

आयकर अपीलिय अधिकरण, अहमदाबाद न्यायपीठ, अहमदाबाद ।
IN THE INCOME TAX APPELLATE TRIBUNAL
"SMC" BENCH, AHMEDABAD

BEFORE SHRI RAJPAL YADAV, VICE-PRESIDENT

आयकर अपील सं./ ITA.No.1126/Ahd/2018
निर्धारण वर्ष/ Asstt. Year: 2011-2012

| | | |
|--|----|---------------------------------|
| M/s.Persource C/o. Netlink India 51, New York Tower-A S.G. Highway Thaltej, Ahmedabad 380 054. PAN : AALFP 1825 H | Vs | ITO, Ward-3(3)(4) Ahmedabad. |
|--|----|---------------------------------|

| अपीलार्थी/ (Appellant) | प्रत्यर्थी/ (Respondent) |
|------------------------|--------------------------|
| Assessee by : | None |
| Revenue by : | Shri N.K.Goel, sr.DR |

सुनवाई की तारीख/Date of Hearing : 14/02/2020
घोषणा की तारीख /Date of Pronouncement: 17/02/2020

आदेश/ORDER

Assessee is in appeal before the Tribunal against order of the Id.CIT(A)-3, Ahmedabad dated 28.2.2018 passed for the Asstt.Year 2011-12. In this appeal, assessee is challenging confirmation of penalty imposed by the AO under section 271(1)(c) of the Income Tax Act of Rs.2,87,907/-.

2. Brief facts of the case are that assessee has filed e-return of income on 29.9.2011 declaring total income at Rs.NIL. The assessment was completed under section 143(3) of the Act on 18.2.2014 and total income of Rs.4,33,710/- was determined. While determining the total income, the Id.AO has disallowed deduction under section 10A of the Act of Rs.9,15,557/- in respect of convertible foreign exchange. Thereafter, the Id.AO initiated penalty proceedings under section 271(1)(c) of the Act for furnishing inaccurate particulars of income for wrongful claim of deduction under

section 10A of the Act amounting to Rs.9,15,557/- and issued and served notice under section 274 r.w.s. 271(1)(c) of the Act. After hearing the assessee, the Id.AO imposed impugned penalty, which was confirmed by the Id.CIT(A). Against this confirmation of penalty, the assessee is now before the Tribunal.

3. Before us, the Id.counsel for the assessee submitted by way of written submission that the assessee has challenged disallowance of deduction under section 10A before the Tribunal. The Tribunal vide order in ITA No.826/Ahd/2015 dated 9.8.2018 allowed claim of the assessee in principle and directed the AO to verify whether export proceeds have been received within twelve months from the date of export in tune with Master Circular. Thereafter, the Id.AO vide order dated 6.5.2019 gave effect to order of the ITAT. In other words, the claim of the assessee found to be admissible and income of the assessee was accordingly reworked out by the AO as per the direction of the ITAT. He placed on record copy of the order of the Tribunal as well as order giving effect to the order of the ITAT by the Id.AO dated 6.5.2019. It is therefore submitted that since disallowance on which penalty has been imposed stands cancelled, penalty under section 271(1)(c) of the Act does not sustain, and therefore extinguishes automatically. The Id.DR, on the other hand, did not dispute factual position of the matter.

4. After hearing Id.DR and a perusal of the material available on record, we find that 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 by 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 or furnishing of inaccurate particulars of income. In other words, the

quantification of the penalty is depended upon the addition made to the income of the assessee. In the present case, the disallowance has been cancelled by the Tribunal vide order dated 9.8.2018 cited (supra), and therefore penalty under section 271(1)(c) of the Act has not limb to stand. Therefore, order of penalty under section 271(1)(c) is cancelled and ground of raised in the appeal of the assessee is allowed.

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

Order pronounced in the Court on 17th February, 2020 at Ahmedabad.

Sd/-
(RAJPAL YADAV)
VICE-PRESIDENT

Ahmedabad; Dated 17/02/2020