

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

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER &**  
**SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER**

आयकर अपील सं./I.T.A. No. 481/Ahd/2015

(निर्धारण वर्ष / Assessment Year : 2008-09)

M/s. B.S. Shah GF-2-3-4, Silver Oak Building, Mahalaxmi Char Rasta, Paldi, Ahmedabad - 380007	<b>बनाम/</b> Vs.	<b>Dy.CIT</b> Circle – 11, 1 <sup>st</sup> Floor, Narayan Chambers, Ahmedabad
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AACFB1266F		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी ओर से / Appellant by :	Shri S. N. Divatia, A.R.
प्रत्यर्थी की ओर से/Respondent by :	Shri Satish Solanki, Sr.D.R.

सुनवाई की तारीख / Date of Hearing	18/09/2019
घोषणा की तारीख /Date of Pronouncement	19/09/2019

**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)-5, Ahmedabad ('CIT(A)' in short), dated 30.12.2014 arising in the penalty order dated 28.03.2013 passed by the Assessing Officer

(AO) under s. 271(1)(c) of the Income Tax Act, 1961 (the Act); concerning A.Y. 2008-09.

2. The assessee by way of its grounds of appeal has challenged the imposition of penalty on additions/disallowances as under:

- “1.1 The order passed u/s.250 on 30-12-2014 for A.Y.2008-09 by CIT(A)-5, Abad upholding the penalty levied u/s. 271(1)(c) in respect of additions towards partners remuneration, interest income and capital gain on redemption of mutual fund is wholly illegal, unlawful and against the principles of natural justice.*
- 1.2 The Ld.CIT(A) has grievously erred in law and or on facts in not considering fully and properly the submissions made and evidence produced by the appellant with regard to the impugned additions.*
- 2.1 The Ld.CIT(A) has grievously erred in law and on facts in confirming the penalty levied u/s.271(1)(c) in respect of the additions towards partners remuneration, interest income and capital gain on redemption of mutual fund.*
- 2.2 That in the facts and circumstances of the case as well as in law, the Ld.CIT(A) ought not to have upheld the penalty levied u/s.271(1)(c) in respect of the additions towards partners remuneration, interest income and capital gain on redemption of mutual fund.*
- 3.1 The Ld.CIT(A) has erred in upholding that the AO had levied penalty for the Act concealing income by furnishing inaccurate particulars of income. The Ld. CIT(A) has failed to appreciate that there was no default of furnishing inaccurate particulars of income and case law relied upon by him were distinguishable on facts.”*

3. Briefly stated, the assessee is a partnership firm engaged in publication and sale of educational books. The return of income for AY 2008-09 was filed declaring total income of Rs.47,35,940/-. In the course of the assessment proceedings, the AO noticed that the assessee has claimed partners remuneration of Rs.32,37,616/- under s.40(b) of the Act although the partners were HUF and no service could be rendered by them. The assessee objected to the same by its written

reply in the assessment proceedings. However, the AO rejected the explanation and made the disallowance of entire remuneration of Rs.32,37,616/-. The AO further observed that the assessee had paid manuscript expenses of Rs.76,700/- without making TDS and consequently, disallowance was carried under s.40(a)(ia) of the Act. The AO made other disallowances and completed the assessment assessing the total income at Rs.81,35,210/-.

4. The CIT(A) in first appeal granted partial relief. Meanwhile, the AO passed order of rectification under s.154 of the Act whereby the disallowance of remuneration was scaled down to Rs.7,84,088/. Penalty proceedings were initiated on the additions/disallowances and the AO imposed penalty of Rs.2,84,090/- on the ground of concealment of particulars of income to the extent of Rs.9,19,372/- comprising of partners remuneration of Rs.7,84,088/- and disallowance of manuscript expenses of Rs.76,700/-, undisclosed capital gains of Rs.42,131/- and interest income of Rs.16,453/-.

5. Aggrieved by the imposition of penalty, the assessee preferred appeal before the CIT(A). The CIT(A) confirmed the penalty levied in respect of aforesaid items of additions/disallowances except for manuscript expenses of Rs.76,700/-.

6. Further aggrieved, the assessee preferred appeal before the Tribunal.

7. We have carefully considered the rival submissions on the imposition of penalty under s. 271(1)(c) of the Act. It is noticed that disallowance of partners remuneration was made only for the reason that interest income of Rs.20,61,351/- was considered as 'income from other sources' which in the opinion of AO did not qualify for book

profit so as to compute partner's remuneration under s. 40(b) of the Act. We notice that co-ordinate bench of Tribunal in some cases, namely, *Akshar Associates ITA No. 2583/Ahd/2011 dated 15.09.2015* and *Horizan Motors ITA No. 555-556/Ahd/2012 dated 30.11.2015* have taken a view that income under all the heads of income are eligible for computing partners remuneration. Without going to the correctness of the eligibility of remuneration from income generated under the head 'income from other sources', we firmly think that the action of the assessee cannot be discarded summarily on the face of divergent views prevailing on the subject. Thus, as claimed, the issue thus not free of debate at the time of filing of return by the assessee. The action of the assessee thus falls within the bracket of bonafide belief. In such circumstances, furnishing inaccurate particulars of income by the assessee cannot be alleged as contemplated under s. 271(1)(c) of the Act.

8. In so far as inclusion of capital gains of maturity of mutual funds is concerned, it is noticed that the assessee has explained the sources of such investment but the effect of redemption was left out to be given in the books of accounts. The assessee has pleaded oversight and mistake. It was pointed out that mistake was committed as it was assumed that long term capital gains from units of mutual funds is exempt from taxation. The other additions towards interest income of Rs.16,453/- was on account of mistake in showing correct income due to non-availability of interest income arising from IDBI Ltd. The action of the assessee was however in conformity with the TDS certificate. The assessee has thus discharged the burden of explaining the circumstances of omission or mistakes. Hence, in totality, we observe that the assessee has acted bonafide and there appears to be no falsity in the explanation offered by the assessee.

9. Needless to say, the imposition of penalty on fastening of tax liability is not automatic. The fulfillment of conditions stipulated in Section 271(1)(c) of the Act is a *sin qua non* for imposition of penalty under s. 271(1)(c) of the Act. The existence of conditions is not discernable from the case records. We thus set aside the order of the CIT(A) and direct the AO to cancel the penalty imposed under s. 271(1)(c) of the Act.

10. In the result, appeal of the assessee is allowed.

**This Order pronounced in Open Court on 19/09/2019**

Sd/-  
(KUL BHARAT)  
JUDICIAL MEMBER  
Ahmedabad: Dated 19/09/2019

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 ।