

**IN THE INCOME TAX APPELLATE TRIBUNAL
“H” Bench, Mumbai**

**Before Shri Ravish Sood, Judicial Member
and Shri N.K. Pradhan, Accountant Member**

**ITA No.6033/Mum/2018
(Assessment Year: 2010-11)**

Shri Hemant Ramniklal Shah
9, Best View Raghavji Road,
Gowalia Tank,
Mumbai – 400 036

Shri Vikas Kumar Singh
ITO, Ward-19(1)(5),
Vs. Mumbai.

PAN – AADPS3365H

(Appellant)

(Respondent)

Appellant by: None
Respondent by: Shri V. Vinod Kumar, D.R

Date of Hearing: 07.11.2019

Date of Pronouncement: 08.11.2019

ORDER

PER RAVISH SOOD, JM

The present appeal filed by the assessee is directed against the order passed by the CIT(A)-6, Mumbai, dated 26.09.2018, which in turn arises from the order passed by the A.O under Sec. 271(1)(c) of the Income-tax Act, 1961 (for short 'Act'), dated 30.03.2015 for A.Y. 2010-11.

2. Briefly stated, the assessee had filed his return of income for A.Y. 2010-11 on 29.09.2010, declaring his total income of Rs.2,55,575/-. Assessment under Sec. 143(3) was completed on 08.02.2013 determining the total income of the assessee at Rs.6,43,780/-. The A.O while framing the assessment had made an addition of Rs.3,88,200/- on account of unexplained cash deposits made in the bank account of the assessee.

3. Aggrieved, the assessee had assailed the assessment in appeal before the CIT(A). It was the claim of the assessee, that due to the ill health of his daughter who was mentally

retarded and suffered from attacks of mild cerebral palsy diplegia, he had in order to meet out any medical emergency was keeping sufficient cash out of his past savings with him, which would be deposited in the bank as and when the same to his understanding would not be required for the time being. Also, it was submitted by the assessee, that the returns of income were being filed by the members of his family. In the backdrop of the aforesaid facts, the CIT(A) while disposing off the quantum appeal partly found favour with the claim of the assessee, and as per him, in all fairness restricted the addition to an amount of Rs. 2,00,000/-.

4. After receiving the order of the CIT(A), the A.O called upon the assessee to show cause as to why penalty under Sec.271(1)(c) may not be imposed in respect of the addition of Rs.2,00,000/- made towards unexplained cash deposits by the A.O, which thereafter was sustained by the CIT(A). As the reply of the assessee that no penalty was liable to be imposed in his hands did not find favour with the A.O, therefore, he imposed a penalty under Sec.271(1)(c) of Rs.36,872/- .

5. Aggrieved, the assessee had assailed the imposition of penalty under Sec.271(1)(c) in appeal before the CIT(A). However, not being persuaded to accept the contentions advanced by the assessee, the CIT(A) upheld the penalty imposed by the A.O under Sec.271(1)(c) and dismissed the appeal.

6. The assessee being aggrieved with the order of the CIT(A) has carried the matter in appeal before us. As the assessee respondent despite having been put to notice as regards the hearing of the appeal had failed to put up an appearance before us, therefore, we proceed with as per Rule 24 of the Appellate Tribunal Rules, 1963, and dispose off the appeal after hearing the revenue respondent and considering the orders of the lower authorities.

7. The Id. Departmental Representative (for short 'D.R') had relied on the orders of the lower authorities. It was averred by the Id. D.R, that as the assessee had failed to explain the 'nature' and 'source' of the cash deposits in his bank account, therefore, the A.O had rightly imposed the penalty u/s 271(1)(c) as regards the cash deposit of Rs.2,00,000/- i.e to the extent the addition was sustained by the CIT(A) in the course of the quantum appeal. It was averred by the Id. D.R, that as the appeal of the assessee was devoid and bereft of any merit, therefore, the same was liable to be dismissed.

