

IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD BENCH

**Before: Shri Rajpal Yadav, Judicial Member
And Shri Amarjit Singh, Accountant Member**

**ITA Nos. 3396 & 3397/Ahd/2015
Assessment Year 2011-12 & 2009-10**

Rashikbhai Patel HUF, Majar Bungalows, B/h Om Towers, Jodhpur Char Rasta, Satellite, Ahmedabd-380015 PAN: AAEHR7338L (Appellant)	Vs	The ITO, Ward-9(1), Ahmedabad (Respondent)
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**Revenue by: Shri Mudit Nagpal, Sr. D.R.
Assessee by: Shri Tej Shah, A.R.**

Date of hearing : 24-10-2018
Date of pronouncement : 31-10-2018

आदेश/ORDER

PER : AMARJIT SINGH, ACCOUNTANT MEMBER:-

These two appeals filed by assessee for A.Y. 2011-12 & 2009-10, arise from order of the CIT(A)-3, Ahmedabad dated 04-09-2015, in proceedings under section 271(1)(c) of the Income Tax Act, 1961; in short the Act.

2. As the facts in both the appeals are similar, so, we take ITA No. 3397/Ahd/2015 assessment year 2009-10 as the lead case and its findings will be applicable in ITA No. 3396/Ahd/2015 assessment year 2011-12 for the sake of convenience.

3. The assessee has raised following grounds of appeal:-

- “1. That the Id. CIT(A) erred in upholding the order of A.O. in levying penalty u/s. 271(i)(c) of the act.
2. Any other ground which may be raised before or during the time of hearing the appeal”

4. There was delay of 8 days in filing the aforesaid appeal. The assessee has filed an affidavit for condoning the aforesaid delay of 8 days stating that certified copy of the order of the Id. CIT(A) against which the aforesaid appeal filed was received on 30th Sep, 2015, however, he was out of station to attend a personal function, therefore, the copy of order of the Id. CIT(A) could not be handed over to the chartered account for filling appeal before the ITAT. After perusal of the affidavit and reason stated by the assessee, it appear that there is abona fide reason for not filing the appeal timely, therefore, minor delay of 8 days is condoned.

5. The brief fact of the case is that return of income declaring income of Rs. 4,42,672/- was filed on 2nd Sep, 2009. Subsequently, the case was selected under scrutiny by issuing of notice u/s. 143(2) of the act on 25th Sep, 2010. During the course of assessment proceedings on examination of AIR, the assessing officer has noticed that assessee has sold immovable property worth of Rs. 1.75 crores on 11th Sep, 2018. On verification of the profit and loss account and other details submitted by the assessee, the assessing officer noticed that assessee has not shown any sale during the year under consideration in respect of sale of commercial property at Vazalpur, Ahmedabad of Rs. 1.75 crores to Shri Siddhi Vinayak Corporation on 11 Sep, 2018 however, the assessee has claimed WIP of Rs. 1,03,61,443/-. Therefore, he was asked to show cause as to why the difference between receipt of Rs. 1.75 crores of Rs. 1,03,61,443/- which comes to Rs. 73,38,577/- shall not be treated as un disclosed income. The assessee contended that the major part of payment was received in subsequent year and there was subsequent work and project was not completed during the previous year. The assessee has also stated that the deal

of sale undergone a dispute in respect of payment and there was some pending finishing work and the same was not completed during the year under consideration. The assessing officer has not accepted the explanation of the assessee and treated the differential amount of Rs. 71,38,857/- as undisclosed and penalty proceedings u/s. 271(1)(C) of the act was initiated. The assessing officer has further made addition of Rs. 15,09,665/- in respect of sundry creditors as the assessee has neither furnished any detail nor attended the proceedings before the assessing officer and penalty proceedings u/s. 271(1)(c) of the act was initiated. During the course of penalty proceedings, the assessing officer has stated that Id. CIT(A) has partly confirmed the addition of Rs. 12,25,249/- on account of undisclosed income and Rs. 1,61,070 on account of non-genuine sundry creditors. The assessing officer has stated that assessee has not responded to the notice issued for levying of penalty, therefore, he has presumed that assessee has furnished inaccurate particulars of income and concealment of income u/s. 271(1)(c) of the act. Consequently, he has levied penalty to the amount of Rs. 4,69,200/- u/s. 271(1)(c) of the act.

