

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ - अहमदाबाद ।  
IN THE INCOME TAX APPELLATE TRIBUNAL  
AHMEDABAD – BENCH ‘A’

**BEFORE SHRI RAJPAL YADAV, JUDICIAL MEMBER  
AND  
SHRI WASEEM AHMED, ACCOUNTANT MEMBER**

**आयकर अपील सं./ ITA No.533/Ahd/2014**

**निर्धारण वर्ष/Assessment Year: 2006-2007**

Swift Knit Pvt.Ltd. C/o. Hiteshbhai G. Patel C/4093, OM Complex Vasna Road Vadodara.	Vs	ITO, Ward-4(3) Vadodara.
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अपीलार्थी/ (Appellant)	प्रत्यर्थी/ (Respondent)
Assessee by :	Shri M.K. Patel, AR
Revenue by :	Shri S.K. Dev, Sr.DR

सुनवाई की तारीख/Date of Hearing : 13/08/2018

घोषणा की तारीख /Date of Pronouncement : 31/08/2018

**ORDER**

**PER RAJPAL YADAV, JUDICIAL MEMBER :** Assessee is in appeal before the Tribunal against order of the Id.CIT(A)-III, Baroda dated 14.10.2013 passed for the Asstt.Year 2006-07.

2. Sole grievance of the assessee is that the Id.CIT(A) has erred in confirming penalty of Rs.4,29,960/- imposed by the AO under section 271(1)(c) of the Income Tax Act.

- 2 -

3. Brief facts of the case are that the assessee has filed its return of income electronically on 31.12.2006 declaring loss at Rs.3,26,832/-. The case of the assessee was selected for scrutiny assessment and notice under section 143(2) was issued and served upon the assessee. On scrutiny of the accounts it revealed to the AO that the assessee had sold capital assets for Rs. 15,75,000/-. The written down value of assets was Rs.2,97,643/-. Thus, there was a capital gain of Rs.12,77,357/-. This gain was not disclosed by the assessee and offered for taxation in the return of income. Hence, the ld.AO confronted the assessee as to why it failed to offer the above gain for taxation. In response to the above notice, the assessee filed submissions on 5.12.2008. The explanation of the assessee has been reproduced by the AO. However, it has not shown as to how it failed to disclose the above capital gain. The ld.AO accordingly made addition of the capital gain to the total income of the assessee and re-worked out loss. He initiated penalty proceedings under section 271(1)(c) of the Act and issued a notice under section 274 r.w.s. 271(1)(c) of the Act inviting explanation of the assessee as to why penalty under the above provision should not be imposed upon it. In response to the query of the AO, the assessee submitted its reply which has been reproduced in para 4 of the impugned penalty order. The ld.AO thereafter imposed penalty of Rs.4,26,960/- for furnishing inaccurate particulars of income. Appeal to the ld.CIT(A) did not bring any relief to the assessee.

4. Before us, the ld.counsel for the assessee while impugning order of the ld.CIT(A) contended that there was no intention to evade any tax on the part of the company. It had huge loss in the books as well as in the

- 3 -

tax returns. The fact that the fixed assets sold were duly recorded in the books of accounts. The books of accounts of the company are audited. Thus, company has not concealed any income nor furnished any inaccurate particulars of income. According to the Id.counsel for the assessee it was an inadvertent mistake committed by the accountant while filing the return. He relied upon the judgment of the Hon'ble Supreme Court in the case of Price Waterhouse Coopers Pvt. Ltd vs. CIT, 348 ITR 306 (SC) . On the other hand, the Id.DR relied upon the orders of the Revenue authorities and contended it is a deliberate attempt at the end of the assessee for not disclosing the capital gain earned by it on sale of asset.

5. We have considered rival contentions and gone through the record. Section 271(1)(c) of the Income Tax Act, 1961 has direct bearing on the controversy. Therefore, it is pertinent to take note of the section.

*"271. Failure to furnish returns, comply with notices, concealment of income, etc.*

*(1) The Assessing Officer or the Commissioner (Appeals) or the CIT in the course of any proceedings under this Act, is satisfied that any person*

*(a) and (b)\*\**

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*(c) has concealed the particulars of his income or furnished inaccurate particulars of such income.*

*He may direct that such person shall pay by way of penalty.*

*(i)and (Income-tax Officer,\*\* \*\**

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*(iii) in the cases referred to in Clause (c) or Clause (d), in addition to tax, if any, payable by him, a sum which shall not be less than, but which shall not exceed three times, the amount of tax sought to be evaded by reason of the concealment of particulars of his income or fringe benefit the furnishing of inaccurate particulars of such income or fringe benefits:*

*Explanation 1- Where in respect of any facts material to the computation of the total income of any person under this Act,*

- 4 -

(A) Such person fails to offer an explanation or offers an explanation which is found by the Assessing Officer or the Commissioner (Appeals) or the CIT to be false, or

(B) such person offers an explanation which he is not able to substantiate and fails to prove that such explanation is bona fide and that all the facts relating to the same and material to the computation of his total income have been disclosed by him, then, the amount added or disallowed in computing the total income or such person as a result thereof shall, for the purposes of Clause (c) of this sub-section, be deemed to represent the income in respect of which particulars have been concealed.”

