHRI RAJPAL YADAV, JUDICIAL MEMBER
AND
SHRI AMARJIT SINGH, ACCOUNTANT MEMBER**

आयकर अपील सं./ ITA No.2496/Ahd/2016

निर्धारण वर्ष/Asstt. Year: 2011-2012

Shri Balkesh A. Patel Plot No.506-1, Phase-IV GIDC Estate, Naroda Ahmedabad. PAN : ACNPP 2333 C	Vs.	ITO, Ward-7(2)(1) Ahmedabad.
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अपीलार्थी (Appellant)		प्रत्यर्थी (Respondent)
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Assessee by :	Shri P.B. Parmar, AR
Revenue by :	Shri Prasoon Kabra, Sr.DR

सुनवाई की तारीख/Date of Hearing : 19/06/2018

घोषणा की तारीख/Date of Pronouncement: 21/06/2018

आदेश/ORDER

PER RAJPAL YADAV, JUDICIAL MEMBER:

Assessee is in appeal before the Tribunal against order of the Id.CIT(A)-7, Ahmedabad dated 4.7.2016 passed for the assessment year 2011-12.

2. Only issue agitated by the assessee is that the Id.CIT(A) has erred in confirming penalty of Rs.8,13,560/- imposed by the AO under section 271(1)(c) of the Income Tax Act, 1961.

3. Brief facts of the case are that during the assessment proceedings, the AO noticed that the assessee had shown Rs.9,14,558/-

as outstanding liability against ice carting expenses and Rs.17,80,141/- towards sundry creditors. Since no explanation was forthcoming from the assessee, the AO made addition of both these amounts and added to the total income of the assessee. This addition was confirmed by the Id.CIT(A). Thereafter, the AO initiated penalty under section 271(1)(c) of the Act and imposed a penalty of Rs.8,13,560/-. This action of the Id.AO was also challenged before the Id.First Appellate authority, who after a detailed discussion confirmed action of the AO. Now, assessee is challenging confirmation of impugned penalty before the Tribunal.

4. Before going to the merit of the case, it was pointed out by Id.counsel for the assessee that issue of quantum addition on account of carting expenses and outstanding sundry creditors was challenged before the Tribunal by the assessee in ITA No.1831/Ahd/2015. The Tribunal vide order dated 23.08.2017 deleted both the additions, and therefore, penalty on this count does not survive. The Id.counsel for the assessee has placed on record copy of order of the Tribunal passed in the quantum appeal of the assessee cited supra. The Id.DR, however, did not controvert to this submission of the Id.counsel for the assessee.

5. After hearing both sides and considering material available on record, we find that sub-clause (iii) of section 271(1)(c) provides mechanism for quantification of penalty. It contemplates that the assessee would be directed to pay a sum in addition to taxes, if any, payable him, which shall not be less than but which shall not exceed three times the amount of tax sought to be evaded by reason of concealment of income and furnishing of inaccurate particulars of income. In other words, the quantification of the penalty is depended upon the addition made to the income of the assessee. Since in the present case, basis for visiting the assessee with penalty has been extinguished by deleting both the additions by the Tribunal in quantum

appeal of the assessee, the impugned penalty does not survive. In other words, there is no room for the Revenue to impose penalty under section 271(1)(c) in this case. Therefore, we cancel the impugned penalty and set aside both orders of the Revenue authorities passed under section 271(1)(c) of the Act.

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

Order pronounced in the Court on 21st June, 2018 at Ahmedabad.

Sd/-
(AMARJIT SINGH)
ACCOUNTANT MEMBER

Sd/-
(RAJPAL YADAV)
JUDICIAL MEMBER