

आयकर अपीलीय अधिकरण।
IN THE INCOME TAX APPELLATE TRIBUNAL
SURAT- BENCH 'SURAT
BEFORE SHRI RAJPAL YADAV, JUDICIAL MEMBER
AND
SHRI AMARJIT SINGH, ACCOUNTANTO MEMBER

आयकर अपील सं./ ITA.No.1477 and 1479/Ahd/2014
निर्धारण वर्ष/ Asstt. Year: 2004-05 and 2005-06
AND
ITA No.1330/Ahd/2016
Asstt.Year : 2005-06

Shri Jivarajbhai Dahyabhai Golakiya A-2, 303, Nandgam Apartment Vrajbhumi, Sector 1 Sarhana, Jakatnaka Varachha Road, Surat. PAN : AWRPG 5351 L	Vs.	ITO, Ward-8(2) Surat.
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अपीलार्थी/ (Appellant)	प्रत्यर्थी/ (Respondent)
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Assessee by :	Shri Jagasheth, CA
Revenue by :	Smt.Smita Nair, Sr.DR

सुनवाई की तारीख/Date of Hearing : 13/11/2018
घोषणा की तारीख /Date of Pronouncement: 13/11/2018

आदेश/O R D E R

PER RAJPAL YADAV, JUDICIAL MEMBER:

The present three appeals are directed at the instance of the assessee against separate orders of the Id.CIT(A) dated 17.12.2012 and 17.3.2016 passed in the Asstt.Year 2004-05, 2005-06 and 2005-06. ITA No.1477/Ahd/2014, 1479/Ahd/2014 emerge out of the assessment proceedings under section 143(3) r.w.s. 147, and ITA No.1330/Ahd/2016 emerges out of the penalty proceedings initiated against the assessee under section 271(1)(c) of the Income Tax Act, 1961.

2. First, we take two quantum appeals i.e. ITA No.1477/Ahd/2014 and 1479/Ahd/2014.

3. Brief facts of the case are that statement of the assessee was recorded under section 131 of the Act on 11.2.2011 by the ADIT(inv), Surat. In his statement, he has disclosed that he entered into an agreement with Harishbhai V. Patel for purchase of land bearing survey no.20/2, new survey no.55/3. A perusal of the agreement, it revealed that the assessee has paid amount of Rs.10.94 lakhs on the following dates:

- i) Rs.2,00,000/- on 22/12/2003
- ii) Rs.4,32,000/- on 22/03/2004
- iii) Rs.4,62,000/- on 24/06/2004

During the course of assessment proceedings, the Id.AO inquired the source of above payments, which is spread over in two assessment years. According to the AO, the assessee failed to give any evidence exhibiting source of payment. Hence, he treated the payment of Rs.10.94 lakhs spread over in two assessment years as unexplained investment. Accordingly, the addition of Rs.6.32 lakhs was made in the Asstt.Year 2004-05 and remaining amount in the Asstt.Year 2005-06. Dissatisfied with the addition made by the AO, the assessee carried the matter in appeal before the Id.CIT(A). It was contended by the assessee that he was an agriculturist. He owned agriculture land within revenue State of taluka Sihor, Bhavnagar district. He placed on record copy of form no.7/12 exhibiting ownership of the agriculture land. He also contended that apart from agriculture land, he took possession of the land for which payment was made. Hence, according to the assessee, he has sufficient saving from the past for making such investment. The Id.CIT(A) did not accept this explanation of the assessee and concurred with the AO. Before us, the Id.counsel for the assessee submitted that as far as challenge made to reopening

of the assessment is concerned, the assessee does not press this ground, hence, it is rejected in both the assessment years.

4. So far as issue with regard to the confirmation of addition of Rs.6,32,000/- in the Asstt.Year 2004-05 and Rs.4,62,000/- in the Asstt.Year 2005-06 made by the AO on account of unexplained investment in land is concerned, we have gone through the record carefully.

5. With the assistance of the Id.representatives, we have gone through the record carefully. The question before us is, whether the stand of the assessee deserves to be accepted that he has accumulated resources of agriculture activities. It is pertinent to observe that whenever we are being confronted with such type of issues, we have to look into background of the assessee, as to from where he belongs. The assessee belongs to an unorganized sector. Never filed return. Only having agriculture land; not maintained any books of accounts, hence it is highly improbable to expect that he would be managing his affairs in well-organised manner and he could produce evidence with mathematical precision. His circumstances are to be looked into on the basis of his rustic background. According to him, he has six acres of agriculture land, out of which he made savings and payments were made in two assessment years. To our mind, it is not such a big amount which could not be kept by a person at home. The Id.Revenue authorities have not appreciated circumstances looking into the background of the assessee. Therefore, taking into consideration the details of agriculture land produced before us, we are of the view that the assessee could have saved this much money for making investment in purchases of agriculture land. No addition deserves to be made on account of unexplained investment. Hence, these grounds in both the years are allowed.

6. So far as penalty under section 271(1)(c) is concerned, 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 by 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 or 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. In the present case, the addition has been deleted by the Tribunal as per our decision in quantum appeal in the foregoing paragraphs of this order for the Asstt.Year 2005-06, therefore, no addition exists for imposition of penalty under section 271(1)(c) of the Act and impugned order does not survive. Therefore, order of penalty under section 271(1)(c) is cancelled and ground of appeal of the assessee is allowed.

7. In the result, both quantum appeals of the assessee are partly allowed, and penalty appeal is allowed.

Order pronounced in the Court on 13th November, 2018 at Surat.

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

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

Surat: Dated 13/11/2018