

IN THE INCOME TAX APPELLATE TRIBUNAL
SURAT BENCH, SURAT
BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER
AND
SHRI O.P. MEENA, ACCOUNTANT MEMBER

ITA No.621/AHD/2016
Assessment Year: 2007-08

The Income Tax Officer, Ward-7, Vapi.	Vs.	M/s.Remi Steel House, Plot No.95 & 96, GIDC, Nr.Emkay Dyecasting, Silvassa Road, Vapi – 396 195. [PAN: AAEFR 2266 B]
(Appellant)		(Respondent)

ITA No.652/AHD/2016
Assessment Year: 2007-08

The Deputy Commissioner of Income Tax, Vapi Circle, Vapi.	Vs.	M/s.Bharat Steel Suppliers, Plot No.95 & 96, GIDC, Nr.Emkay Dyecasting, Silvassa Road, Vapi – 396 195. [PAN: AACFB 5446 R]
(Appellant)		(Respondent)

Assessee by	Shri hardik Vora – Advocate
Department by	Shri R.P.Rastogi – Sr.DR
Date of Hearing	16.07.2019
Date of Pronouncement	17.07.2019

ORDER

PER H.S. SIDHU, JM:

These two appeals filed by the Revenue against the separate impugned orders passed by the Id.Commissioner of Income Tax(Appeals)-Valsad, Valsad dated 04.01.2016 pertaining to assessment year 2007-08.

2. Grounds raised by the Revenue in ITA No.621/Ahd/2016 read as under:

- “1. On the facts and circumstances of the case as well as law, the CIT(A), has erred in deleting the penalty levied u/s.271(1)(c) of the I.T. Act of Rs.43,20,735/- ignoring the fact that disclosure was made u/s.132(4) of the I.T.Act and the assessee is not eligible for the benefit of immunity and exemption under clause 2 of Explanation 5 to section 271(1)(c) of the I.T.Act.
2. On the facts and in the circumstances of the case and in law, the CIT(A) has erred in admitting new ground/additional evidences under Rule 46A without calling remand report from the assessing officer.
3. It is prayed that the order of the CIT(A) may be set-aside and that the order of the A.O. may be restored.”

3. Grounds raised by the Revenue in ITA No.652/Ahd/2016 read as under:

- “1. On the facts and in the circumstance of the case and in law, the CIT(A) has erred in deleting the penalty levied u/s.271(1)(c) of the I.T.Act of Rs.31,41,900/- ignoring the fact that disclosure was made u/s 132(4) of the I.T.Act and the assessee is not eligible for the benefit of immunity and exemption under clause 2 of Explanation 5 to section 271(1)(c) of the I.T.Act.
2. On the facts and in the circumstances of the case and law, the CIT(A) has erred in admitting new ground/additional evidences under Rule 46A without calling remand report from the assessing officer.
3. It is prayed that the order of the CIT(A) may be set-aside and that the order of the A.O. may be restored.”

4. The issue involved in both the appeals are interlinked, therefore we have heard both the appeals together and disclosing the same by passing the one common order for the sake of convenience.

5. The assessee is a concern of the Remi Steel Group of Vapi which consists of M/s.Remi Steel House, M/s.Bharat Steel Suppliers and M/s.Rolax

Steel Centre all are engaged in the business of trading ferrous and non-ferrous metals alloys etc., The search Operation u/s.132 of the Income Tax was conducted in the above group of cases on 27.12.2006. In the case of M/s.Remi Steel action u/s.133A was conducted on 27.12.2006. Proceeding u/s.132 was conducted at the residential premises of the partners. During the search and seizure operation and survey actions, several incriminating documents/materials were found and seized, the implications of which formed basis for assessment order u/s.143(3) of the Income Tax Act. There was excess physical stock of Rs.2,11,70,636/- found in the whole group during survey proceedings u/s.133A of the Act. Similarly, cash of Rs.40,00,000/- was seized from the residence premises of Shri Kamlesh Jain, partner assessee firm. This cash was admitted to the unaccounted income surrendered and undisclosed/unaccounted and explained income of the group forming part of the disclosure of Rs.2.60 crores.

6. Further, Shri Kamlesh Jain had given bifurcation of the unexplained and unaccounted stock and cash on 14.02.2007. The Assessing Officer found that assessee firm has been in possession of unexplained cash of Rs.5,00,000/- and unaccounted stock of Rs.1,23,36,409/-. The assessee has filed its Return of Income of Rs.1,01,17,550/- on 31.10.2007. The Assessing Officer completed assessment u/s.143(3) of the Income Tax Act on 28.11.2008 for the assessed income of Rs.1,31,26,410/-. Penalty

proceedings u/s.271(1)(c) of the Act initiated and finalized on 15.05.2009 and penalty of Rs.43,20,735/- was levied.

7. Aggrieved by this penalty order, the assessee filed appeal before the Id.First Appellate Authority who vide order dated 03.03.2010 has confirmed the same and dismissed appeal of the assessee.

