

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'बी', अहमदाबाद ।
IN THE INCOME TAX APPELLATE TRIBUNAL
“ B ” BENCH, AHMEDABAD

सर्वश्री प्रदीप कुमार केडिया, लेखा सदस्य एवं महावीर प्रसाद, न्यायिक सदस्य के समक्ष ।
BEFORE SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER &
SHRI MAHAVIR PRASAD, JUDICIAL MEMBER

आयकर अपील सं./I.T.A. No.1637/Ahd/2017
(निर्धारण वर्ष / Assessment Year : 2014-15)

Jayanti Super Construction(Previoulsy : Super Construction Co.) At & Post Kakoshi Tal Sidhpur, Dist. Patan 384 290	बनाम/ Vs.	The DCIT Mehsana Circle Mehsana
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAFS 9357 P		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी ओर से/ Appellant by :	Shri Hasmukh V.Doshi, AR
प्रत्यर्थी की ओर से/Respondent by :	Shri Mudit Nagpal, Sr.DR

सुनवाई की तारीख / Date of Hearing	14/05/2019
घोषणा की तारीख/Date of Pronouncement	27/ 05/2019

आदेश / O R D E R

PER PRADIP KUMAR KEDIA - AM:

The captioned appeal has been filed at the instance of the Assessee against the order of the Commissioner of Income Tax(Appeals)-Gandhinagar,Ahmedabad [CIT(A) in short] dated 02/05/2017 in the matter of assessment order under s.143(3) of the Income Tax Act, 1961

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(hereinafter referred to as "the Act") dated 18/05/2016 relevant to Assessment Year (AY) 2014-15.

2. As per its ground of appeal, the assessee has challenged the action of the CIT(A) in confirming the penalty under s.271(1)(c) of the Act on interest on income-tax refund received under s.244A of the Act and not included in the Return of Income.

3. When the matter was called for hearing, the Ld.AR for the assessee submitted that the interest income on IT refund was found credited in annual statement in Form No.26 AS generated from the site of the Income Tax Department. The assessee was having no clue about the interest component of Rs.3,16,272/- included in the IT refund till the return was filed. It was at the time of hearing when reconciliation was made between the books of accounts qua entries reflected in Form No.26 AS that the anomaly in the return was detected. The Ld.AR contended that the assessee did not contest the mistake at all and readily paid the taxes by way of self assessment tax. The Ld.AR also attempted to prop up its case of bonafide mistake on the premise that assessee has declared total income of Rs.1,94,11,240/- and paid taxes thereon as a civil contractor. The Ld.AR pointed out that while the assessee has come forward to pay taxes on such large amount, there was no reason for him to conceal the interest received from Income Tax Department itself

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except for bonafide error and lack of information. The Ld.AR accordingly urged for deletion of penalty on such inculpable error.

4. The Ld.DR, on the other hand, relied on the orders authorities below.

5. We have carefully considered the rival submissions. Penalty proceedings under s.271(1)(c) of the Act were initiated for non-disclosure of interest received on excess amount of tax paid to the Income Tax Department in the instant case. It was pointed out on behalf of the assessee that it did not not have requisite details of interest embedded in refund amount and came to know about the same only from system generated Form 26AS. It was pointed out that there was no willful submission of false return with tested on the touchstone of preponderance of probabilities. It is submitted on behalf of the assessee that it is large taxpayer alleged and concealments is disproportionately miniscule which is an indicator that it is a bonafide error. We find merit in the circumstances narrated on behalf of the assessee. A bonafide error or mistake does not necessarily invite penalty proceedings in every case. It will not be out of context to recollect the observation of Hon'ble Supreme Court in the case of Hindusthan Steel Ltd. vs. State of Orissa (1972) 83 ITR 26 (SC) wherein it was held that penalty cannot be imposed merely because it is lawful to do so. In the absence of any

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intentional omission of the taxable income from the return of income as reasonably demonstrated on behalf of the assessee, we are disposed to hold that statutory discretion vested with the AO for imposition of penalty ought to have been exercised for the assessee. We see force in the plea of the assessee that a person of his stature diligently paying large taxes would not imagine to keep away something from the very Department which issued the refund and which would be making the assessee's assessment. Such brazen behaviour on the part of the assessee or of any assessee for that matter, cannot at all be ordinarily postulated. It is only on verification of records generated from Income Tax site that the information towards interest component has come to the fore. Failure of the assessee to look into the aforesaid form at the time of filing return would not indicate any contumacious or obstinate conduct on the part of the assessee, but possibly reflect laxity or some carelessness. Under these circumstances, we are of the view that benefit of doubt should go to the assessee, more so where we have a case in hand for determination of penalty which is penal in nature. The order of the CIT(A) is accordingly set aside and the Assessing Officer is directed to cancel this penalty on this score.

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

This Order pronounced in Open Court on	27/ 05/2019
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Sd/-
(महावीर प्रसाद)
न्यायिक सदस्य
(MAHAVIR PRASAD)
JUDICIAL MEMBER

Sd/-
(प्रदीप कुमार केडिया)
लेखा सदस्य
(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER

Ahmedabad; Dated 27/ 05 /2019

टी.सी.नायर, व.नि.स./T.C. NAIR, Sr. PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)-Gandhinagar, Ahmedabad
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकर अपीलीय अधिकरण, अहमदाबाद/ ITAT, Ahmedabad