

आयकर अपीलअ अधकरण, राजकोट ँयायपीठ, राजकोट ।  
IN THE INCOME TAX APPELLATE TRIBUNAL, RAJKOT BENCH, RAJKOT

**BEFORE SHRI RAJPAL YADAV,  
HON'BLE JUDICIAL MEMBER  
AND  
SHRI WASEEM AHMED  
HON'BLE ACCOUNTANT MEMBER**

**ITA No.302/RJT/2016**

**अधकरण वर्षा Asstt. Year: 2011-12**

Smt. Varsha Rohit Ravani "Sarda", 12-Nutan Nagar Kalawad Road Rajkot.	Vs.	ITO, Ward-5(2) Rajkot.
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<b>(Applicant)</b>		<b>(Responent)</b>
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Assessee by :	Shri M.J. Ranpura, AR
Revenue by :	Shri Anil Kumar Das, DR

सुनवाई का ताराख/**Date of Hearing** : 19/09/2019

घोषणा का ताराख /**Date of Pronouncement**: 19/09/2019

**आदेश/O R D E R**

**PER RAJPAL YADAV, JUDICIAL MEMBER:**

Assessee is in appeal before the Tribunal against order of the ld.CIT(A)-3, Rajkot dated 28.6.2016

2. Solitary grievance of the assessee is that the ld.CIT(A) has erred in confirming the penalty of Rs.1,44,488/- levied under section 271(1)(c) of the Income Tax Act, 1961.

3. Brief facts of the case are that the assessee has filed her return of income on 4.2.2012 declaring total income at Rs.7,26,800/-. On scrutiny of the accounts, it revealed to the AO that the assessee has sold property for Rs.55 lakhs and derived short term capital gain on that transaction. The



*Explanation 1- Where in respect of any facts material to the computation of the total income of any person under this Act,*

*(A) Such person fails to offer an explanation or offers an explanation which is found by the Assessing Officer or the Commissioner (Appeals) or the CIT to be false, or*

*(B) such person offers an explanation which he is not able to substantiate and fails to prove that such explanation is bona fide and that all the facts relating to the same and material to the computation of his total income have been disclosed by him, then, the amount added or disallowed in computing the total income or such person as a result thereof shall, for the purposes of Clause (c) of this sub-section, be deemed to represent the income in respect of which particulars have been concealed.”*

7. A bare perusal of this section would reveal that for visiting any assessee with the penalty, the Assessing Officer or the Learned CIT(Appeals) during the course of any proceedings before them should be satisfied, that the assessee has; (i) concealed his income or furnished inaccurate particulars of income. As far as the quantification of the penalty is concerned, the penalty imposed under this section can range in between 100% to 300% of the tax sought to be evaded by the assessee, as a result of such concealment of income or furnishing inaccurate particulars. The other most important features of this section is deeming provisions regarding concealment of income. The section not only covered the situation in which the assessee has concealed the income or furnished inaccurate particulars, in certain situation, even without there being anything to indicate so, statutory deeming fiction for concealment of income comes into play. This deeming fiction, by way of Explanation I to section 271(1)(c) postulates two situations; (a) first whether in respect of any facts material to the computation of the total income under the provisions of the Act, the assessee fails to offer an explanation or the explanation offered by the assessee is found to be false by the Assessing Officer or Learned

CIT(Appeal); and, (b) where in respect of any fact, material to the computation of total income under the provisions of the Act, the assessee is not able to substantiate the explanation and the assessee fails, to prove that such explanation is bona fide and that the assessee had disclosed all the facts relating to the same and material to the computation of the total income. Under first situation, the deeming fiction would come to play if the assessee failed to give any explanation with respect to any fact material to the computation of total income or by action of the Assessing Officer or the Learned CIT(Appeals) by giving a categorical finding to the effect that explanation given by the assessee is false. In the second situation, the deeming fiction would come to play by the failure of the assessee to substantiate his explanation in respect of any fact material to the computation of total income and in addition to this the assessee is not able to prove that such explanation was given bona fide and all the facts relating to the same and material to the computation of the total income have been disclosed by the assessee. These two situations provided in Explanation 1 appended to section 271(1)(c) makes it clear that that when this deeming fiction comes into play in the above two situations then the related addition or disallowance in computing the total income of the assessee for the purpose of section 271(1)(c) would be deemed to be representing the income in respect of which inaccurate particulars have been furnished.

8. In the light of the above, if we examine the facts of the present case, then it would reveal that the assessee has claimed expenditure towards development and improvement of Rs.30,28,000/-. Out of that, expenses to the extent of Rs.3,81,000/- was disallowed. Probably, the assessee might not be able to produce supporting evidence to this expenditure. But it cannot be construed that explanation of the assessee was false. She does not deserve to

be visited with penalty on such estimated disallowance. Hence, we allow the appeal of the assessee and cancel the impugned penalty.

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

**Order pronounced in the Court on 19<sup>th</sup> September, 2019 at Rajkot.**

Sd/-  
**(WASEEM AHMED)**  
**ACCOUNTANT MEMBER**

Sd/-  
**(RAJPAL YADAV)**  
**JUDICIAL MEMBER**