

**आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'SMC' अहमदाबाद ।**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**“SMC” BENCH, AHMEDABAD**

**BEFORE SHRI RAJPAL YADAV, JUDICIAL MEMBER &  
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER**

आयकर अपील सं./I.T.A. Nos. 524 & 525/Ahd/2018

(निर्धारण वर्ष / Assessment Years : 2012-13 & 2013-14)

<b>Shri Jatin M. Shah</b> Shree Krishna Cargo, M-7, Shree Ghantakaran Mahavir Market, New Cloth Market, Ahmedabad - 380002	<b>बनाम/ Vs.</b>	<b>The Income-tax Officer</b> Ward – 5(3)(4), Narayan Chambers, Ashram Road, Ahmedabad - 380009
<b>स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : APZPS2196H</b>		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी ओर से /Appellant by :	Shri P. F. Jain, A.R.
प्रत्यर्थी की ओर से / Respondent by :	Shri Aditya Shukla, Sr.D.R.

सुनवाई की तारीख / Date of Hearing	05/08/2019
घोषणा की तारीख /Date of Pronouncement	11/09/2019

**आदेश/ORDER**

**PER PRADIP KUMAR KEDIA - AM:**

The captioned appeals have been filed at the instance of the assessee against the orders of the Commissioner of Income Tax (Appeals)-5, Ahmedabad ('CIT(A)' in short), dated 02.02.2018 arising in the penalty order dated 08.08.2016 passed by the Assessing Officer (AO) under s. 271(1)(c) of the Income Tax Act, 1961 (the Act) concerning AYs. 2012-13 & 2013-14.

2. The grievances raised being common, both the cases were heard together and disposed of by the common order.

3. We shall first take up assessee's appeal in ITA No. 524/Ahd/2018 concerning AY 2012-13.

**ITA No. 524/Ahd/2018-AY-2012-13 (Assessee's appeal)**

4. As per its grounds of appeal, the assessee has challenged the order of the CIT(A) in sustaining the penalty under s. 271(1)(c) of the Act to the extent of Rs.1,69,855/- for concealment of income.

5. Briefly stated, the assessment of the assessee was carried out under s.143(3) of the Act wherein addition of Rs.13,10,400/- was made in the hands of the assessee on account of unexplained cash deposits in bank account. Consequently, the penalty proceedings under s. 271(1)(c) of the Act was initiated against the assessee towards such unexplained deposits. The quantum additions were carried out by the assessee to the Tribunal. The co-ordinate bench of Tribunal in ITA No. 712/Ahd/2015 vide its order dated 06.09.2017 has granted part relief and sustained the cash deposits to the extent of 50% as unexplained income of the assessee. The relevant operative para of the order of the ITAT in quantum proceedings as reproduced hereunder:

“9. *There is no dispute that Rs. 39,00,300/- was found to be deposited in the Savings Bank account with IndusInd Bank in A.Y. 2011-12 and Rs. 13,10,400/-was found to be deposited in A.Y, 2012-13. It is equally true that the explanation of the assessee is without any substance. However, at the same time, on perusing the ledger account of IndusInd Bank, we find that whenever the cash was deposited, it was immediately transferred to M/s. Shri Krishna Cargo. Therefore, the contentions that die same forms part of the business receipts cannot be brushed aside lightly.*

10. *The assessee has not furnished any detail in support of its claim of business receipts. In our considered opinion and considering the manner in which that cash was deposited and transmitted to the firms account, 50% of the cash deposited should be treated as the*

*income of the assessee, We modify the findings of the ld. CIT(A) and direct the A.O. to treat 50% of the cash deposited as undisclosed income of the assessee.”*

As a consequence of the ITAT's order, the CIT(A) confirmed the action of the AO towards imposition of penalty to the extent of addition sustained. The penalty imposed of Rs.3,39,710/- was accordingly scaled down by the CIT(A) to Rs.1,69,855/-.

