

IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT

BEFORE: SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER  
AND SHRI VIKRAM SINGH YADAV, ACCOUNTANT MEMBER

ITA No. 660/SRT/2018  
Assessment Year :2012-13

Girish Kantibhai Zaveri 1, Ashirvad Society, Opp. Circuit House, Surat-396445	Vs.	Income Tax Officer, International Taxation, Surat
PAN/GIR No.: AALPZ4926F		
Appellant		Respondent

Assessee by : Shri Rasesh Shah (CA)  
Revenue by : Shri B.P.K. Panda (Sr. DR)

Date of Hearing : 10/05/2019  
Date of Pronouncement: 26/06/2019

ORDER

PER: VIKRAM SINGH YADAV, A.M.

This is an appeal filed by the assessee against the order of Id. CIT(A)-13, Ahmedabad dated 20.06.2018 for AY 2012-13 where the sole grievance of the assessee is against the action of the Id CIT(A) in confirming the levy of penalty of Rs. 3,87,942/- u/s 271(1)(c) of the Act.

2. At the outset, Id. AR submitted that while initiating the penalty, the show cause notice issued by the AO doesn't specify the specific limb whether the penalty is proposed to be levied for concealment of income or for furnishing inaccurate particulars and our reference was drawn to the show cause dated 02.12.2016. It was further submitted that even while passing the penalty order, the Assessing Officer has not given a specific finding in terms of the basis of levy of penalty u/s 271(1)(c) of the Act. In this regard, our reference was drawn to Para No. 2 and 3 of the penalty order which reads as under:-

"2. *In view of the above, a notice dated 2.12.2016 & 19.04.2017 u/s 271(1)(c) r.w.s 274 of the I.T. Act, was issued and served upon the assessee asking him to explain as to why an order imposing a penalty on you should not be made under section 271(1)(c) of the I.T. Act for concealing his income. In response to this, the assessee through his authorized representative has given the same reply as given at the time of assessment proceedings and has not furnished any additional evidences to prove the genuineness and credit worthiness of cash deposited in the bank. The assessee failed to prove the genuineness of the source of the deposition in question.*

3. *In view of the above discussions, I am satisfied that this is a fit case for levy of penalty u/s 271(1)(c) of the Act. Accordingly, I impose a penalty of Rs. 3,87,942/-@100% u/s 271(1)(c) of the I.T. Act, 1961."*

It was accordingly submitted that in absence of specific finding in the penalty order, the penalty so levied cannot be sustained in the eyes of law.

4. The Id. Sr. DR is heard who has relied on the findings of the lower authorities.

5. We have heard the rival contentions and perused the material available on record. In the instant case, the addition has been made by the AO towards unexplained cash deposits found in the bank account of the assessee and penalty proceedings were separately initiated. As apparent from the penalty order, as we have noted above, there is no specific finding recorded by the Assessing Officer in terms of whether it is a case for concealment of income or for furnishing inaccurate particulars. Therefore, in absence of specific finding recorded by the Assessing officer, the impugned penalty proceedings cannot be

sustained in the eyes of law. Our view is fortified by the decision of the **Hon'ble Gujarat High Court** in case of **CIT vs Manu Engineering Works** reported in 122 ITR 306 wherein it was held as under:

*"However, the final order passed by the Tribunal in the appeal before it can be sustained on a different ground which also affects the jurisdiction of the IAC. We find from the order of the IAC, in the penalty proceedings, that is, the final conclusion as expressed in para. 4 of the order: "I am of the opinion that it will have to be said that the assessee had concealed its income and/or that it had furnished inaccurate particulars of such income". Now, the language of "and/or" may be proper in issuing a notice as to penalty order or framing of charge in a criminal case or a quasi-criminal case, but it was incumbent upon the IAC to come to a positive finding as to whether there was concealment of income by the assessee or whether any inaccurate particulars of such income had been furnished by the assessee. No such clear-cut finding was reached by the IAC and, on that ground alone, the order of penalty passed by the IAC was liable to be struck down."*

The decision of the Hon'ble Gujarat High Court in case of Snita Transport (supra) however doesn't support the case of the Revenue and stand distinguishable as in that case, the Assessing officer has recorded a clear finding while passing the penalty order and the relevant discussion by the Hon'ble High Court reads as under:

*"9. Regarding the contention that the Assessing Officer was ambivalent regarding under which head the penalty was being imposed namely for concealing the particulars of income or furnishing inaccurate particulars, we may record that though in the assessment order the Assessing Officer did order initiation of penalty on both counts, in the ultimate order of penalty that he passed, he clearly held that levy of penalty is sustained in*

*view of the fact that the assessee had concealed the particulars of income. Thus insofar as final order of penalty was concerned, the Assessing Officer was clear and penalty was imposed for concealing particulars of income."*

Therefore, on this ground alone, the penalty so levied is directed to be deleted.

In the result, appeal of the assessee is allowed.

Order pronounced in the Open Court on 26/06/2019.

**Sd/-**  
(Sudhanshu Srivastava)  
Judicial Member

**Sd/-**  
(Vikram Singh Yadav)  
Accountant Member

Jaipur

Dated:- 26/06/2019

Copy of the order forwarded to:

1. The Appellant- Girish Kantibhai Zaveri, Surat
2. The Respondent- ITO, International Taxation, Surat
3. CIT
4. CIT(A)
5. DR, ITAT,
6. Guard File {ITA No. 660/SRT/2018}

By order,

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Asst. Registrar

