

**IN THE INCOME TAX APPELLATE TRIBUNAL**

**AHMEDABAD “B” BENCH**

**(BEFORE SHRI MAHAVIR PRASAD, JUDICIAL MEMBER  
& SHRI AMARJIT SINGH, ACCOUNTANT MEMBER)**

**ITA. No: 2724/AHD/2017  
(Assessment Year: 2004-05)**

<b>Gujarat Setco Cluch Ltd. (Now known as : Setco Automotive Ltd.) Baroda Godhra Highway, Kalol, Panchmahal-389330</b>	<b>V/S</b>	<b>The Deputy Commissioner of Income Tax, Panchmahal Circle, Station Road, Godhra-389001</b>
<b>(Appellant)</b>		<b>(Respondent)</b>

**PAN: AAACG 7777K**

**Appellant by : Shri Bhavin Marfatia & Nirmitt Mehta  
Respondent by : Shri M. Anand Kumar, Sr. D.R.**

**(आदेश)/ORDER**

Date of hearing : 07 -05-2019  
Date of Pronouncement : 08 -05-2019

**PER AMARJIT SINGH, A.M.**

1. This appeal filed by the Assessee is directed against the order of the Ld. CIT(A)-4, Vadodara dated 11.09.2017 pertaining to A.Y. 2004-05.

2. The solitary ground of appeal of the assessee is against the decision of ld. CIT(A)-4, Vadodara in confirming the action of the Assessing Officer in levying penalty of Rs. 3,01,990/- u/s. 271(1)(c) of the Act.
3. The fact in brief is that ld. A.O. has finalized assessment u/s. 143 r.w.s. 147 of the Act on 20.12.2006 by making an addition of Rs. 33,47,983/- on account of excess stock uncovered during a search operation carried out by the Central Excise Department on 09.10.2003.
4. Thereafter, ld. CIT(A) has sustained the aforesaid addition made by the Assessing Officer treated the aforesaid excess stock as unexplained investment u/s 69B of the Act. The ld. A.O. has also initiated penalty proceeding u/s 271(1)(c) of the Act for concealment of particulars of income by issuing of notice u/s 274 of the Act on 20.12.2006. In response to the notice issued the assessee has explained that the impugned excess stock was laying in the work in progress and the said stock was released by the Excise Authorities and entered in the excise record and later on cleared for dispatch after payment of excise duties. Therefore, the assessee has submitted that there was no excess stock found by the department and such stock was subsequently released by the Excise Department. Therefore, the penalty proceeding may be dropped. The ld. A.O. has not agreed with the submission of the assessee stating that there was no concrete explanation given by the assessee and assessee has also failed to submit order from the Central Excise Appellate Tribunal to substantiate its stand that stock was already explained. Consequently, the ld. A.O. has levied penalty of Rs. 12,01,090/- on the ground that assessee has concealed particulars of his income to the extent of Rs. 33,47,983/-.

5. Aggrieved assessee has failed before the ld. CIT(A). The ld. CIT(A) has dismissed the appeal of the assessee. During the course of appellate proceeding before us, the ld. counsel has submitted paper book containing detail of submission made before the Assessing Officer and ld. CIT(A) during the course of assessment and appellate proceeding. He has also submitted a copy of order of Custom Excise and Service Tax Appellate Tribunal placed at page no. 146 to 171 of the paper book and contended that as per Para 9 of this order, it is held that the assessee has explained the reason for non accounting of the goods in the RGI and it is the claim of the assessee that the goods were in the process of final packing and the same is not disputed by the Revenue. It is further held that in the absence of any contrary evidence these goods were not finished goods and confiscation of the goods was unwarranted.
6. In the light of the above facts and order of the Custom Excise and Service Tax Appellate Tribunal as cited above, we restore this issue to the file of the Assessing Officer to decide the matter afresh after considering the aforesaid decision of the Excise Tribunal as the same was not considered during the penalty proceeding and appellate proceeding before the ld. CIT(A). Accordingly, the appeal of the assessee is allowed for statistical purposes.
7. In the result, appeal filed by the Assessee is allowed for statistical purposes

Order pronounced in Open Court on	08- 05- 2019
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Sd/-

**(MAHAVIR PRASAD)**  
**JUDICIALMEMBER** True Copy  
Ahmedabad: Dated 08/05/2019

Sd/-

**(AMARJIT SINGH)**  
**ACCOUNTANT MEMBER**