6. Aggrieved by the partial confirmation of penalty, the assessee is in appeal before the Tribunal.

7. The learned AR for the assessee relied upon the order of the ITAT and submitted that in the light of the order of the ITAT one cannot say with clarity that the cash deposits in the bank account are unexplained. The addition has been made out on estimated basis which does not warrant onerous imposition of penalty. The learned AR also relied upon the order of the ITAT in the case of *Shri Anil Yashpal Khosla vs. ITO ITA Nos. 1078 & 1079/Ahd/2015* order dated 19.03.2018 where the penalty was deleted in respect of cash deposits. The learned AR also contended that in the alternative that the notice issued by the AO for the imposition of penalty was vague and non-descript. The notice did not specify the nature of default committed by the assessee and therefore the imposition of penalty in pursuance of such defective notice is bad in law.

8. The learned DR for the Revenue, on the other hand, relied upon the orders of the lower authorities.

9. We have carefully considered the rival submissions and perused the orders of the authorities below in quantum proceedings as well as in penalty proceedings. The case laws cited were also perused. The imposition of penalty on unexplained cash deposits is in controversy. The CIT(A) has dealt with the issue as under:

3.3. *In this case, the AO has made addition of Rs. 13,10,400/- treating the same as income from undisclosed sources on account of cash deposits. The same was confirmed by the CIT(A) vide order dtd, 28.03.2015. Thereafter the AO has levied the penalty u/s.271(1)(c) of the Act amounting to Rs.3,39,710/- for furnishing of inaccurate particulars of income.*

3.4. *During the appellate proceedings the appellant has contended that the appellant's appeal before the Hon'ble ITAT has been decided and (he ITAT sustained 50% addition and deleted the balance, the relevant para of the order of the Hon'ble ITAT is reproduced as under:-*

*"Para 9 : There is no dispute that Rs.39,00,300/- was found to be deposited in the Saving Bank account with Indushul Bank in AY.2011-12 and Rs. 13,10,400/- was found to be deposited in AY.2012-13. It is equally true that the explanation of the assessee is without any substance. However, at the same lime, on perusing the ledger account of IndusInd Bank, we find that whenever the cash was deposited, it was immediately transferred to M/s. Shri Krishna Cargo. Therefore, the contentions that the same forms part of the business receipts cannot be brushed aside lightly.*

*Para 10 : The assessee has not furnished any detail in support of its claim of business receipts. In our considered opinion and considering the manner in which the cash was deposited and transmitted to the firms account, 50% of the cash deposited should be treated as the income of the assessee. We modify the findings of the Ld CIT(A) and direct the AO to treat 50% of the cash deposited as undisclosed income of the assessee. "*

*It is further contended that the addition made becomes estimated addition and further the word used in section 68 and 69 is may and not shall and therefore the unsatisfactory explanation will not entitle the AO to treat the same as income of the assessee. The appellant has relied upon the decisions as cited above. It is also contended that notice being defective and in the assessment order also no specific default for penalty has been mentioned hence on this ground also penalty is also not leviable.*

3.5. *Facts of the case and the submissions are considered. A perusal of assessment order and penalty order shows that the AO has very much clear before levying the penalty and clearly stated the default committed by the appellant for levying the penalty u/s.271(1)(c) of the Act. A perusal of show cause notice issued u/s.271(1)(c) of the Act is clearly shows that the penalty has been initiated on two counts i.e. concealment of the particulars of income and furnishing of inaccurate particulars of such income. The appellant has furnished inaccurate particulars of his income and by furnishing of such inaccurate particulars she has concealed his income on which account the AO has levied penalty u/s.271(1)(c) of the Act. The contention of the appellant that the AO is not affirm about the charges is not correct. In the case of Snita Transport (P.) Ltd. 221 Taxman 217, the Hon'ble Gujarat High Court has held as under:-*

*"9. Regarding the contention that the Assessing Officer was ambivalent regarding wider 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. In light of this, we may peruse the decision of this Court in case of Manu Engineering Works (supra). In the said decision, the Division Bench came to the conclusion that language of "and/or" may be proper in issuing a notice for penalty, but it was incumbent upon the Assessing Authority 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 them. If no such clear, cut finding is reached by the authority, penalty cannot be levied. It was a case in which in final conclusion the authority had recorded that "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." it was in this respect the Bench observed that "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."*

