

IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT

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

ITA No. 30/SRT/2019
Assessment Year :2014-15

Shree Dhanji J Rakholiya, 19-20, Vishnunagar Society-2, AK Road, Surat- 395006	Vs.	ITO, Ward 3(3)(2), Surat
PAN/GIR No.: AAUPR8053Q		
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)-3, Surat dated 29.11.2018 for AY 2014-15. The sole grievance of the assessee is that the Id CIT(A) has erred in confirming the action of the Assessing Officer in levying penalty of Rs. 2,93,550/- u/s 271(1)(c) of the Act.

2. At the outset, Id. AR submitted that the Assessing Officer has erred in initiating penalty in the assessment order on the ground of furnishing inaccurate particulars of income and levying the penalty ultimately on both the grounds i.e. for concealment of income or for furnishing inaccurate particulars. Therefore, it shows lack of application of mind on the part of the Assessing officer and in absence of a clear charge, the penalty so levied should be directed to be deleted. He relied on the decision of the Co-ordinate Bench in case of DCIT vs. Nepa Ltd. [2015] 58 taxmann.com 137 (Trib.) (Indore) and

Hon'ble Supreme Court decision in case of CIT vs. Reliance Petroproducts (P.) Ltd. [2010] 322 ITR 158/189 Taxmann 322 (SC).

3. Per contra, the Id. Sr DR relied on the decision in case of CIT vs. Mak Data Ltd. [2013] 31 taxmann.com 35 (Delhi), CIT vs. Usha International Ltd. [2012] 27 taxmann.com 227 (Delhi), Snita Transport (P.) Ltd vs. ACIT [2014] 42 taxmann.com 54 (Gujarat) & Bharatkumar G. Rajani vs. DCIT [2013] 40 taxmann.com 344 (Gujarat) besides others.

4. In order to appreciate, the rival contentions, we refer to the assessment order passed u/s 143(3) dated 23.12.2016. During the course of assessment proceedings, the Assessing Officer observed that the assessee has purchased one Audi Car which has been funded partly by Bank loan taken from Varachha Co. Op. Bank Ltd. and partly by the firm in which the assessee is a partner. Regarding the source of the installment paid to the Bank amounting to Rs. 16,50,000/, the Assessing officer has held that the assessee has failed to prove the source of the installment paid to the extent of Rs. 9,50,000/-. During the course of assessment proceedings, the assessee voluntarily offered the same amount of Rs. 9,50,000/- and the same was brought to tax as undisclosed income u/s 68 of the Act. The penalty proceedings were separately initiated for the furnishing inaccurate particular of the income. The notice issued u/s 274 read with section 271(1)(c) dated 23.12.2016 however, talks about both the charges i.e, concealment of income or furnishing inaccurate particular of the income. In Para No. 8 of the penalty order, the AO has stated that the assessee has deliberately furnished incorrect particulars of his income by not concealing income & filing inaccurate return of income for the year under consideration. Had the case of the assessee not been selected under CASS for assessment for the year under consideration, the assessee might not have disclosed amount of the deposits in the bank accounts of the assessee for the

year under consideration. Thereafter, in Para No. 9, the AO has stated that the very spirit of the penal provision u/s 271(1)(c) of the Act is attracted by the action of the assessee by not furnishing accurate particulars of his income thereby not filing his return of income for the year under consideration. Thereafter in Para No. 10, the AO has stated that the income by way of non-disclosure of Rs. 9,50,000/- being deliberately suppressed by not filing the return of income correctly is deemed to represent concealed income in view of the Explanation 1 to section 271(1)(c) of the Act. Lastly, in Para No. 12, the AO has stated that he is satisfied that the assessee has not furnished accurate particulars of his income thereby not filing his return of income for the year under consideration resulting into concealment of his income as discussed above and evaded the tax payable thereon.

5. We therefore find that there is no clarity in thought process of the Assessing Officer in terms of specific charge of penalty. At times, he is talking about furnishing inaccurate particulars of income and at times, he is talking about concealing the particulars of income and has invoked Explanation 1 to section 271(1)(c) of the Act. Therefore, in absence of specific charge and finding of the Assessing Officer while passing the penalty order, 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- Shree Dhanji J Rakholiya, Surat
2. The Respondent- ITO, Ward 3(3)(2), Surat
3. CIT
4. CIT(A)
5. DR, ITAT,
6. Guard File {ITA No. 30/SRT/2019}

By order,

/ / TRUE COPY / /

Asst. Registrar

