

आयकर अपीलीय अधिकरण, सुरत न्यायपीठ, सुरत  
**IN THE INCOME TAX APPELLATE TRIBUNAL  
 SURAT BENCH, SURAT**  
 श्री सी.एम.गर्ग, न्यायिक सदस्य तथा श्री ओ.पी.मीना, लेखा सदस्य के समक्ष  
**BEFORE SHRI C.M.GARG, JUDICIAL MEMBER  
 AND SHRI O.P.MEENA, ACCOUNTANT MEMBER**

आ.अ.सं./I.T.A No.1011/Ahd/2014/SRT  
 निर्धारण वर्ष/Assessment Year : 2004-05

Ashwinbhai B. Pokia 61, Saify Society, L.H.Road, Surat – 395006. <b>[PAN: ACKPP 5049 C]</b>	<b>Vs.</b>	The Asstt. Commissioner of Income-tax, Circle-9, Surat.
<b>अपीलार्थी Appellant</b>		<b>प्रत्यर्थी/Respondent</b>

निर्धारिती की ओर से /Assessee by	Shri Rasesh Shah - CA
राजस्व की ओर से /Revenue by	Shri J.K.Chandnani, Sr.DR

सुनवाई की तारीख/ Date of hearing:	12.07.2018
उद्घोषणा की तारीख/Pronouncement on	31.07.2018

**आदेश /ORDER**

**PER O. P. MEENA, ACCOUTANT MEMBER:**

1. This appeal filed by the Assessee is directed against the order of learned Commissioner of Income tax (Appeals)-V, Surat (in short “the CIT (A)”) dated 13.01.2014 pertaining to Assessment Year 2004-05, which in turn has arisen from the order passed by the Assistant Commissioner of Income-tax, Circle-9, Surat, (in short “the AO”) dated 22.12.2006 under section 143(3) of Income Tax Act, 1961 (in short ‘the Act’).

**2. Ground No.1 the learned C.I.T.(A) has erred in confirming the penalty of Rs.7,72,888/- u/s.271(1)(c) of Income Tax Act, 1961.**

**3.** Brief facts of the case are that the assessee filed his return of income declaring total income of Rs.1,01,290/- on 28.10.2004 and the income consists of salary and income from other sources. In the case of Shri Jayantibhai Lakhani Prop. of M/s.Indo Fashion Fab, survey proceedings u/s.133A of the Income Tax Act was carried out on 21.03.2005. It is noted that during the course of survey proceedings it was admitted by Shri Jayantibhai Lakhani that he and his group members had accepted unsecured loans by giving cash to the person from whom loans and advances received. He also agreed that the cash given to obtain these loans are not recorded in their books of account. Thereafter, the assessee had filed a revised return dated 31.03.2005 disclosing total income at Rs.12,19,266/-. On verification of the revised return the assessee has disclosed the undisclosed income under the head Income from other source i.e. "Depositors Loan" amounting to Rs.11,17,975/-. Taking the revised return into account, assessee return has been selected for scrutiny and notice u/s.143(2) of the Income Tax Act, 1961 was issued on 02.08.2005 and served upon the assessee on

10.08.2005. And also notice u/s.142(1) along with details questionnaire dated 24.07.2006 was issued and duly served upon the assessee by Speed Post. On the appointed day, nobody attended nor any adjournment sought for. Therefore, another opportunity was granted by issuing letter dated 01.08.2006 that case fixed for hearing on 11.06.2006. On 15.08.2006, Shri Ketan Bhatt attended before the Assessing Officer with authorization and furnished some of the details as per questionnaire. The AO relied on the statement of Shri Jayantibhai V. Lakhani recorded on oath u/s.131 on 21.03.2005 and undisclosed income is worked out at Rs.26,69,004/- (Rs11,17,975/- shown in the revised return + Rs.15,51,029/- not disclosed in the return) and treated his income and accordingly added u/s.68 of the Act. Then penalty proceedings u/s.274 r.w.s. 271(1)(c) of the Act initiated for furnishing inaccurate particulars of income and thereby concealment of income on entire amount of Rs.26,96,004/-. Despite, AO given number of opportunities there was large scale of non-compliance from the side of the assessee and assessee failed to prove the genuineness of the loan which gives AO no other option than to treat this as bogus loan and add the same as non-genuine cash credit u/s.68 of the I.T.Act. In the quantum appeal, the CIT(A) has given a relief of Rs.6,65,602/- against the addition

made in the assessment order. Finally, in absence of any explanation before the AO, penalty of Rs.7,72,888/- was imposed.

**4.** Being aggrieved, the assessee filed appeal before the Id.CIT(A), whereas in quantum appeal Id.CIT(A) deleted the addition of Rs.6,65,602/- in respect of (Rs.4,41,602/- on account of Mulchand Khandelwal, Rs.40,000/- on account of Chhaganbhai Vaghasia, Rs.45,000/- on account of Vrajlal Siddpara, Rs.45,000/- on account of Parshottam Barad, Rs.48,000/- on account of Amrutbhai Siddpara and Rs.46,000/- on account of Popatbhai Pokiya).

**5.** In the first appellate proceedings, the Id.CIT(A) further dismissed the appeal of the assessee relying on these case laws of cases in Hon'ble Delhi High Court of CIT vs. Gurbachan Lal in 250 ITR 157 (Delhi), Hon'ble Punjab and Haryana High Court in Viswakarma Industries vs. CIT (1982) 132 ITR 652, Hon'ble Kerala High Court in CIT vs. K.P.Madhusudana in 246 ITR 218, Hon'ble Allahabad High Court in Sushil Kumar Sharad Kumar 232 ITR 588 (All), Hon'ble Delhi High Court in CIT vs. Sohan Singh 254 ITR 170 held that for the purpose of penalty matter has to be examined in the background of Explanation to Section 271(1)(c). It has also been held that evidences recorded during the course of assessment proceedings, though not conclusive, are not totally irrelevant.