*A perusal of penalty order clearly shows that the AO has given a clear finding that it is a fit case for levy of penalty u/s.271(1)(c) of the Act.*

*3.6. Further the Hon'ble ITAT has categorically stated in its order that the assessee has not furnished any details in support of his claim of business receipts. A perusal of order- of the Hon'ble ITAT clearly shows that the appellant has failed to furnish explanation regarding the cash deposits. The Hon'ble ITAT has sustained additions of 50% as the assessee has failed to furnish explanation for entire amount of the cash deposits. The appellant's contention that it becomes an estimate addition is not correct as the addition made by the AO is not at all on any estimates. There was a clear cut finding given by the AO that the assessee has failed to explain cash deposits. The addition was reduced to 50% by the Hon'ble ITAT as the appellant has explained the deposits to the tune of 50% of total deposits. Considering the above, it is very much clear that (he appellant has defaulted the provisions of Section 271(1)(c) of the Act and the AO has levied the penalty correctly. However, as the addition is reduced to 50% of total addition, the penalty is also reduced to that extent. Thus the grounds of appeal are partly allowed."*

10. The CIT(A) has noted from the findings of the ITAT in quantum proceedings that assessee has failed to furnish explanation regarding cash

deposits. We find no error in such conclusion drawn by the CIT(A). It is a matter of record that cash deposits were made in the bank account for which no satisfactory answer was provided by the assessee. The co-ordinate bench has given the benefit of doubt to the assessee and treated the cash deposits to the extent of 50% as explained. The ITAT however has categorically observed that remaining portion to be income of unexplained nature. No valid explanation has been furnished towards source of cash deposits even in the penalty proceedings. Therefore, observation of the ITAT in quantum proceedings requires to be adopted for penalty purposes as well. The CIT(A) has also rejected the plea of the assessee towards defective notice relying upon the decision of the Hon'ble Gujarat High Court in *Snita Transport (P.) Ltd. 221 Taxman 217 (Guj)*. In the light of the decision of the Hon'ble Gujarat High Court, we do not see any merit in the alternative contention of the assessee as well. The reliance placed on behalf of the assessee on the decision of the co-ordinate bench in *Shri Anil Yashpal Khosla (supra)* is totally misplaced. The explanation in respect of cash deposited in that case was found to be reasonable in view of certain affidavits of third party filed which remained unverified by the AO. No such facts have been shown to exist in the present case. In the peculiar facts of the case, the nature of concealment was clear to the assessee and no prejudice has been caused to the assessee *per se* by such alleged technical defect. The CIT(A) in our view has rightly adjudicated the issue with which interference is called for.

11. In the result, appeal of the assessee for AY 2012-13 is dismissed.

**ITA No. 525/Ahd/2018-AY 2013-14**

12. The penalty on peak amount of cash deposits of Rs.5,49,900/- is in controversy similar to AY 2012-13. In the light of the decision taken in ITA No. 524/Ahd/2018, we decline to interfere with the order of the CIT(A) on principles. However, we take note of the decision of the ITAT in ITA No. 500/Ahd/2017 order dated 17.09.2018 whereby the additions were restricted to 50% of the deposits. As pointed out on behalf of the

assessee that the CIT(A) has passed the order confirming the penalty on the full amount as the benefit of the decision of the ITAT was not available to the CIT(A) while passing the appellate order in respect of penalty proceedings. We thus find merit in the plea of the assessee for reduction in the quantum or penalty in tune with the reduction in the quantum additions based on the order of the ITAT. The AO is accordingly directed to re-work the penalty based on the amount of additions quantified by the ITAT in quantum proceedings.

13. In the result, appeal of the assessee for AY 2013-14 is partly allowed.

14. In the result, the appeal of the assessee for AY 2012-13 is dismissed and for AY 2013-14 is partly allowed.

**This Order pronounced in Open Court on 11/09/2019**

Sd/-  
(RAJPAL YADAV)  
JUDICIAL MEMBER  
Ahmedabad: Dated 11/09/2019

Sd/-  
(PRADIP KUMAR KEDIA)  
ACCOUNTANT MEMBER

True Copy

S. K. SINHA

आदेश की प्रतिलिपि अग्रेषित / 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 ।