

आयकर अपीलीय अधिकरण, राजकोट न्यायपीठ, 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.251/RJT/2017
निर्धारण वर्ष/ Asstt. Year: 2007-08

Ashokbhai Jamnadas Pala "Milan", 4, Pujara Plot Rajkot.	Vs.	ITO, Ward-2(1)(3) Rajkot.
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(Applicant)		(Responent)
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Assessee by :	Written Submissions
Revenue by :	Shri Anil Kumar Das, DR

सुनवाई की तारीख/Date of Hearing : 20/09/2019
घोषणा की तारीख /Date of Pronouncement: 03/10/2019

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)-2, Rajkot dated 23.6.2017 passed for the Asstt.Year 2007-08.

2. Sole grievance of the assessee is that the ld.CIT(A) has erred in confirming penalty of Rs.6,92,657/- imposed by the AO under section 271(1)(c) of the Income Tax Act, 1961.

3. Brief facts of the case are that assessee has filed his return of income on 31.3.2008 declaring total income at Rs.1,24,471/-. During the year, the AO has got information that the assessee has deposited certain amounts in cash with Corporation Bank, Rajkot. On verification of pass book, an entry

amounting to Rs.21.00 lakhs could not be explained by the assessee. Therefore, he made addition to this effect to the total income of the assessee. The addition was confirmed by the Id.CIT(A). Simultaneously, the Revenue has initiated penalty proceedings under section 271(1)(c) of the Act. The quantum addition was challenged by the assessee before the Tribunal, and the Tribunal vide order in ITA No.186/RJT/2017 dated 31.7.2017 set aside the issue to the file of Id.CIT(A) for fresh adjudication in the light of evidences submitted by the assessee *qua* creditor's confirmation, affidavit, PAN, Bank statement, passport and account details pertaining to creditor NRE bank. Assessee has filed a copy of order of the Tribunal dated 31.7.2017 passed in the quantum appeal of the assessee. The same is placed on record.

4. After hearing both the sides, and a perusal of the order of the Tribunal cited supra, we find that, issue of quantum addition, as of now, is pending before the Id.CIT(A). Therefore, question of imposition of penalty under section 271(1)(c) does not arise now. Sub-clause (iii) of section 271(1)(c) provides mechanism for quantification of penalty. It contemplates that the assessee would be directed to pay a sum in addition to taxes, if any, payable him, which shall not be less than , but which shall not exceed three times the amount of tax sought to be evaded by reason of concealment of income and furnishing of inaccurate particulars of income. In other words, the quantification of the penalty is depended upon the additions made to the income of the assessee. Upto and until, the issue regarding determination of the taxable income is finalized, penalty under section 271(1)(c) of the Act cannot be imposed upon the assessee. The determination of taxable income of the assessee is subjudiced before the Id.CIT(A). After adjudication the issue of quantum, it will be in the discretion of the Id.AO to reinitiate or not to

3

initiate penalty proceedings against the assessee. Therefore, we set aside the impugned penalty order and allow the appeal of the assessee.

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

Order pronounced in the Court on 3rd October, 2019 at Ahmedabad.

Sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER

Sd/-
(RAJPAL YADAV)
JUDICIAL MEMBER