

**IN THE INCOME TAX APPELLATE TRIBUNAL**

**AHMEDABAD “A” BENCH**

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

**ITA. No: 3050/AHD/2014  
(Assessment Year: 2008-09)**

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| <b>Shri Bhargav Harivadan<br/>Desai 6, Prashanti<br/>Appartment, 74/A/,Pritam<br/>Nagar, Ellisbridge,<br/>Ahmedabad-380006<br/>(Appellant)</b> | <b>V/S</b> | <b>Income Tax Officer, Ward-<br/>9 (2), Ahmedabad<br/><br/>(Respondent)</b> |
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**PAN: AAUPD3762A**

**Appellant by : Shri Biren Shah, AR  
Respondent by : Shri Mudit Nagpal, Sr. D.R.**

**(आदेश)/ORDER**

Date of hearing : 12 -12-2018

Date of Pronouncement : 05 -03-2019

**PER MAHAVIR PRASAD, JUDICIAL MEMBER**

1. This appeal filed by the Assessee is directed against the order of the Ld. CIT(A)-XV, Ahmedabad dated 10.10.2014 pertaining to A.Y. 2008-09 and following grounds have been taken:

1 *In law, and in the facts and circumstances of the appellant's case, the Learned CIT(A) has erred in confirming levy of penalty u/s 271(1)(c) of the Act for Rs 71,997.*

2.1 *In law, and in the facts and circumstances of the appellant's case, the Learned CIT(A) has erred in confirming the penalty u/s.271(1)(c) for concealment of income on an amount of Rs. 1,83,000/- representing alleged cash deposits without appreciating that they were made out of personal savings, and considering the status of the appellant's family, such savings and deposits therefrom are reasonable.*

2.2 *In law, and in the facts and circumstances of the appellant's case, the Learned CIT(A) has failed to comprehend that Explanation 1 stipulates two conditions for the levy of penalty-firstly, the person offers an explanation which he is not able to substantiate 'and' secondly, fails to prove that such a claim is bonafide. The Learned CIT(A) ought to have appreciated that in quantum appeal, her predecessor CIT(A) himself has allowed estimated relief of Rs 50,000 and such relief would not have been provided if the appellant's explanation was malafide.*

3.*In law, and in the fact and circumstances of the case, the Ld CIT(A) has grossly erred in upholding the penalty on the addition of Rs.1,50,000/- on account of household expenses, without considering the fact that such an addition was made only on estimate basis.*

2. In this case, assessment for A.Y.2008-09 was finalized u/s. 143(3) determining total income at Rs.8,34,200/- on 27/12/2010. As against return income of Rs.5,21,200/-. Addition in respect of unexplained investment in cash deposit in bank account amounting to Rs.1,33,000/- and unexplained household expenses amounting to Rs.1,80,000/- were made in the income and penalty proceedings u/s.271(l)(c) of the I. T. Act were initiated by issuing notice u/s.274 r.w.s. 271(l)(c) of the I. T. Act.
3. Aggrieved with the order, the assessee has gone in appeal. The Ld. CIT(A) vide appeal order No. CIT(A)-XV/9(2)/299/10-11 dated 02/07/2012, has given relief of Rs.50,000/- and Rs.30,000/- in respect of unexplained investment in cash deposit in bank and unexplained household expenses respectively.

Accordingly, the income was re-determined at Rs.7,54,200/-. As per order giving effect to the order of CIT(A)'s order dated 29/08/2012

4. And thereafter penalty proceeding proceedings were initiated and ld. CIT(A) uphold the levy of penalty of Rs. 71997/-.
5. Now assessee has come before us against the levy of penalty.
6. In this case, assessee deposited total amount of cash Rs. 2,35,000/- on various dates and stated that this deposit was made out of past saving or from previous withdrawals. Ld. A.O. considering the contention of assessee allowed the benefit of Rs. 102000/- which is cash withdrawal of assessee during the assessment year and confirmed the addition of Rs. 1,33,000/-. On appeal to the ld. CIT(A), he had estimated Rs. 50,000/- as assessee past saving considering his age and being regular tax payer and restricted addition of Rs. 83,000/-.
7. In support of its contention, ld. A.R. cited an order of Chandigarh ITAT (2015) 61 taxmann.com 230 (Chandigarh Trib.) wherein relevant para is produced:

*“IT : Where in quantum appeal against addition made under section 68, Tribunal had accepted assessee's explanation in respect of part of deposit and partly confirmed addition stating that explanation given by assessee was not convincing, it could not be said that assessee had concealed his income or furnished any inaccurate particulars warranting levy of penalty under section 271(1)(c)”*

8. And ld. A.R. also cited a judgment of Hon'ble Gujarat High court wherein relief has been granted to the assessee in the matter of National Textiles vs. CIT (supra) , the relevant para is reproduced:

*"Section 271(l)(c), read with section 68, of the Income-tax Act, 1961 - Penalty - For concealment of income -Assessment year 1974-75 - Whether under Explanation 1 to section 271(l)(c), as it stood at relevant time, absence of | proof acceptable to department cannot be equated with fraud or willful default - Held, yes"*

9. And apart from above said judgments, ld. A.R. also cited a judgment of Hon'ble Gujarat High Court in the matter of Jumabhai Premchand (HUF) vs. CIT wherein low household expenses were estimated by the revenue and Hon'ble High Court granted relief to the assessee and relevant para of the same is reproduced:

*"Section 271(l)(c) of the Income-tax Act, 1961 - Penalty - For concealment of income - Assessment years 1968-69 and 1969-70 - For relevant assessment years, assessee - karta of HUF had withdrawn certain amount an account of household expenses -Considering large family of assessee, his social status, fact that three daughters were studying and further that three daughters got married, ITO held that household expenses shown by assessee were extremely low and, therefore, by estimating such expenses at a higher amount,, he made an addition - ITO also issued show-cause notice to assessee on ground that assessee had deliberately concealed particulars of his income and held that there was enough material on record to draw an inference of concealment of income and, accordingly, imposed penalty on assessee - Whether, since department proceeded on basis of "deliberate concealment" of income by assessee, it could not be said, in absence of evidence and finding to that effect, that department had established case against assessee under section 271(l)(c) - Held, yes - Whether since department had not discharged onus in establishing that assessee had met his household expenses from income from undisclosed sources, penalty could not be levied - Held, yes."*

10. Since assessee has not furnished inaccurate particulars and addition has been made purely on estimation basis and on account of aforesaid judgment, we allow the appeal of the assessee.

11. In the result, penalty confirmed by the Id. CIT(A) to be deleted.

12. In the result, appeal filed by the Assessee is allowed.

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| Order pronounced in Open Court on | 05 - 03- 2019 |
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Sd/-

**(PRADIP KUMAR KEDIA)**  
**ACCOUNTANT MEMBER True Copy**  
Ahmedabad: Dated 05/03/2019

Sd/-

**(MAHAVIR PRASAD)**  
**JUDICIAL MEMBER**

Rajesh

Copy of the Order forwarded to:-

1. The Appellant.
2. The Respondent.
3. The CIT (Appeals) –
4. The CIT concerned.
5. The DR., ITAT, Ahmedabad.
6. Guard File.

By ORDER

Deputy/Asstt.Registrar  
ITAT,Ahmedabad