6. A bare perusal of this section would reveal that for visiting any assessee with the penalty, the Assessing Officer or the Learned CIT(Appeals) during the course of any proceedings before them should be satisfied, that the assessee has; (i) concealed his income or furnished inaccurate particulars of income. As far as the quantification of the penalty is concerned, the penalty imposed under this section can range in between 100% to 300% of the tax sought to be evaded by the assessee, as a result of such concealment of income or furnishing inaccurate particulars. The other most important features of this section is deeming provisions regarding concealment of income. The section not only covered the situation in which the assessee has concealed the income or furnished inaccurate particulars, in certain situation, even without there being anything to indicate so, statutory deeming fiction for concealment of income comes into play. This deeming fiction, by way of *Explanation I* to section 271(1)(c) postulates two situations; (a) first whether in respect of any facts material to the computation of the total income under the provisions of the Act, the assessee fails to offer an explanation or the explanation offered by the assessee is found to be false by the Assessing Officer or Learned CIT(Appeal); and, (b) where in respect of any fact,

- 5 -

material to the computation of total income under the provisions of the Act, the assessee is not able to substantiate the explanation and the assessee fails, to prove that such explanation is bona fide and that the assessee had disclosed all the facts relating to the same and material to the computation of the total income. Under first situation, the deeming fiction would come to play if the assessee failed to give any explanation with respect to any fact material to the computation of total income or by action of the Assessing Officer or the Learned CIT(Appeals) by giving a categorical finding to the effect that explanation given by the assessee is false. In the second situation, the deeming fiction would come to play by the failure of the assessee to substantiate his explanation in respect of any fact material to the computation of total income and in addition to this the assessee is not able to prove that such explanation was given *bona fide* and all the facts relating to the same and material to the computation of the total income have been disclosed by the assessee. These two situations provided in *Explanation 1* appended to section 271(1)(c) makes it clear that that when this deeming fiction comes into play in the above two situations then the related addition or disallowance in computing the total income of the assessee for the purpose of section 271(1)(c) would be deemed to be representing the income in respect of which inaccurate particulars have been furnished.

7. Before adverting to the contentions of the Id.counsel for the assessee, let us take note of the finding of the Id.CIT(A), which reads as under:

“4.3. I have considered the facts of the case and submission made by the AR of the appellant. The main crux of the appellant's

submission is that it had insufficient staff due to which an inadvertent error took place while computing the total income of the year. The appellant has also stated that keeping in mind the heavy accumulated business loss and depreciation, there was no tax liability on the part of the appellant had it disclosed the short term capital gain u/s 50 of the Act while filing the tax return. This submission of the appellant is not correct- as the appellant had short term capital gain on sale of assets at Rs.12,77,357/-. The appellant had submitted before the AO that such short term capital gain was set off against the past carried forward unabsorbed business and depreciation loss as per the provisions of the Section 72 of the Act. It may be noted here that short term capital gain of current year can be set off against brought forward unabsorbed depreciation only and not against brought forward unabsorbed loss. After setting off the STCG against the b/f unabsorbed depreciation income of Rs.3,33,846/- out of the short term capital gain has remained. The AO has again set off brought forward losses of earlier year against this income which has been incorrectly done. The appellant should have paid taxes on this income from short term capital gain of Rs.3,33,846/-. Thus, it was having taxable income but by filing a computation of income in which the short term capital gain was not shown, the appellant filed inaccurate particulars of income. The claim of inadvertent mistake is also not acceptable as the appellant has not explained who was the person who had computed the total income and under what circumstances he omitted to mention the short term capital gain earned by the appellant in the return of income so filed. Thus, the appellant had made wholly unsustainable and legally untenable claim in its return of income and thus has filed inaccurate particulars of income. Hence, it is held that the AO has rightly levied penalty u/s 271(l)(c) in this case."

8. In the light of the above details, let us examine contentions of the ld.counsel for the assessee. Only arguments raised by the ld.counsel for the assessee is that, it was an inadvertent and *bona fide* mistake while filing the return. Question before us is, how such mistake was committed and how it could be termed as an inadvertent or *bona fide* mistake. In the case of Price Waterhouse Coopers Pvt. Ltd vs. CIT

- 7 -

(supra) a provision for gratuity etc. was made for the regular and *adhoc* employees. In the audit report, it was pointed by the auditor that provision for *adhoc* employees was required to be written back. But somehow, while filing the return, accountant failed to add back that amount. An affidavit of the concerned person was filed and it was pointed out that more than thousands of employees were working in that concern. In that background, it was construed as *bona fide* human error i.e. failure to add back a particular provision. In the present case, no such circumstances have been pointed out by the assessee either before the AO or before the Id.CIT(A). The only statement made is that it was a *bona fide* human error. This is a very general and sweeping statement. It should be demonstrated with circumstantial evidence as to how this error has happened; what is operating force in the mind of person who has prepared the return, and how he failed to comprehend a particular item. Even the affidavit of that person has not been filed. Therefore, we are of the view that this statement is just being made for giving an explanation. Revenue authorities have appreciated this aspect and rejected the contentions of the assessee. We do not find any merit in the contentions of the assessee, accordingly, appeal of the assessee is dismissed.

9. In the result, appeal of the assessee is dismissed.

**Pronounced in the Open Court on 31<sup>st</sup> August, 2018.**

**Sd/-  
(WASEEM AHMED)  
ACCOUNTANT MEMBER**

**Sd/-  
(RAJPAL YADAV)  
JUDICIAL MEMBER**

Ahmedabad; Dated, 31/08/2018