

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'C' अहमदाबाद ।

**IN THE INCOME TAX APPELLATE TRIBUNAL
"C" BENCH, AHMEDABAD**

**BEFORE SHRI MAHAVIR PRASAD, JUDICIAL MEMBER
& SHRI AMARJIT SINGH, ACCOUNTANT MEMBER**

आयकर अपील सं./I.T.A. No. 2462/Ahd/2015

(निर्धारण वर्ष / Assessment Year: 1999-00)

Shri Vithalbhai R. Patel Dabhan Bhagol, Nadiad	बनाम/ Vs.	ITO Ward-4, Nadiad-387001
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No.: ADO PP1 428 N		
(अपीलार्थी/Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी ओर से/Appellant by :	Shri Urvashi Sodhan, AR
प्रत्यर्थी की ओर से / Respondent by:	Shri L. P. Jain, Sr. DR

सुनवाई की तारीख/Date of Hearing	22/07/2019
घोषणा की तारीख /Date of Pronouncement	16/09/2019

आदेश/O R D E R

PER AMARJIT SINGH - AM:

The appeal filed by the Assessee for A.Y. 1999-00, arise from order of the CIT(A)-2, Vadodara dated 19.05.2015, in proceedings under section 143(3) r.w.s. 147 of the Income Tax Act, 1961; in short "the Act".

2. The solitary ground of appeal of the assessee is filed against the decision of the Ld. Cit(A) in confirming the penalty of Rs. 5,28,000/- imposed u/s. 271(1)(c) on different additions made by the AO. In this case the assessee has filed return of income on 31.12.1999 declaring total income as under:-

"(1) Salary	:	Rs. 31,000/-
(2) Income from profession	:	Rs. 5,12,098/-
(3) Long Term Capital Gain	:	Rs. 15,830/-
(4) Income from other sources	:	Rs. 86,510/-
Less: Deduction u/s. 80L	:	<u>Rs. 15,000/-</u>
Total	:	<u>Rs. 6,31,438/-</u> "

3. Further the assessee has disclosed gross income at Rs. 5,77,035/- and after claiming deduction u/s. 80L for Rs. 15,000/- the total income was declared at Rs. 5,62,040/- instead of aforesaid total income of Rs. 6,31,438/-. Along with the return of income the assessee has attached a copy of Form No. 10CCA however the assessee has not claimed deduction 80HHC for Rs. 7,52,295/-. The assessee has also shown agriculture income at Rs. 76,31,343/-. Thereafter, a revised return of income was filed on 18.02.2000 declaring total income at Rs. 5,86,341/- including interest income of Rs. 1,95,301/- earned on investment out of agriculture income which was not disclosed in the original return of income. Further the assessee has excluded an amount of Rs. 1,71,000/- being rent received from the firm KPH Industries/Shree Chem Industries in which the assessee was a partner. In the revised return of income the assessee has shown agriculture income at Rs. 74,36,042/-. The assessee has filed another revised return of income on 16.11.2000 declaring total income at Rs. 42,244/- and agriculture income at Rs. 76,81,582/-. In this revised return of income the assessee has shown business income at loss of Rs. 29,266/-. Subsequently, the AO has noticed that income chargeable to tax has escaped within the meaning of Sec. 147 therefore the notice u/s. 148 was issued on 08.07.2003. In response to the notice u/s. 148 the assessee has filed return of income on 09.09.2003 disclosing total income at Rs. 1,76,149/- and agriculture income at Rs. 74,36,042/-. The head wise break up of income shown in return of income filed in response to Sec. 148 are as under:-

“(1) Salary	:	Rs. 59,000/-
(2) Income from property	:	Rs. 6,75,000/-
(3) Income from business	:	Rs. (-) 76,180/-
(4) Long Term Capital Gain	:	Rs. 15,830/-
(5) Income from other sources	:	Rs. 2,85,624/-”

In this return of income the assessee has also claimed deduction u/s. 80HHC at Rs. 7,52,295/- which was not claimed in the original return of income filed by the assessee. The assessment u/s. 143(3) r.w.s. 147 of the Act was determined at total income at Rs. 79,20,780/- and agriculture income was determined at Rs. 4,36,042/-. The claim of deduction u/s. 80HHC to the amount of Rs. 7,52,295/- was disallowed.