They could be taken note of. According to the High Court decision what was required was that the assessee must offer an explanation which, if found to be untenable or unacceptable, then the penalty can be levied under section 271(1)(c) of the I.T.Act.

**6.** Being aggrieved, the assessee filed appeal before this Tribunal and further submitted that during the survey proceedings in the Lakhani Group, Shri Jayantibhai Lakhani had disclosed huge amount on behalf of several persons out of fear and mental pressure. He had disclosed Rs.26,69,004/- on account of alleged unexplained cash credit in his name and further submitted that he retracted the same. He surrendered the deposits of Rs.11,17,975/- as additional income towards cash credit in the revised return of income and filed the same in the revised return of income showing taxable income of Rs.12,19,266/- which includes the surrendered amount of Rs.11,17,975/- towards cash credit.

**7.** The learned Senior Departmental Representative relied upon the orders of the lower authorities and submitted that the assessee has not complied with the orders of the AO and did not co-operate in submitting the information asked by the AO. No complete address and names were furnished even at the appellate stage

before the AO. Therefore, there was no reason to interfere with the order of the Id.CIT(A).

**8.** We have heard the rival submissions and perused the material available on record. We have also considered the decision of ITAT, Ahmedabad 'D' Bench in assessee's own case in ITA No.614/Ahd/2008 for the A.Y. 2004-05 read as follows :

*"8. We have considered the submissions of the learned DR and the material available on record. The AO specifically recorded in the assessment order that during the course of survey it was gathered that the assessee has obtained unsecured loans from various parties and Shri Jayantibhai Lakhani has admitted in his voluntary statement and his group members had accepted unsecured loans by giving cash to the persons from whom loans and advances were receive. He has agreed that cash given to obtain these loans are not recorded in the books of account. The assessee agreed to surrender the non-genuine credits in the revised return but only part of the amount was disclosed as undisclosed income in a sum of Rs.11,17,975/-. The assessee did not comply with the statutory notices before the AO and no specific details were filed to prove the genuineness of the various credits. No details were furnished before the AO. The AO issued show cause notices to the assessee which was also not complied. The assessee failed to produce the parties before the AO and also failed to furnish their whereabouts before the AO. Considering the non-cooperative attitude of the assessee the AO treated Rs.15,51,029/- which were not disclosed in the return of income as agreed earlier to surrender as undisclosed income u/s 68 of the IT Act. Similarly, the assessee did not provide full details along with confirmation from the depositors. Therefore, sum of Rs.3,52,112/- was also treated as non-genuine cash credits. The learned CIT(A) considering the request of the assessee to produce the parties to substantiate his claim of genuine cash credits remanded the matter to the file of the AO. At the appellate stage, some of the parties were produced and their statements were recorded by the AO and credits were found to be genuine for which the learned CIT(A) has already granted relief to the assessee. However, for the rest of the parties the AO gave numbers of opportunities to the assessee to produce the parties and their evidences to support genuineness of the credits in the matter. But the assessee had not furnished even the names and complete addresses of the rest of the creditors. The above facts, therefore, would show that initially the assessee accepted the credits to be bogus and also agreed to surrender the income in the revised return but only part of the bogus credits were disclosed as undisclosed income in the revised return. In such a situation burden is very heavy upon the assessee to prove the genuineness of the credits of the rest of the amount which the assessee has not disclosed in the revised return despite admitted in the voluntary statement recorded on the date of survey. The assessee has however, not complied with the statutory notices before the AO at the assessment stage. Even at the appellate proceedings the assessee did not produce the parties and their complete addresses and particulars before the AO in the remand proceedings. Therefore, it stands proved that the assessee has no explanation to offer to explain the genuine credits in the matter. It was the assessee who has made a claim*

*before the learned CIT(A) to produce the parties before the AO to substantiate his claim of genuine credit. Therefore, the assessee should have taken steps in the matter to prove genuine credits. The assessee has however, failed to do anything in the matter even at the appellate stage. As noted above, this appeal was adjourned several times on the request of the assessee on one or the other reasons but the assessee did not produce any material or evidence on record to prove its case beyond doubt. We accordingly do not find any merit in the appeal of the assessee. The same is accordingly dismissed.”*

**9.** In view of the above, it is evident that the appellant had deliberately and intentionally not disclosed the true and correct income with the intention to avoid payment of tax and thereby concealed the income. The facts and circumstances as discussed in above decision of ITAT, Ahmedabad ‘D’ Bench in assessee’s own case in ITA No.614/Ahd/2008 for A.Y.2004-05, we find that provisions of section 271(1)(c) are attracted. Therefore, we do not find any reason to interfere with findings recorded by the lower authorities.

**10.** In view of these facts and circumstances, the appeal of the assessee is therefore dismissed.

**11.** In the result, appeal of the assessee is dismissed.

**12.** The order pronounced in the open Court 31-07-2018.

Sd/-

(सी.एम.गर्ग /C.M. GARG)

न्यायिकसदस्यतथा/JUDICIAL MEMBER लेखासदस्यकेसमक्ष /ACCOUNTANT MEMBER  
सुरत/ Surat, दिनांक Dated: 31<sup>st</sup> July, 2018

Copy of order sent to- Assessee/AO/Pr. CIT/ CIT (A)/ ITAT (DR)/Guard file of ITAT.

**By order**

/ / TRUE COPY / /

**Assistant Registrar, Surat**