

IN THE INCOME TAX APPELLATE TRIBUNAL

AHMEDABAD “B” BENCH

**(BEFORE SHRI MAHAVIR PRASAD, JUDICIAL MEMBER
& SHRI WASEEM AHMED, ACCOUNTANT MEMBER)**

**ITA. No: 547/AHD/2019
(Assessment Year: 2014-15)**

Hemant Navinbhai Modi 47, Harishchandra Park Co.Op. Hou. Soc. Ner Sanskar Bharti Society, Naranpura, Ahmedabad- 380013	V/S	Income Tax Officer, Ward- 5 (3)(3), Ahmedabad
(Appellant)		(Respondent)

PAN: ASCPM8299B

**Appellant by : Shri P. F. Jain, AR
Respondent by : Shri Mudit Nagpal, Sr. D.R.**

(आदेश)/ORDER

Date of hearing : 26 -06-2019
Date of Pronouncement : 11-09-2019

PER MAHAVIR PRASAD, JUDICIAL MEMBER

1. The present appeal is directed at the instance of assessee against the order of ld. CIT(A) dated 20.02.2019. The sole grievance of the assessee is that ld. CIT(A)

has erred in confirming the penalty of Rs. 75,830/- imposed by the Assessing Officer u/s. 271(1)(c) of the Income Tax Act.

2. The brief facts of the case are that assessee has filed his return of income on 02.06.2015 declaring total income at Rs. 2,07,104/-. The case of the assessee was selected for scrutiny assessment and notice u/s. 143(2) was issued and served upon the assessee.
3. During the course of assessment proceedings, it came to the notice of A.O. that assessee was having a Saving Bank account with Bank of Baroda, Naranpura but he has made deposits in this bank account. Ld. Assessing Officer has confronted the assessee to disclose the source of deposits of Rs. 2,40,96,015/-. The assessee contended that total deposit was of Rs. 25,72,665/- and not Rs. 2,40,96,015/-. According to the assessee, he was a small man carrying out computer maintenance and repairing activities. These deposits were made out of the receipt received from various customers on repair of their computers. He agreed that if 20% of these deposits is being taken as tax then he has no grievance. Ld. Assessing Officer has recognized such deposits as business receipt and ultimately computed the tax at 20% as income of these amounts and made addition of Rs. 5,14,533/-. In this way income of the assessee has been determined at Rs. 7,21,640/-.
4. Ld. Assessing Officer has initiated the penalty proceeding u/s. 271(1)(c) of the Income Tax Act and after hearing the assessee imposed a penalty of Rs. 75,830/-. The calculation of the penalty read as under:

<i>Calculation of Penalty u/s 271(l)(c)</i>		
<i>Sr. No.</i>	<i>Items</i>	<i>Amount</i>
1	<i>Income assessed/Revised Income (including concealed Income)</i>	<i>Rs. 7,21,637/-</i>
2	<i>Income other than concealed Income</i>	<i>Rs. 2,07,104/-</i>
3	<i>Concealed Income</i>	<i>Rs. 5,14,533/-</i>
4	<i>Tax on assessed/ Revised Income (including concealed Income) (As per Sr.1)</i>	<i>Rs. 76,557/-</i>
5	<i>Tax on Income other than concealed Income (As per Sr.2)</i>	<i>Rs. 731/-</i>
6	<i>Tax on concealed Income @100% of the tax (Sr.4)-(Sr.5)</i>	<i>Rs. 75,826/-</i>
7	<i>Tax on concealed Income @300% of the tax</i>	<i>Rs. 2,27,478/-</i>

4.1 Considering the facts and circumstances of the case, I hereby levy a penalty of Rs. 75,830/-, being 100% of tax on concealed income as against Rs. 2,27,478/- being 300% of tax on concealed income. Accordingly, I hereby levy a penalty of Rs.75,830/-.

4.2 This order has been passed with the prior approval of the Addl. Commissioner of Income-tax, Range-5(3), Ahmedabad, conveyed vide his letter No. Addl. CIT/Range-5(3)/Pen. Appro./271(l)(c)/2017-18 dated 20.06.2017.

5. Appeal to the Id. CIT(A) did not bring any relief to the assessee.
6. With the assistance of the Ld. Representative, we have gone through the record carefully.

7. Section 271(1)(c) of the Act has a direct bearing on the controversy and, therefore, it is salutary upon us to take note of the relevant provisions of section 271(1)(c) along with Explanation 1 which read as under:

*"271. Failure to furnish returns, comply with notices, concealment of income, etc.
(1) If the Assessing Officer or the Commissioner (Appeals) or the CIT in the course of any proceedings under this Act, is satisfied that any person
(a) and(b)
(c) has concealed the particulars of his income or furnished inaccurate particulars of such income.
He may direct that such person shall pay by way of penalty.*

*(i) and (Income-tax Officer,)
(iii) in the cases referred to in Clause (c) or Clause (d), in addition to tax, if any, payable by him, a sum which not be less than, but which shall not exceed three times, the amount of tax sought to be evaded by reason of the concealment of particulars of his income or fringe benefit the furnishing of inaccurate particulars of such income or fringe benefits;*

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 of 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".*

8. 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 hi 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(Appeals); 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, hi 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.
9. In the light of above, if the examine the facts of present case then it would reveal that it is not unexplained cash deposits in the bank account. If the assessee has made deposits of the receipts which he has received during the course of his computer repair business. This fact has been accepted even by the Assessing Officer while determining the element of income at 20% of these deposits in the bank account.
 10. The only allegation against the assessee by the Assessing Officer for visiting the penalty is that while he failed to account for these amounts in his return of income. The assessee has submitted that on account of some oversight this has not been taken into consideration by the tax consultants. There is not deliberate attempt at the end of the assessee to avoid payment of taxes nor there is any planning for withholding certain information from the revenue. Being a layman engaged in the business of computer repairs etc., he might have failed to take cognizance of this fact when his return was filed.
 11. Considering the bona fide of the assessee and non recording of any finding by the Assessing Officer that explanation put forth by the assessee is false. We are

of the view that assessee does not deserve to be visited with penalty. Therefore, appeal of the Assessee is allowed and impugned penalty is deleted.

Order pronounced in Open Court on	11- 09- 2019
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Sd/-

(WASEEM AHMED)
ACCOUNTANT MEMBER True Copy
Ahmedabad: Dated 11/09/2019

Sd/-

(MAHAVIR PRASAD)
JUDICIAL MEMBER

Rajesh

Copy of the Order forwarded to:-

1. The Appellant.
2. The Respondent.
3. The CIT (Appeals) –
4. The CIT concerned.
5. The DR., ITAT, Ahmedabad.
6. Guard File.

By ORDER

Deputy/Asstt.Registrar
ITAT,Ahmedabad