

आयकर अपील अाधिकरण, अहमदाबाद ँयायपीठ  
IN THE INCOME TAX APPELLATE TRIBUNAL,  
"A" BENCH, AHMEDABAD

BEFORE, SHRI WASEEM AHMED, ACCOUNTANT MEMBER

And

Ms. MADHUMITA ROY, JUDICIAL MEMBER

आयकर अपील सं./ITA No. 1569/AHD/2018

अाधरण वष/Asstt. Year: 2010-2011

Shri Madhubhai P. Vasani (HUF), 41, Krishnanagar Society, T.B.N. Road, India Colony, Bapunagar, Ahmedabad-380024.  PAN: AABHV9880J	Vs.	A.C.I.T, Circle-5(3), Ahmedabad.
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(Applicant)		(Respondent)
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Assessee by :	Shri Biren Shah, A.R
Revenue by :	Shri Satish Solanki, Sr.DR

सुनवाई क तारख/Date of Hearing : 25/09/2019

घोषणा क तारख /Date of Pronouncement: 29/11/2019

**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), Ahmedabad-5 [Ld. CIT(A) in short], dated 16/04/2018 arising in the matter of penalty order passed under s. 271(1)(c) of the Income Tax Act, 1961 (here-in-after referred to as "the Act") dated 28/03/2017 relevant to Assessment Year (A.Y) 2010-11.

The assessee has raised the following grounds of appeal:

- 1 *In the law and in facts and circumstances of the case, Ld.CIT(A) has erred in confirming penalty u/s.271(1)(c) for Rs.2,36,707/- on disallowance of exemption claimed u/s.54 and 54F of the Act amounting to Rs.11,49,063/- without appreciating the fact that Appellant has provided all the relevant evidences in assessment proceedings and there was no concealment of income.*
- 2 *The appellant raves leave, to add to, alter, and /or withdraw any ground or ground of appeal either before or during the course of hearing of the appeal.*

2. At the outset, it was observed that the impugned appeal filed by the assessee is against the penalty levied by the authorities below under section 271(1)(c) of the Act. However, we find that the quantum addition with respect to which the impugned penalty was levied has been restored to the file of the AO for fresh adjudication as per the provisions of law in ITA No. 3562/AHD/2015 vide order dated 7 September 2018. The relevant extract of the order is reproduced as under:

9. *We have heard the rival contentions and perused the materials available on record. The facts as discussed above are not in dispute. Therefore, we are not inclined to repeat the same for the sake of brevity, convenience, and adjudication.*

9.1 *From the preceding discussion/ we note that the assessee was in possession of the documents evidencing that investment was made in the residential house property and accordingly the assessee was eligible for exemption u/s. 54/54F of the Act but the exemption was denied to the assessee because he failed to furnish the supporting evidence to the A.O. during the assessment proceedings. It was also explained that the documents were not-filed before the A.O. due to the wrong advice of the Consultant.*

9.2 *The Id. D.R. has not brought anything contrary to the argument advanced by the Id. A.R. Therefore, we hold that the assessee failed to file the additional documents due to the wrong advice of the consultant which in our considered view a reasonable cause prevented the assessee from filing the documents during the assessment proceedings. In holding so, we find support and guidance from the order of the Hon'ble ITAT, Rajkot in the case of Parekh Automobiles vs. ITO reported in 68 TTJ 722 wherein it was held as under:*

*"Thus, assessee was misguided by the CA and, therefore, he could not produce the necessary evidence before him. On appeal, he produced the evidence of cash payment before the learned CIT(A). Therefore the intention of the assessee was a bona fide one and the learned CIT(A) should have taken into account the fresh evidence produced before him for giving proper justice to the assessee. In view of legal pronouncements by the various High Courts discussed above, we are of the considered opinion that, in the interest of justice, the learned CIT(A) should have admitted the fresh evidence and should have made further enquiries before passing the order. Therefore, the case was set aside and restored back to the file of the CTT(A) with the direction to admit the new evidence regarding the cash payments and pass a speaking order after conducting necessary investigation and after making necessary enquiries in this regard."*

9.3 *Thus, in view of the above, we hold that there was sufficient reason which prevented the assessee from filing the documents before the A.O. during the assessment proceedings. Therefore, the additional document of the assessee deserves to be admitted. Accordingly, after admitting the additional evidences as discussed above, we restore the issue to the file of the A.O. for fresh adjudication in accordance to the provisions of law and in the light of the additional documents as discussed above. Thus, the ground of appeal filed by the assessee is allowed for statistical purposes.*

10. *In the result, appeal filed by the assessee is allowed for statistical purposes.*

3. As, the quantum addition with respect to which the penalty was levied has been restored to the file of the AO for fresh adjudication as per the provisions of law, the impugned penalty appeal does not require any separate adjudication. As such it becomes infructuous in view of the above stated fact. Accordingly, we dismiss the same as infructuous.

Hence, the appeal filed by the assessee is disposed of in the manner as indicated above.

4. In the result, the appeal of the assessee is **dismissed**.

**Order pronounced in the Court on 29/11/2019 at Ahmedabad.**

**-Sd-**  
**(Ms MADHUMITA ROY)**  
**JUDICIAL MEMBER**

Ahmedabad; Dated **(True Copy)** 29/11/2019  
*Manish*

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