

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ - अहमदाबाद ।

IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD – BENCH ‘SMC’

BEFORE SHRI RAJPAL YADAV, JUDICIAL MEMBER
AND
SHRI WASEEM AHMED, ACCOUNTANT MEMBER

आयकर अपील सं./ ITA No. 2648/Ahd/2015

निर्धारण वर्ष/Assessment Year: 2009-10

Mukesh Kumar Ratilal Modi C/o. Ratilal & Co. Bazar, Kukarwada Tal. Vijapur 384 002. Dist. Mehsana. PAN : ABWPM 1623 J	Vs	ITO, Patan Ward-5 Mehsana.
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अपीलार्थी/ (Appellant)	प्रत्यर्थी/ (Respondent)
Assessee by :	Shri Anil Kshtriya
Revenue by :	Shri Apoorva Bhardwaja, Sr.DR

सुनवाई की तारीख/Date of Hearing : 20/03/2019

घोषणा की तारीख /Date of Pronouncement : 22/ 03/2019

ORDER

PER RAJPAL YADAV, JUDICIAL MEMBER : Assessee is in appeal before the Tribunal against order of the Id.CIT(A), Gandhinagar dated 13.7.2015 passed for the Asstt.Year 2009-10.

2. Solitary grievance of the assessee is that the Id.CIT(A) has erred in confirming the penalty of Rs.13,29,742/- which was imposed by the AO under section 271(1)(c) of the Income Tax Act, 1961.

3. Brief facts of the case are that the assessee has filed his return of income declaring total loss of Rs.(-)8,45,004/-. An assessment was

completed under section 143(3) on 30.12.2011 determining total income at Rs.42,85,610/-. The AO has disallowed the claim of bad debt amounting to Rs.50,06,147/-. This amount has been considered by the AO for visiting the assessee with penalty.

4. The Id.counsel for the assessee at the very outset submitted that this disallowance has been deleted by the Tribunal vide order dated 20.6.2017 passed in ITA No.1057/Ahd/2014. He placed on record copy of the Tribunal's order. He took us through para-4.7 of this order, which reads as under:

“4.7 In view of the above stated peculiar facts and circumstances of the case, we hold that it is a business loss and therefore, otherwise also admissible u/s.28 of the Act which is adjustable while computing income under the head "income from business" essentially being incidental to business of the appellant. When the department authorities hold a different view and do not allow the bad debt as claimed by the appellant, in the alternative, the said amount of Rs.50,06,147/- deserve to be allowed and adjusted as business loss.”

5. On the other hand, the Id.DR was unable controvert the contentions of the Id.counsel for the assessee.

6. After hearing both sides and considering material available on record, 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 in the present case, basis for visiting the assessee with penalty has been deleted by the Tribunal vide order dated 20.6.2017 (supra), the impugned penalty does not survive. In other words, there is no room for the Revenue to impose penalty under section 271(1)(c) in this case. Therefore, we cancel the impugned penalty and set aside both orders of the Revenue authorities passed under section 271(1)(c) of the Act.

7. In the result, appeal of the assessee is allowed.

Pronounced in the Open Court on 22nd March, 2019.

Sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER
Ahmedabad; Dated, 22/03/2019

Sd/-
(RAJPAL YADAV)
JUDICIAL MEMBER