

आयकर अपीलिय अधिकरण, अहमदाबाद न्यायपीठ 'SMC' अहमदाबाद ।

**IN THE INCOME TAX APPELLATE TRIBUNAL
"SMC" BENCH, AHMEDABAD**

**BEFORE SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER
& SHRI MAHAVIR PRASAD, JUDICIAL MEMEBR**

आयकर अपील सं./I.T.A. No. 460/Ahd/2017

(निर्धारण वर्ष / Assessment Year : 2012-13)

Shri Sampatlal B. Shah 2/A, Ambalal Park, Jawahar Chowk, Sabarmati, Ahmedabad - 380005	बनाम/ Vs.	The ITO Ward- 2 (2)(5), Pratyaksh Kar Bhavan, Ambawadi, Ahmedabad
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : ACSPS6030N		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी ओर से/Appellant by :	Shri S. N. Divatia, A.R.
प्रत्यर्थी की ओर से / Respondent by :	Shri Sumeet Kumar Verma, Sr. D.R.

सुनवाई की तारीख / Date of Hearing	24/01/2019
घोषणा की तारीख /Date of Pronouncement	25/03/2019

ORDER

PER MAHAVIR PRASAD, JM:

This appeal has been preferred by the assessee against the levy of penalty of Rs.1,63,100/- under s.271(1)(c) of the Income Tax Act, 1961 ('the Act') by the learned Commissioner of Income Tax (Appeals)-10, Ahmedabad [in short 'CIT(A)'], appeal No. CIT(A)-10/ITO Ward – 2(2)(5)/327/15-16 dated 08.12.2016 arising from the penalty order dated 28.09.2015 and following grounds have been taken by the assessee:

- “1.1 The order passed u/s.250 on 8-12-2016 for A.Y.2012-13 by CIT(A)-10, Abad upholding the penalty of Rs.163100/- levied u/s 271(1)(c) by AO is wholly illegal, unlawful and against the principles of natural justice.*
- 1.2 The Ld. CIT (A) has grievously erred in law and or on facts in not considering fully and properly the submissions made and evidence produced by the appellant with regard to the impugned penalty.*
- 2.1 The Ld. CIT (A) has grievously erred in law and on facts in confirming the penalty of Rs. 163100/- levied u/s 271(1)(c) by AO.*
- 2.2 That in the facts and circumstances of the case as well as in law, the Ld.CIT(A) ought not to have upheld the penalty of Rs.163100/- levied u/s271(1)(c) byAO*
- 3.1 The Ld. CIT (A) has grievously erred in law and on facts in holding that there was concealment of income by claiming inadmissible deduction u/s 57. The Ld. CIT(A) has failed to appreciate that the AO had failed to levy definite charge of concealment or furnishing inaccurate particulars of income so that entire order levying penalty was illegal & unlawful.”*

2. Facts of the case are that the appellant had claimed interest expenses of Rs.7,39,450/- against the income from other sources. The appellant supported his claim on the ground that the loan was taken to acquire land and it was later on sold in the next year and short term capital gain of Rs.19,21,506/- was declared. The AO concluded that the deduction was not admissible under s.57 of the Act and it could not be justified in view of major income being salary. Hence, the claim was disallowed. The assessee/appellant did not prefer any appeal in order to avoid costly and long litigation. In the meanwhile, AO initiated proceedings under s.271(1)(c) of the Act in respect of said disallowance of interest expenses. The contention of the appellant was that he had not concealed any income nor furnished any inaccurate particulars, hence penalty cannot be imposed. But CIT(A) was not convinced with the plea of the appellant and confirmed the penalty order of the AO.

3. Now, by way of second appeal, the appellant is before us. The question is to be decided by us in a case where the assessee has furnished all the details and some of the claims which were not allowed or sustained by the Revenue Authorities whether on such disallowance penalty can be imposed or not. There are several judgments of the Hon'ble Supreme Court and High Courts which state where the assessee has furnished particulars which not found to be inaccurate *per se* and nothing has been concealed from the Revenue Authorities and on the basis of such disallowance of claim, penalty cannot be levied. Therefore, we are of the firm opinion that in such case where the assessee made certain claim, which was disallowed by the Revenue Authorities, on such disallowance, penalty cannot be imposed.

4. In the result, appeal filed by the assessee is allowed.

This Order pronounced in Open Court on 25/03/2019

Sd/-
(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER
Ahmedabad: Dated 25/03/2019

Sd/-
(MAHAVIR PRASAD)
JUDICIAL MEMBER

True Copy

S.K.SINHA

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. राजस्व / Revenue
2. आवेदक / Assessee
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद /
DR, ITAT, Ahmedabad
6. गार्ड फाइल / Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण, अहमदाबाद ।