

**IN THE INCOME TAX APPELLATE TRIBUNAL
“RAJKOT” BENCH, RAJKOT**

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

आयकर अपील सं./I.T.A. No. 331/Rjt/2014

(निर्धारण वर्ष / Assessment Year: 2006-07)

Falcon Submersible Pvt. Ltd. 7-Parsana Society, Sorathiyawadi, Rajkot	बनाम/ Vs.	Assistant Commissioner of Income Tax Circle – 5, Rajkot
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAACF3196P		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी ओर से /Appellant by :	Mr. Mehul Ranpura, A.R.
प्रत्यर्थी की ओर से / Respondent by :	Mr. Praveen Verma, Sr. D.R.

सुनवाई की तारीख / Date of Hearing	01/07/2019
घोषणा की तारीख /Date of Pronouncement	08/07/2019

आदेश/ORDER

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)-IV, Rajkot ('CIT(A)' in short), dated 25.03.2014 arising in the penalty order dated 02.03.2012 passed by the Assessing Officer (AO) under s. 271(1)(c) of the Income Tax Act, 1961 (the Act) concerning AY 2006-07.

2. As per grounds of appeal, the assessee has challenged the imposition of penalty under s.271(1)(c) of the Act on the quantum additions towards profit element on unaccounted sale transactions.

3. In the course of the hearing, the learned AR for the assessee pointed out that penalty amount of Rs.3,83,920/- only is in dispute as against the penalty of Rs.12,06,600/- mentioned in the grounds of appeal.

4. The learned AR for the assessee referred to the decision of the co-ordinate bench of ITAT in ITA No. 169/Rjt/2011 order dated 28.11.2018 in respect of quantum additions. The learned AR for the assessee pointed out that the co-ordinate bench has approved the estimations of net profit @ 7% as adopted by the CIT(A) as against 4.89% as declared by the assessee on other recorded sales. The learned AR also submitted that the net profit is merely an estimation and therefore no penalty on such estimation is proper.

5. On consideration of the submissions of the assessee and the orders of the lower authorities, we find no substance in the plea of the assessee for deletion of penalty. The fact towards existence of unrecorded sales cannot be disputed in view of the findings of the co-ordinate bench in quantum proceedings. Now what is left is estimation of net profit thereon. The Revenue has estimated 7% profit and imposed penalty for concealment of such estimated income whereas the assessee canvasses for adoption of 4.89% as fair estimate. Therefore, the entire issue being the realm of estimation for quantification of concealment, we give benefit of

doubt to the assessee and restrict the imposition of penalty to be quantified at the net profit by applying 4.89% of the unrecorded sales despite approval of 7% net profit for the purposes of quantum proceedings.

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

This Order pronounced in Open Court on 08/07/2019

Sd/-
(MAHAVIR PRASAD)
JUDICIAL MEMBER
Ahmedabad: Dated 08/07/2019

Sd/-
(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER

True Copy

S. K. SINHA

आदेश की प्रतिलिपि अग्रहित / 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 ।