6. The Ld. CIT(A) has sustained the penalty levied.

7. We have heard the rival contentions and perused the material on record carefully.

8. During the course of assessment proceedings, the assessing officer has made addition of Rs. 71,38,557 as assessee's profit on sales transactions not disclosed during the year under consideration. The Id. CIT(A) has sustained such addition to the extent of Rs. 12,25,249/-. The assessing officer has also made addition of Rs. 15,09,965/- as unexplained sundry creditors on the ground that during the course of assessment proceedings the assessee has failed to furnish the confirmation letters. The Id. CIT(A) has confirmed this addition to the extent of Rs. 1,61,070/-. The assessing officer has levied penalty of Rs.

4,69,200/- on the aforesaid additions stating that assessee has not furnished any explanation as to why the penalty may not be levied. He has held that under the above circumstances it can be presumed that the assessee has nothing to state in this matter therefore penalty for filing inaccurate particulars of income and concealment of income u/s. 271(1)(c) of the act was levied. The Id. CIT(A) has sustained the penalty levied by the assessing officer. We have noticed that in the case of the assessee, the assessing officer noticed that the assessee has sold a commercial immovable property at an aggregate sale consideration for Rs. 1,75,00,000/- and WIP of Rs. 10361443 has been incurred but no income has been shown during the year under consideration, therefore, the differential amount of Rs. 71,38,557/- was treated as assessee's income for the year under consideration. The assessee has stated that it is engaged in construction activity and shown profit of WIP of Rs. 10361443/- and the construction work of the project has been continued for next 2 years till assessment year 2011-12. It was submitted by the assessee that it has shown receipt of Rs. 37,22,000/- in F.Y. 2009-10 and Rs. 14,00,000/- in F.Y. 2010-11 considering the sale of the aforesaid commercial building. It is also contended that assessee has received an amount of Rs. 1,23,78,000/- during the year under consideration. It was also stated that there were certain dispute in completion of the construction of the property and the matter was not finally settled therefore as per Accounting Standard -9 the income could not be recognized due to dispute and conditional payment made by the buyer after the completion of the project. We observe that because of the aforesaid circumstances, the Id. CIT(A) has worked the addition to the extent to Rs. 12,25,249/- for the assessment year 2009-10 and Rs. 11,40 lakhs for assessment year 2011-12. It is noticed that Id. CIT(A) has worked the profit on the basis of mercantile system of accounting as against blanket addition made by the assessing officer. In the light of the above facts and circumstances, we observe that the assessee has furnished the related particulars of income and the addition was made on re-allocation of income as per computation made at page 27 to 29 of the order of the Id. CIT(A) dated 06/02/2013. The assessing

officer has not controverted the claim of the assessee that the claim of the assessee was under dispute and the construction work was yet to be completed as a result the assessee was of the view that construction contract to be recognized when there will be no risk/dispute as per Accounting Standard-9 of the ICAI. However, we consider that the assessee has failed to file the confirmation and other relevant evidences to substantiate the genuineness in respect of on account sundry creditors of Rs. 1,61,070.. Considering the above, we observe that the assessee has furnished the complete particulars of income in respect of addition of Rs. 12,25,249/- on which the levying of penalty is not justified. However for the reason stated above we restrict the levying of penalty on account of undisclosed income of Rs. 1,61,070 on account of non-genuine sundry creditors u/s. 271(1)(c) of the act. Accordingly the appeal of the assessee is partly allowed for assessment year 2009-2010 and appeal of the assessee for the assessment year 2011-12 is allowed.

9. In the result, the appeal of the assessee is partly allowed for assessment year 2009-2010 and appeal of the assessee for the assessment year 2011-12 is allowed.

Order pronounced in the open court on 31-10-2018

Sd/-
(RAJPAL YADAV)
JUDICIAL MEMBER
Ahmedabad : Dated 31/10/2018

Sd/-
(AMARJIT SINGH)
ACCOUNTANT MEMBER

आदेश क० तालिम अ० षत / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलालय आधिकरण,
अहमदाबाद