

IN THE INCOME TAX APPELLATE TRIBUNAL

AHMEDABAD “SMC” BENCH

**(BEFORE SHRI PRADIP KUMAR KEDIA, ACCOUNTANT
MEMBER & SHRI MAHAVIR PRASAD, JUDICIAL MEMBER)**

**ITA. No: 3152/AHD/2016
(Assessment Year: 2004-05)**

Gayatri Construction Co. C/o Ramjibhai & Co, Highway Road, Kheralu- 382825 (Appellant)	V/S	The Deputy Commissioner of Income-tax, Patna Circle, Patan (Respondent)
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PAN: AABFG5422D

**Appellant by : Shri Nandlal Thakkar, AR
Respondent by :Dr. Anupama Sinala, Sr. D.R.**

(आदेश)/ORDER

Date of hearing : 29 -06-2018
Date of Pronouncement : 31-08-2018

PER MAHAVIR PRASAD, JUDICIAL MEMBER

1. This appeal by the Assessee is directed against the order of the Ld. CIT(A), Gandhinagar, Ahmedabad dated 16.05.2016 pertaining to A.Y. 2004-05 that the

- ld. CIT(A) for confirming the levy of penalty u/s. 271(1)(c) of the Act of Rs. 2,53,493/-.
2. During the course of assessment proceedings, it was seen that the assessee firm has claimed labour charges of Rs. 3,53,770/- for repairing of vehicles for payment made to Insat Auto Electricals of Visnagar. The payments were made in small amounts between Rs. 10,000/- and Rs. 20,000/-. The assessee produced self made vouchers in support of the same. To verify the genuineness of claim of the assessee, summons was issued to the payee on the address given by the assessee. The said party- Insat Auto Electricals in response to the said summons informed that they have not made any business transactions with the assessee. It was also informed that they do not know the assessee. Thereafter, a copy of the said letter was provided to the assessee and the assessee was requested to show cause as to why the said payment should not be disallowed. The assessee on 14.12.2006 produced one Shri Dahyabhai alias Rameshbhai Ghemarbhai Chaudhary who claimed that he was proprietor of Insat Electric at Visnagar. The statement of Shri Dahyabhai was recorded and in his statement Shri Dahyabhai claimed that he has specialized knowledge regarding auto electric and therefore, started repairing work relating to auto electric. He however failed to produce any documentary evidence in support of the same.
 3. Further, in his statement he was requested to name important parts of the vehicles, in response to which he named only two, i.e. battery and dynamo. He was asked to explain dynamo and alternate but he was not able to explain its functioning. After, making further enquiry the payment of Rs. 3,53,770/- claimed to have been made to Insat Auto Electricals, was added to the total

income as the assessee's income from undisclosed sources. Penalty proceedings u/s-271(l)(c) on this issued was initiated separately.

4. Further, during the assessment proceedings, it was noticed that the assessee claimed Rs. 4,55,031/- on account of labour charges for repairing of vehicles made to Mayur Auto Garage, Visnagar. The payments were shown as made in cash and in small amounts between Rs. 10,000/- and Rs. 20,000/-. To verify the genuineness summons was issued to this party and sent by post at the address given by the assessee . In response to the same, Shri Maiyuddin S. Saiyed, filed a letter dated 17.10.06 informing that his father is the owner of the said Garage and since he is sick, he may be allowed time for at least 15 days. The adjournment was given and next date was fixed on 7.11.06. Again on the said date the son of the owner attended and requested to record his statement. Since, recording of the statement of the son was not lawful, he was asked to produce his father on 14.11.06. on the said date no one attended. The assessee also failed to produce the owner of the garage on the said date even if he was asked to do so. Later, on 18.12.06 the owner attended and his statement was recorded on oath. He was asked to confirm the payments shown in his letter dated 7.12.06. In response to that he replied that his signature was taken on the said letter by the assessee hurriedly and he did not know what was written on the said letter. He further stated that he has received only Rs.1.5 lakh or so from the assessee and not Rs.4,55,031/- as claimed by the assessee. In view of the above, Rs.3,53,031/- being Rs.4,55,031-1,02,000/ was added to the assessee's income. Penalty proceedings u/s 271(l)(c) were initiated separately for concealment of income and furnishing inaccurate particulars of income.

5. It is noteworthy to mention here that aggrieved by the order of the AO the assessee preferred an appeal before the Ld. CIT(A) and thereafter before the Hon'ble ITAT and both the appellate authorities upheld the order of the A.O. thereby confirming the stand taken by the A.O.
6. As is clear from the facts narrated above, it is crystal clear that the assessee has willfully concealed his income by furnishing inaccurate particulars of income and the same would not have been detected had the case of the assessee was not selected for scrutiny. Further, during the course of assessment proceedings as well as during the penalty proceedings the assessee was given ample opportunities to give evidence to submit his reply in support of the same but he failed to do so. Further, both the appellate authorities have upheld the order of the AO and in view of the facts mentioned above, it is clear that the assessee has wrongfully claimed expenses that were not genuine to inflate expenses and lower down his profit. Therefore, it is clear that the assessee has willfully committed the default within the purview of section 271(l)(c) for which penalty is leviable.
7. Thereafter, assessee preferred first statutory appeal before the Id. CIT(A) and made detailed contention before the Id. CIT(A) but to no avail. Thereafter, in quantum proceeding, Co-ordinate Bench of ITAT confirmed the addition made by the lower authorities.
8. We have gone through the relevant record in the impugned order. So far penalty on account of disallowed paid for labour charges of Rs. 3,53,770/- for repairing of vehicles to Insat Auto Electrics. Ld. A.R. Shri M.K. Patel made his statement that he does not want to press penalty on amount of Rs. 3,53,770/-.

9. Now only effective ground is remained for our consideration penalty on account of disallowed paid for labour charges of Rs. 3,53,031/- for paid repairing of vehicles to Mayur Auto Garage is concerned, in this connection, one Mayurdin Saiyad who is proprietor of Mayur Auto Garage was called and statement was recorded but he could not give details of vehicles which were repaired by him and he was also failed to give the details that kind of repair was done by him.
10. So far quantum addition of Rs. 4,55,031/- towards labour charges for repairs of vehicles is concerned, we find that while the addition may be justified on the based of preponderance of the probabilities, the penalty could not be justified in the absence of visible culpability of the repair claimed by the appellant cannot be out rightly disallowed for the purposes of weing justifications in the context of section 271(1)(c) . Therefore, we direct A.O. to delete the penalty on the quantum addition of Rs. 4,55,031/- towards labour charges.
11. Ld. A.R. has been failed to demonstrate before us that penalty proceedings are not sustainable in the eyes of law and he could not give any proper justification and plausible explanation with regard to payment of Rs. 3,53,031/-. In the absence of any clinching evidence in support of the assessee, we confirm the penalty on Rs. 3,53,031/-.
12. In the result, appeal filed by the Assessee is partly allowed.

Order pronounced in Open Court on 31 - 08- 2018

Sd/-
(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER True Copy
Ahmedabad: Dated 31/08/2018

Sd/-
(MAHAVIR PRASAD)
JUDICIAL MEMBER