

आयकर अपील अाधिकरण, अहमदाबाद ढयायपीठ
IN THE INCOME TAX APPELLATE TRIBUNAL,
"A" BENCH, AHMEDABAD
BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER
AND
SHRI WASEEM AHMED, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No. 2014/AHD/2017

अाधारण वर्ष/Asstt. Year: 2008-2009

| | | |
|---|-----|--------------------------------------|
| Shri Vipul A. Shah, 4, Niv Bungalow, B/h Yash Complex, Gotri Road, Baroda. PAN: AFOPS7332C | Vs. | D.C.I.T., Circle-1(2), Baroda. |
|---|-----|--------------------------------------|

| (Applicant) | (Respondent) |
|---------------|------------------------|
| Assessee by : | Shri Parin Shah, A.R |
| Revenue by : | Shri S.K. Dev, Sr. D.R |

सुनवाई का ताराख/Date of Hearing : 27/08/2019

घोषणा का ताराख /Date of Pronouncement: 01/10/2019

आदेश/O R D E R

PER WASEEM AHMED, ACCOUNTANT MEMBER:

The captioned appeal has been filed at the instance of the Assessee against the order of the Learned Commissioner of Income Tax (Appeals)-5, Vadodara dated 01/06/2017 (in short 'Ld.CIT(A)') arising in the matter of assessment order passed under s. 143(3) r.w.s. 147 of the Income Tax Act, 1961 (here-in-after referred to as "the Act") dt.28/03/2013 relevant to the Assessment Year 2008-2009.

The assessee has raised the following grounds of appeal:

1. *The Ld. Commissioner of Income Tax (Appeals) has erred in law and on the facts of the appellant's case in confirming the action of Ld.A.O of levying penalty u/s.271(1)(c) of the Act of Rs.1,03,480/- on the erroneous plea that the appellant has concealed the particulars of his income.*
2. *Both the lower authorities have erred in law and on facts of the appellant's case is not appreciating the fact that the appellant has neither concealed particulars of his income nor furnished its inaccurate particulars.*
3. *The appellant craves leave to add, amend, later, edit, delete, modify or change all or any of the grounds of appeal at the time of or before hearing of the appeal.*

The solitary issue raised by the assessee is that the Ld.CIT (A) erred in confirming the penalty for Rs. 1,03,480/-under section 271(1)(c) of the Act.

2. The facts, in brief, are that the assessee in the present case is an individual and engaged in the business of real estate consultancy. The assessee is also a director in a company namely Miles Motors private Ltd dealing in automobile business. The assessment was framed under section 147 of the Act by the AO vide order dated 28-03-2013 after making the following additions:

- | | |
|-------------------------------------|-----------------|
| 1) Unsecured loan | Rs. 16,12,500/- |
| 2) Unexplained cash credit | Rs. 17,00,000/- |
| 3) Cash deposit | Rs. 44,89,300/- |
| 4) Profit on sale of car, land etc. | Rs. 38,303/- |

3. On appeal, the Ld. CIT (A) deleted most of the addition except the following:

- | | |
|-------------------------------------|----------------|
| 1) Unexplained cash deposit | Rs. 2,96,580/- |
| 2) Profit on sale of car, land etc. | Rs. 38,303/- |

In view of the above, the AO issued notice under section 274/271(1)(c) of the Act proposing the penalty for Rs. 1,03,480/- on account of concealment of income.

4. The assessee in response to such notice submitted that the additions sustained by the Ld. CIT(A) was not challenged as these were based on presumption/difference of opinion which are highly debatable. Furthermore these additions were admitted by the assessee in order to buy the peace of mind and to avoid the litigation.

5. However, the AO disagreed with the contention of the assessee and held that the assessee had suppressed his income by concealing the particulars of income. Accordingly the AO levied the penalty of Rs. 1,03,840/- being 100% of the amount of tax sought to be evaded.

The aggrieved assessee preferred an appeal to the Ld. CIT(A).

6. The assessee before the Ld. CIT(A) submitted that the cash was deposited out of the opening balance of Rs. 1,43,776/- and the remaining amount was advanced returned by the staff of Rs. 1,52,804/-. The assessee in support of his claim also filed the copy of the cash book before the Ld. CIT(A).

6.1 The assessee also claimed that most of the additions to the extent of 97% were deleted by the Ld. CIT (A) in the quantum proceedings. Thus it is implied that there was no intention of the assessee to evade the tax by concealing the particulars of income.

6.2 The assessee also submitted that he had sold various financial assets having negligible values. Moreover the clarification furnished to the AO was not found to be false or bogus as per explanation 1 of section 271(1)(c) of the Act.

7. However, the Ld. CIT(A) confirmed the penalty levied by the AO by observing that the assessee failed to furnish the evidence in support of his contention.

Being aggrieved by the order of the Ld. CIT(A) the assessee is in appeal before us.

8. The Ld. AR before us reiterated the submissions as made before the authorities below. On the other hand, the Ld. DR vehemently supported the order of the authorities below.

9. We have heard the rival contentions of both the parties and perused the materials available on record. In the present case, the penalty was levied on account of concealment of income as detailed below:

- 1) Unexplained cash deposit Rs. 2,96,580/-
- 2) Profit on sale of car, land etc. Rs. 38,303/-

9.1 Regarding the cash deposit, we note that the addition was made by the AO for Rs. 44,89,300/- which was reduced by the Ld. CIT(A) to Rs. 2,96,580/-only. Thus it appears that the major additions were deleted by the Ld. CIT(A). Moreover, we also note that the assessee was the man of means as evident from the deposit of cash in the bank account. Therefore we are of the view that there cannot be any penalty merely on the addition of such a

small amount of cash deposit. We also find that the assessee in support of cash deposit has filed the cash book and there was no defect pointed out therein.

9.2 Insofar the amount returned from the staff, we note that the question of returning the advance arises only when the advances have been made. As such, none of the authorities below has doubted on the amount advanced by the assessee to such party.

9.3 Regarding the confirmation of the addition of Rs. 38,303/- we note that it comprises the following items:

- i. Profit on the sale of land Rs. 14,305.00
- ii. Profit on the sale of Car Rs. 15,209.00
- iii. Income from Mutual Fund Rs. 280.00
- iv. Income from share trading Rs. 8,509.00

9.4 The assessee claimed that such additions were highly debatable, but to avoid the litigation, the same were accepted. Looking at the amount of the addition we are of the view that there was no deliberate act on the part of the assessee to conceal the particulars of income as pointed out by the authorities below, therefore we hold that there cannot be any penalty of the assessee in the given facts and circumstances.

9.5 In holding so we find support and guidance from the judgment of the supreme court in case of Dilip N Shroff Vs. JCIT reported in 291 ITR 519 wherein it was held as under:

“It signifies a deliberate act or omission on the part of the assessee. Such deliberate act must be either for the purpose of concealment of income or furnishing of inaccurate particulars”

In view of the above, we are not inclined to uphold the findings of the authorities below. Hence we set aside the order of the Ld. CIT(A) and direct the AO to delete the penalty imposed by him under section 271(1)(c) of the Act. Thus the ground of appeal of the assessee is allowed.

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

Order pronounced in the Court on 01/10/2019 at Ahmedabad.

**-Sd-
(KUL BHARAT)
JUDICIAL MEMBER**

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

(True Copy)
Ahmedabad; Dated 01/10/2019
manish