8. The assessee preferred an appeal before the ITAT against the order of the Id.CIT(A). The Hon'ble ITAT "C" Bench, Ahmedabad deleted the penalty in dispute.

9. Aggrieved by the order of ITAT the Revenue preferred an appeal before the Hon'ble Gujarat High Court and the Hon'ble High Court vide order dated 21.10.2013 quashed the order of the ITAT and has set-aside the matter and remanded back to the Assessing Officer to consider the penalty proceedings u/s.271(1)(c) of the Income Tax Act afresh in accordance with law and on merits.

10. In compliance of the same, the Assessing Officer after giving the opportunity to the assessee against levied the penalty of Rs.43,20,735/- on 24.07.2014.

11. Aggrieved with the penalty order, the assessee filed appeal before the Id.CIT(A) who allowed the appeal of the assessee and deleted the penalty in dispute by observing that the disclosure was made under the survey proceedings and this fact is also emanating from the assessment order as well as from the penalty order. The appellant cannot be visited with the penalty as per specific provisions contained under Explanation 5 of section 271(1)(c) of the Act.

12. Aggrieved by the order of Id.CIT(A), the Revenue preferred the present appeal.

13. At the time of hearing, the Id.CIT-DR relied on the penalty orders passed by the Assessing Officer and contention raised by the Revenue in the grounds of appeals.

14. On the contrary, the Id.Counsel for the assessee relied on the order of Id.CIT(A) and stated that this disclosure has been made during survey proceedings u/s.133A of the Income Tax Act and as regards to the penalty the Explanation 5 of section 271(1)(c) is not applicable in the case of assessee, therefore, he relied on the order of the Id.First Appellate Authority and requested that appeal filed by the Revenue may be dismissed.

15. We have heard the both parties and perused the orders passed by the Revenue Authorities and we are of the considered view that Id.First Appellate Authority has passed well-reasoned order and rightly not apply the provision of Explanation 5A of section 271(1)(c) of the Income Tax Act in the both cases of Assessee and rightly deleted the penalties in dispute. For the sake of convenience the relevant portion of Id.CIT(A) order is reproduced as under:

"I have carefully considered the facts of the case as contained in the penalty order passed by the assessing officer as well as the written submission made by AR of the appellant during the appellate proceedings.

While passing the penalty order in compliance of directions of Hon'ble High Court of Gujarat, the assessing officer did not comply with all the limbs of the directions of Hon'ble High Court of Gujarat. While levying the penalty the assessing officer merely relied upon the order of CIT(A) who confirmed the penalty levied by the assessing officer vide order dt:03.03.2010. No finding as to whether the disclosure made by the appellant u/s 133A of the Act or u/s 132 of the Act was made by the assessing officer. No rebuttal of the submissions made by the appellant before the assessing officer during the penalty proceedings was also made. No reasoned penalty order based on findings which were required to be made, was passed by assessing officer. The assessing officer simply relied upon the order of CIT(A) who upheld the penalty considering the disclosure made under search because later on this was the line of the argument of the Department before hon High Court of Gujarat against the decision of TIAT Ahmadabad setting aside the order of CIT(A) after considering the accepting the disclosure as made under the survey proceedings by the appellant. As the assessing officer has not given any finding as to the disclosure made under survey proceedings or under search proceedings so I am left with no alternative except to rely on the submissions as well as the evidences adduced by the AR of the appellant during the appellate proceedings. After considering the submission of the appellant I am of the considered view that the disclosure was made under the survey proceedings, is not disputed by the assessing officer and also keeping in view the various submissions of the AR of the appellant and also the evidences such as statements, documents prepared at the time of survey and submitted during the appellate proceedings there remains no doubt that the

disclosure of undisclosed income was made during the survey proceedings u/s 133A of the Act. As a result the appellant cannot be visited with the penalty as per specific provisions contained under Expl. 5A of section 271(1)(c) of the Income Tax act. In view of these facts and circumstances the penalty levied by the assessing officer at Rs.43,20,740/- u/s.271(1)(c) of the Act is deleted and the ground of appeal of the appellant is allowed."

15. After going through the aforesaid findings of the Id.First Appellate Authority on the issue involved in the present appeal, we are of the considered view that no interference is called for in the well-reasoned orders passed by the Id.First Appellate Authority. We uphold the impugned orders by dismissing the appeals of the Revenue for both the assessment years.

31. In the result, both appeals of the Revenue are dismissed.

Order pronounced on 17-07-2019.

Sd/-
(O.P. MEENA)
ACCOUNTANT MEMBER

Sd/-
(H.S. SIDHU)
JUDICIAL MEMBER

Dated: 17/07/2019

"GANGADHARA RAO.S"

Copy forwarded to:

1. Appellant
2. Respondent
3. Pr.CIT
4. CIT(A)
5. DR

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Asst. Registrar,
ITAT, Surat