

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'C' अहमदाबाद ।

IN THE INCOME TAX APPELLATE TRIBUNAL  
"C" BENCH, AHMEDABAD

BEFORE SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER  
& SHRI MAHAVIR PRASAD, JUDICIAL MEMEBR

आयकर अपील सं./I.T.A. No. 56/Ahd/2017

(निर्धारण वर्ष / Assessment Year : 2007-08)

<b>Abhishek Engineers Pvt. Ltd.</b> Abhishek House, 5, Shrimali Society, Nr. Jain Derasar, Navrangpura, Ahmedabad 380009	<b>बनाम/</b> Vs.	<b>The Dy. C.I.T.,</b> Circle - 1(1)(1), Ahmedabad 3 <sup>rd</sup> Floor, Pratyakshkar Bhavan, Panjara Pole, Ambawadi, Ahmedabad
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAACA9827E		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी ओर से /Appellant by :	Shri Rajesh Shah, A.R.
प्रत्यर्थी की ओर से / Respondent by :	Shri Rajesh Meena, Sr. D.R.

सुनवाई की तारीख / Date of Hearing	09/08/2018
घोषणा की तारीख /Date of Pronouncement	04/09/2018

आदेश/ORDER

**PER PRADIP KUMAR KEDIA - AM:**

The captioned appeal has been filed at the instance of the assessee against the order of the Commissioner of Income Tax (Appeals)-1, Ahmedabad ('CIT(A)' in short), dated 24.11.2016 arising in the penalty order dated 31.08.2015 passed by the

Assessing Officer (AO) under s. 271(1)(c) of the Income Tax Act, 1961 (the Act) concerning assessment year 2007-08.

2. When the matter was called for hearing, the learned AR for the assessee submitted that the CIT(A) has misdirected himself in law as well as on facts in confirming the action of the AO in imposing the penalty.

3. The learned DR for the Revenue, on the other hand, relied upon the penalty order passed by the AO under s.271(1)(c) which was endorsed by the CIT(A).

4. We have carefully perused the assessment order, the penalty order as well as the order of the CIT(A). The short question for adjudication is maintainability of penalty under s.271(1)(c) of the Act amounting to Rs.2,46,728/- in the facts of the case. As stated, the assessee in the instant case wrongly claimed depreciation on fixed assets already sold amounting to Rs.7,33,000/- during the year under consideration. Thus, the taxable income was under-reported to this extent. Thereafter, the case was re-opened under s.147 of the Act in pursuance of notice under s.148 of the Act. The assessee filed another return of income wherein the assessee suo motu withdrew the aforesaid wrong claim of depreciation made in the original return. The re-assessment proceedings were accordingly completed and penalty was imposed on the aforesaid wrong claim of depreciation made earlier. The argument on behalf of the assessee for non-imposition of penalty are two fold; (i) the assessee itself has suo motu declared and conceded the wrong claim without the same being brought to its notice by the

Revenue & (ii) the AO had initiated the penalty proceedings on the grounds of ‘concealment of particulars of income’ whereas the penalty was ultimately confirmed by the AO alleging ‘furnishing of inaccurate particulars of income’. It was thus claimed by the assessee that the basis of ‘satisfaction’ has undergone substantive change and therefore, the penalty imposed is not sustainable in law. In this regard, we take cognizance of second plea first. The identical issue arose in the case of Hatish Prabhudas Chaudhary vs. ITO in ITA No. 3557/Ahd/2016 order dated 19.06.2018. The relevant operative part of the order of the co-ordinate bench is reproduced hereunder:

*“9. We have carefully considered rival submissions and perused the assessment order, penalty order and the first appellate order in penalty proceedings. The material referred in the course of hearing was also perused. As noted above, the controversy revolves around the maintainability of penalty on income by way of short term capital gain not included in the return of income but offered for taxation in the course of scrutiny proceedings. In this regard, it is noted that the assessee has readily offered the income on sale in the course of assessment proceedings and paid taxes thereon. No doubt, it is the bounden duty of an assessee to offer the income chargeable to tax in the return of income itself. The assessee has filed revised computation after the issuance of scrutiny notice seeking pertinent details including bank statement which could have easily unearthed the capital gains not offered thus far. However, this by itself will not, in our view, propel a reasonable person to draw an inflexible inference that omission was deliberate. The totality of circumstances is required to be gauged. The intention requires to be seen from the conduct of the assessee. The assessee herein is a technical person and may not necessarily know the complicated tax laws. A perusal of land sale agreement suggests that the land was in the nature of agricultural land the gain on sale of which, under the popular belief, is not taxable. However, on objective consideration, it was found that such agricultural land was also required to undergo agricultural operations, which was missing in the present case. In these circumstances, the assessee acting on legal advice, readily came forward and offered the capital gains without resorting to litigation. On weighing the circumstances, we are of the view that*

*the onus of bonafide therefore, in our view, is broadly discharged. The strict provisions of Section 271(1)(c) of the Act should not apply in these facts. Couple with this, we simultaneously notice that the action of the AO is quite vague. The 'satisfaction' in the course of the assessment was formed for alleged 'furnishing of inaccurate particulars of income'. The penalty notice does not specify the nature of default and thus suffers from vice of ambiguity. The AO, however, in departure with the satisfaction formed in the assessment proceedings, went on to impose penalty on a different ground i.e. concealment of particulars of income. Ostensibly, the original basis of initiation of penalty has been altered in a significant way by the AO himself by imposing the penalty. The basis for formation of satisfaction, thus, was altered and rendered nonexistent. Hence, in the absence of continuity in the satisfaction of the AO at the quantum stage vis-à-vis penalty stage, the penalty order passed by the AO is liable to be struck down on this ground also. For such a view, we may usefully refer to the decision of the Hon'ble Gujarat High Court in the case of New Sorathia Engineering Co. (supra) as well as another decision of the Hon'ble Gujarat High Court in the case of CIT vs. Manu Engineering Works (1980) 122 ITR 306 (Guj). Thus, in totality, penal action under s.271(1)(c) of the Act is not sustainable in law."*

In the light of the aforesaid decision, the penalty under s.271(1)(c) of the Act is not sustainable where the edifice of 'satisfaction' has undergone fundamental change. Thus, in parity, the penalty is required to be cancelled on this ground alone. We also find merit in the first plea of the assessee as well. The assessee has shown its bonafide by conceding the mistake in the second return filed in pursuance of notice under s.148 of the Act. Significantly, the reasons recorded under s. 148(2) of the Act were not made available to the assessee at that stage. Therefore, the plea of the assessee that revision of income was made suo moto without any knowledge obtained from the AO in this regard deserves to be accepted. Needless to say, the penalty under s. 271(1)(c) of the Act is not automatic consequence of any and every type of mistake committed by an assessee. The facts in the

instant case prove the bonafides reasonably. Thus, the penalty is not maintainable on either count. Consequently, the penalty imposed by the AO is directed to be cancelled.

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

**This Order pronounced in Open Court on 04/09/2018**

Sd/-  
(MAHAVIR PRASAD)  
JUDICIAL MEMBER  
Ahmedabad: Dated 04/09/2018

Sd/-  
(PRADIP KUMAR KEDIA)  
ACCOUNTANT MEMBER

True Copy

*S. K. SINHA*

**आदेश की प्रतिलिपि अद्येषित / Copy of Order Forwarded to:-**

1. राजस्व / Revenue
2. आवेदक / Assessee
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद /  
DR, ITAT, Ahmedabad
6. गार्ड फाइल / Guard file.

By order/आदेश से,

उप/सहायक पंजीकार  
आयकर अपीलीय अधिकरण, अहमदाबाद ।