

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ ।
IN THE INCOME TAX APPELLATE TRIBUNAL,
"C" BENCH, AHMEDABAD
BEFORE SHRI RAJPAL YADAV, JUDICIAL MEMBER
AND
SHRI AMARJIT SINGH, ACCOUNTANT MEMBER

ITA No.404/Ahd/2018

निर्धारण वर्ष/ Asstt. Year: 2012-2013

Pankajkumar Joitrambhai Patel 261, Rajkessari Complex Nr.Vikram Chemical Amraiwadi Ahmedabad. PAN : AKZPP 7012 J	Vs.	ITO, Ward-6(1)(1) Narayan Chambers Ahmedabad.
---	-----	---

(Applicant)	(Responent)
Assessee by :	Ms.Saumya Sheth, AR
Revenue by :	Shri Lalit P.Jain, Sr.DR

सुनवाई की तारीख/Date of Hearing : 18/10/2018

घोषणा की तारीख /Date of Pronouncement: 23 /10/2018

आदेश/O R D E R

PER RAJPAL YADAV, JUDICIAL MEMBER:

Present appeal is directed at the instance of the assessee against the order of the Id.CIT(A)-6, Ahmedabad dated 16.8.2017 passed for the Asstt.Year 2012-13, by which the Id.CIT(A) confirmed action of the AO in imposing penalty under section 271(1)(c) of the Income Tax Act, 1961.

2. In the grounds of appeal, the assessee has also challenged in not condoning the delay in filing appeal before the Id.CIT(A) against imposition of penalty under section 271(1)(c) of the Act.

3. The issue *qua* condonation of delay in filing of appeal before the Id.First Appellate Authority, we find that the assessee has pleaded before the Id.CIT(A) the assessee has no knowledge about receipt of 143(3) and 271(1)(c) orders of the Id.AO by the father of the assessee, who due to the age and other factors misplaced the same and could not communicate to the assessee. It was only when banker of the assessee informed the assessee about the attachment of bank account by the Department, the assessee came to know about the orders being passed. Therefore, the assessee immediately approached the Id.AO and got certified copies of the orders. The assessee thereafter proceeded to file appeal before the Id.First Appellate Authority. Therefore, due to the reasons beyond the control of the assessee could not file appeal in time before the Id.First Appellate authority. Assessee has filed an affidavit to the effect deposing the facts. It may be mentioned here that no litigant would intend to give up his/her right to file appeal by simply getting the appeal delayed, on the other hand, he would remain vigilant as far as possible to enforce his legal right. No doubt, the reasons canvassed by the assessee were not convincing enough, but to render substantial justice and in the fitness of things, delay caused in filing appeal is to be condoned. Thus, we condone the delay in filing appeal before the Id.CIT(A) and proceed to dispose of this appeal.

4. Now we proceed to adjudicate the issue of penalty imposed under section 271(1)(c) of the Act.

5. Brief facts of the case are that the assessee has filed his return of income on 26.9.2012 declaring total income at rs.9,06,620/-. The assessment was finalized on 27.3.2015 under section 143(3) by determining total income at Rs.39,06,620/-, which included an addition of Rs.30.00lakhs on account of unexplained cash loan. This addition was confirmed by the Id.CIT(A).

Thereafter, Id.AO initiated penalty proceedings under section 271(1)(c) of the Act and imposed penalty an amount of Rs.9,27,000/-, which was also confirmed by the Id.First Appellate authority. The assessee is now challenging imposition of penalty before the Tribunal.

6. The Id.counsel for the assessee submitted that against the order of Id.CIT(A) dated 15.12.2017 vide which the Id.CIT(A) has confirmed the action of the AO in making addition of Rs.30.00 lakhs on account of alleged unexplained cash loan, was challenged before the Tribunal in ITA No.403/Ahd/2018 and the Tribunal vide order dated 28.6.2018 held that the *ex parte* order of the Id.CIT(A) was passed without giving reasonable opportunity to the assessee to defend its case, and accordingly the Tribunal remanded back all the issues to the file of the CIT(A) for reconsideration. Therefore, since issue of validity quantum of addition is pending before the Id.CIT(A), the penalty under section 271(1)(c) *qua* this addition does not survive and liable to be set aside to the file of CIT(A) to be decided depending upon the outcome of impugned quantum addition. On the other hand, the Id.DR did not dispute the factual aspect of the matter.

7. We have duly considered rival contentions and gone through the record carefully. 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 the Tribunal has set aside quantum appeal of the assessee back to the file of the Id.CIT(A)

for reconsideration, which is pending, the issue of imposition of penalty under section 271(1)(c) of the Act does not arise before us. Therefore, we set aside the penalty appeal also back to the file of Id.CIT(A) to be decided in accordance with the outcome in the quantum proceedings pending before him. Consequently, appeal of the assessee stands allowed for statistical purpose.

8. In the result appeal of the Assessee is allowed for statistical purpose.

Order pronounced in the Court on 23rd October, 2018 at Ahmedabad.

**Sd/-
(AMARJIT SINGH)
ACCOUNTANT MEMBER**

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