

IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT

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

ITA No. 186 & 187/SRT/2019  
Assessment Year :2012-13 & 2013-14

Trupti Piyush Shah, 101-102 Regency Tower Opp Iscon Mall Dumas Road Surat 400006	Vs.	Deputy Commissioner of Income Tax Circle-3(3) Surat
PAN/GIR No.: ACIPS4469B		
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.

These are two appeals filed by the assessee against the respective orders of Id. CIT(A), Surat dated 24.09.2015 for AY 2012-13 & 2013-14. The sole grievance of the assessee is that the Id. CIT(A) has erred in confirming the action of Assessing Officer in levying penalty u/s 271(1)(c) of the Act of Rs. 39,010/- for A.Y 2012-13 and Rs. 5,17,240/- for A.Y 2013-14 respectively.

2. At the outset, learned counsel for the assessee submitted that the penalty levied u/s 271(1)(c) is bad in law as the Assessing Officer has not specified in the notice u/s 271(1)(c) read with section 274 whether the penalty was leviable for concealment of income or for furnishing inaccurate particulars of income. It was further submitted that even while passing the penalty order, the AO has erred in levying penalty on both the limbs i.e. for concealment of particulars of income and for furnishing inaccurate particulars of income.

Therefore, it shows lack of application of mind on the part of the Assessing officer and in absence of a specific charge, the penalty so levied should be directed to be deleted. In support, he relied on the decision of Hon'ble Supreme Court in case of Dilip N Shroff vs JCIT, decision of the Hon'ble Gujarat High Court in case of Nayan C Shah vs ITO 69 Taxmann.com 256 and decisions of various Coordinate Benches.

3. The Id Sr DR is heard who has vehemently argued the matter and submitted that even where in the show-cause notice, the charge is not specific, the same cannot be held fatal to the penalty proceedings. It was further submitted that while passing the penalty order, the AO has given a specific finding that it is a case of furnishing of inaccurate particulars of income. In support, he relied on the orders of the Hon'ble Gujarat High Court in case of CIT vs. Manu Engineering Works [1980] 122 ITR 306 (Guj), Snita Transport (P.) Ltd [2014] 42 taxmann.com 54 (Guj), AM Shah & Co vs CIT [2000] 108 Taxman 137 (Guj) besides others. He accordingly supported the order of the lower authorities.

4. In order to appreciate the rival contentions, we refer to the assessment order which has been passed for AY 2012-13 u/s 143(3) read with section 153A of the Act. A Search action u/s 132 was carried out on 05.03.2013 and in response to notice issued u/s 153A, the assessee filed her return of income for the A.Y 2012-13 on 27.12.2013 declaring total income at Rs. 6,98,740/-. Subsequently, the assessment was completed u/s 143(3) read with section 153A on 16.03.2015 at assessed income of Rs. 8,58,740/- wherein the AO has made an addition of Rs. 1,60,000/- on account of unexplained expenditure u/s 69C of the Act. The said addition is basis the receipt of AIR information that the assessee has made payment through SBI Credit Card in tune of Rs. 1,60,000/- and subsequent analysis of books of accounts of the assessee wherein

assessee has not shown the said expenditure in her books of account and the fact that the payment has been made in cash. Separately, the penalty proceedings were initiated for furnishing inaccurate particulars of income u/s 271(1)(c) of the Act. However, in the show cause notice u/s 274 read with section 271(1)(c) on 16.03.2015, the assessee was asked to file its submission as to why the penalty should not be imposed u/s 271(1)(c) for concealment of income or furnishing inaccurate particulars of such income.

5. We now refer to the penalty order dated 24.09.2015 for AY 2012-13 wherein the AO has given his finding in Para No. 6 which reads as under:-

*"6. From the above facts, it is evident that there was advertent failure on the part of the assessee to disclose fully and truly all material facts on records, thereby leading to furnish inaccurate particulars of income. On satisfaction of above facts, the assessee is deemed to have furnished the inaccurate particulars of income within the meaning of section 271(1)(c) of the Act. The assessee has failed to give any justification or acceptable explanation. The assessee has failed to advance any evidence in support of his claims and contentions. Further, the assessee has not preferred an appeal before the CIT(A) against the assessment order u/s 143(3) r.w.s. 153A dated 16.03.2015, which proves that the assessee has no objection to the addition of Rs. 1,60,000/- as unexplained expenditure u/s 69C of the I.T.Act, 1961. Hence, logically and inescapably, this case falls within the mischief of section 271(1)(c). The assessee's case covered by explanation 1 to section 271(1)(c) of the Act. In view of the above discussion, I am satisfied that the assessee has committed a default under section 271(1)(c) of the Act 1961. "*

6. On perusal of the aforesaid findings of the Assessing Officer, it would indicate that initially he wishes to impose the penalty for furnishing inaccurate

particulars of income. Thereafter, towards the end, he has invoked Explanation 1 to section 271(1)(c) which provides that if any addition is being made to the total income of the assessee for which the assessee failed to give any explanation or his explanation was found to be false, then qua that addition, it will be deemed that the assessee has concealed his income. Both the situations are contradictory to each other in the above order. Similar findings have been recorded in the penalty order for AY 2013-14. Therefore, in absence of a specific finding of the Assessing officer while passing the penalty order that the penalty is being imposed for furnishing inaccurate particulars of income or concealment of income, both the penalty orders are not sustainable 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, both the appeals of the assessee are 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- Trupti Piyush Shah, Surat
2. The Respondent- DCIT, Circle-3(3), Surat
3. CIT
4. CIT(A)

5. DR, ITAT,
6. Guard File {ITA No. 186 & 187/SRT/2019}

By order,

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Asst. Registrar

