

आयकर अपीलिय 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. No. 1216/Ahd/2012

(निर्धारण वर्ष / Assessment Year : 1994-95)

Gujarat Incatel Telecommunication Ltd. 3 rd Floor, Panorama, R. C. Dutta Road, Baroda	बनाम/ Vs.	Income Tax Officer Ward – 1(3), Baroda
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAACG7700L		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी ओर से /Appellant by :	Shri Mehul K. Patel, A.R.
प्रत्यर्थी की ओर से / Respondent by :	Shri Virender Singh, Sr.D.R.

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

आदेश/ORDER

PER PRADIP KUMAR KEDIA - AM:

The captioned appeal has been filed at the instance of the assessee against the order of the Commissioner of Income Tax (Appeals)-I, Baroda ('CIT(A)' in short), dated 01.03.2012 arising in the penalty order passed by the Assessing Officer (AO) under s. 271(1)(c) of the Income Tax Act, 1961 (the Act) concerning AY 1994-95.

2. The captioned appeal has been filed by the assessee against the imposition of penalty under s. 271(1)(c) of the Act on unexplained cash credit of Rs.1,90,000/-.

3. Briefly stated, the quantum assessment for AY 1994-95 in question was finalized under s.143(3) of the Act. The assessed income *inter alia* included a sum of Rs.1,90,000/- tax as unexplained credit. The assessee contested addition made to the return income before the CIT(A) on the aforesaid amount without any success.

4. The assessee preferred appeal before the Tribunal against the aforesaid order of the CIT(A) in quantum proceedings but was dismissed in *limine* owing to non-representation from the assessee. In view of the additions made in the quantum proceedings, the penalty has been imposed by the AO under s. 271(1)(c) of the Act on the aforesaid unexplained cash credit, the penalty so imposed by the AO was also confirmed by the CIT(A) with following observations:

“2.2.1 Regarding addition of Rs.1,90,000/- i.e. unexplained cash deposits in the bank accounts, neither during assessment proceedings nor before CIT(A) in the quantum addition proceedings, any explanation regarding source of cash deposit was furnished. Even before me, no explanation is furnished in this regard. Since appellant has not furnished any explanation regarding source of cash deposit in the bank accounts, it is a case falling under Explanation 1 below section 271(1)(c). Decision in the case of National Textile v CIT, 114 Taxman 203 is not applicable in view of Supreme Court's decision in the case of Dharmendra Textiles Processors that mens rea is not an essential ingredient for levy of penalty u/s 271(1)(c). Levy of penalty u/s 271(1)(c) is upheld. To sum up, AO is directed to recompute penalty u/s 271(1)(c) by taking the concealed income to be Rs.1,90,000/- only.”

5. Aggrieved by the aforesaid action of the CIT(A), the assessee is in appeal before the Tribunal.

6. The learned AR for the assessee at the outset submitted that the original name of the assessee was Gujarat Investment Castings Ltd., which was re-named as Gujarat Incatel Telecommunication Ltd. It was pointed out that the matter is very old and concerns AY 1994-95 and therefore, he is in possession of very limited information. The learned AR further submitted that while the assessee could not establish the source of cash deposit in the quantum proceedings as held by various authorities, nevertheless, the matter requires to be looked afresh for the purpose of

imposition of penalty under s. 271(1)(c) of the Act. It was submitted by the learned AR that the aforesaid amount actually represented the share application money received from some of the shareholders to whom the shares were actually issued. On being inquired by the Bench however, the learned AR could not establish the aforesaid assertion. A further inquiry was made as to whether such stand was taken at any stage before the lower authorities either in quantum proceedings or in penalty proceedings. The learned AR for the assessee drew blank and could not point out anything in this regard. The learned AR however urged for deletion of penalty.

7. The learned DR, on the other hand, strongly relied upon the order of the CIT(A) confirming the penalty and submitted that the narratives framed on behalf of the assessee has no substance and was not pleaded at any stage. It was further submitted that assessee has failed to provide the source of credit till today and therefore the findings in the quantum proceedings becomes a very good evidence for the purposes of penalty proceedings as well.

8. We have considered the rival submissions. The correctness of penalty imposed under s. 271(1)(c) of the Act by the Revenue on alleged unexplained cash deposits, is in controversy. Before we proceed to deal with merits, we consider it expedient to note that the matter was first called for hearing on 02.08.2012 by the Tribunal and thereafter was listed for hearing numerous times till today. The assessee has taken adjournment on one pretext or the other which reflects indolent attitude of the assessee. The matter concerns AY 1994-95 and the appeal was filed in the Tribunal in 2012 more than six years have lapsed before the Tribunal. We also see that the records before the Tribunal are only partly complete. It is also noticed that the assessee has dodged the notices in the assessment proceedings as well, which impeded requisite inquiry. In view of the indifferent behavior, we proceed to dispose of the appeal on the basis of submissions made by the assessee before the CIT(A). The CIT(A) has reproduced the submissions made by the assessee as per para 2.1 of its order. We do not find anything substantive to rebut the allegation of cash

deposits of Rs.1,90,000/- in aggregate as an explained. The CIT(A) has also observed that assessee has failed to explain the source of cash deposit. Nothing has been brought on record before the Tribunal to rebut the aforesaid findings of the CIT(A). We thus see no reason to interfere with the order of the CIT(A) confirming the penalty of the aforesaid amount.

9. In the result, the appeal of the assessee is dismissed.

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 ।