4. The assessee has filed appeal before the Ld. CIT(A). The CIT(A) has partly allowed the appeal of the assessee and directed the AO to allow deduction of Rs.

2,28,000/- being rent received from the firm where the assessee was a partner and the house property income was determined at Rs. 8,46,000/-. The CIT(A) has also allowed deduction of Rs. 3,01,689/- out of interest income of Rs. 3,05,502/- on investment out of agriculture income. The CIT(A) has also directed the AO to consider agriculture income at Rs. 8,00,000/- and income from other sources at Rs. 66,36,042/-. The CIT(A) has also confirmed the disallowance of claim of deduction u/s. 80HHC to the amount of Rs. 7,52,295/-.

5. The assessee filed appeal before the ITAT. The ITAT has partly allowed the appeal of the assessee and directed the AO to consider Rs. 8,00,000/- as income from other sources and amount of Rs. 68,31,343/- as agriculture income. The AO has also initiated penalty proceeding u/s. 271(1)(c) of the Act while passing the order u/s. 147 r.w.s. 143(3) of the Act. The AO has stated that assessee has concealed the income to the tune of Rs. 17,78,409/- and its break up is given as under:

(1)	<i>Concealment of salary income</i>	:	<i>Rs. 27,000/-</i>
(2)	<i>Disallowance of claim of 80HHC</i>	:	<i>Rs. 7,52,295/-</i>
(3)	<i>Reduction of interest income</i>	:	<i>Rs. 95,301/-</i>
(4)	<i>Interest addition by ITAT</i>	:	<i>Rs. 3,813/-</i>
(5)	<i>Considering Agriculture Income as income from other source</i>	:	<i>Rs. 8,00,000/-</i>

6. Aggrieved assessee has filed before the Ld. CIT(A). The Ld. CIT(A) has dismissed the appeal of the assessee.

7. We have heard the rival contention and perused the material on record. The AO has made various addition in the assessment completed u/s. 147 r.w.s. 143(3) of the Act. On the quantum of addition which were sustained by the ITAT as supra the AO has imposed penalty to the amount of Rs. 5,28,000/- u/s. 271(1)(c) of the Act. On the perusal of material on record it is observed that assessee has disclosed all the particular pertaining to his claim of deduction 80HHC to the amount of Rs. 7,52,295/- which was not claimed in the original return of income, however, assessee had filed Form No. 10CCA. Considering this fact we observe that claiming deduction u/s 80HHC cannot be treated as concealment of income as the assessee has filed all the particular pertaining to his claim. Therefore, on this account levying of penalty is not

correct. Regarding other addition pertaining to estimation of income from other sources out of agriculture income to the amount of Rs. 8,00,000/- we observe that there is a no case of furnishing inaccurate particulars of income. The AO has also not established with any relevant supporting evidences that there was case of furnishing any inaccurate particular income in respect of estimation of income from other sources out of agriculture income. Therefore, we consider that it is not justified to levy penalty on the amount of Rs. 8,00,000/-. Similarly on the addition in respect of interest income of Rs. 1,95,307/- and Rs. 3,813/- the AO has not established that there was case of furnishing inaccurate particular of income so we consider that no penalty is required to be levied on the addition made on account of interest expenses. However, we observe that assessee has concealed the particular of income for not disclosing the salary income to the amount of Rs. 27,000/- which was not shown in the original return of income, therefore, we consider that assessee has concealed the particular of income in respect of 27,000/- of salary income. Accordingly, AO is directed to restrict the penalty u/s. 271(1)(c) to the amount of addition made on account of salary income. Therefore, appeal of the assessee is partly allowed.

8. In the result, the appeal of the assessee is partly allowed.

This Order pronounced in Open Court on 16/09/2019

Sd/-
(MAHAVIR PRASAD)
JUDICIAL MEMBER

Ahmedabad: Dated 16/09/2019

TANMAY

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आदेश की प्रतिलिपि अग्रहित / 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.

Sd/-
(AMARJIT SINGH)
ACCOUNTANT MEMBER

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण, अहमदाबाद ।