8. We have heard the authorised representatives for both the parties, perused the orders of the lower authorities and the material available on record. As is discernible from the orders of the lower authorities, the assessee in the course of the assessment proceedings was called upon to put forth an explanation as regards the excess cash deposits of Rs.3,88,200/- in his bank account during the year under consideration. In reply, it was submitted by the assessee, that the aforesaid amount of cash deposits were sourced out of his past savings. In order to fortify his aforesaid claim, it was submitted by the assessee that as his daughter was mentally retarded and was suffering from attacks of mild cerebral palsy deplegia, therefore, in order to take care of any unforeseen emergency he was keeping sufficient cash (out of his past savings) available with him. It was the claim of the assessee, that as and when the aforesaid cash (out of past savings) lying with him, to his understanding, would not be immediately required for the time being, the same would be deposited by him in his bank account. Apart therefrom, it was submitted by the assessee that he had been filing returns of income for more than 25 years and in the last 10 years had shown a net income(aggregate) of Rs.39,56,000/-. As can be gathered from the penalty order, it was also submitted by the assessee that his wife had shown income of Rs.18,00,000/-, his HUF had shown income of Rs.4,14 lacs and his daughter had shown an income of Rs.7.99 lac. In sum and substance, it was the claim of the assessee that he along with his family members had sufficient funds which would explain the cash deposit of Rs.3,88,200/- in his bank account during the year under consideration. As observed by us hereinabove, the explanation of the assessee was not accepted by the A.O, who therein held the cash deposits of Rs.3,88,200/- as an unexplained cash credit under Sec.68 of the Act. On appeal, the CIT(A) observing that in the totality of the facts of the case the addition made in the hands of the assessee was liable to be restricted to Rs.2,00,000/-. It is in context of the addition of Rs.2,00,000/- that has been sustained by the CIT(A), that penalty under Sec.271(1)(c) of Rs.36,871/- had been imposed by the A.O.

9. We have given a thoughtful consideration to the facts of the case and are unable to persuade ourselves to subscribe to the view taken by the lower authorities. As is discernible from the orders of the lower authorities, the assessee on being called upon to put forth an explanation as regards the cash deposits of Rs.3,88,200/- in his bank account, had therein submitted, that the same was out of his past saving (after meeting out personal expenses). In

our considered view, the fact that the assessee had consistently been filing his returns of income for more than 25 years, and also the fact that his family members were being assessed to tax, therein inspires substantial confidence as regards his explanation in respect of availability of cash to the extent of Rs.3,88,200/- (out of past savings) with him during the year under consideration. Apart therefrom, we find that the assessee had also come forth with an explanation as to for what purpose he was keeping sufficient cash (out of past savings) with him. As observed by us hereinabove, it has throughout been the claim of the assessee, that it was but for the ill health of his daughter who was suffering from mental retardation that he was keeping sufficient cash available with him to meet out any emergency situation. Also, it was claimed by the assessee that the said cash (out of past savings) would be deposited by him in bank, as and when the said funds to his understanding would not be immediately required.

10. We have deliberated on the facts of the case and find substantial force in the claim of the assessee. In our considered view, as the assessee had come forth with an explanation as regards the 'nature' and 'source' of the cash deposits under consideration, which we find has not been shown as incorrect or false, therefore, he could not have been visited with any penalty u/s 271(1)(c) on the said count. Admittedly, the quantum addition to the extent of Rs. 2 lac had been confirmed by the CIT(A), however, we cannot remain oblivious of the fact that assessment and penalty proceedings are separate and distinct proceedings, and merely for the reason that an addition had been made in the hands of the assessee would not justify imposition of penalty u/s 271(1)(c) on the assessee. As a matter of fact, we find that the CIT(A) in the course of the quantum proceedings had also partly accepted the aforesaid explanation of the assessee and had restricted the addition in the hands of the assessee to the extent of Rs.2,00,000/- (out of addition of Rs. 3,88,200/- made by the A.O). In our considered view, the sustaining of the quantum addition by the CIT(A) at an amount of Rs.2,00,000/- is not backed by any basis but is only founded on an estimation. In sum and substance, the CIT(A) after accepting the explanation of the assessee had on an estimate basis restricted the addition in the course of the quantum appeal to an amount of Rs.2,00,000/-. We are of a strong conviction that no penalty under Sec.271(1)(c) can be validly imposed in respect of an estimated addition de hors any supporting material. On the basis of our aforesaid deliberations, we are not inclined to uphold the order of the CIT(A) who had sustained the penalty imposed by the A.O under

Sec.271(1)(c) of the Act. Accordingly, the order of the CIT(A) is set aside and the penalty of Rs.36,871/- imposed by the A.O is quashed.

10. The appeal of the assessee is allowed.

Order pronounced in the open court on 08.11.2019

Sd/-
(N.K. Pradhan)
ACCOUNTANT MEMBER
मुंबई Mumbai; दिनांक 08.11.2019
PS. Rohit

Sd/-
(Ravish Sood)
JUDICIAL MEMBER

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई /
DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

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उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai