

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'SMC' अहमदाबाद ।

**IN THE INCOME TAX APPELLATE TRIBUNAL
"SMC" BENCH, AHMEDABAD**

**BEFORE SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER
& SHRI MAHAVIR PRASAD, JUDICIAL MEMBER**

आयकर अपील सं./I.T.A. No. 1516/Ahd/2018

(निर्धारण वर्ष / Assessment Year : 2006-07)

Shri Harshad Manilal Shah 16, Golden Temple Bungalow, B/h. Manek- baug Hall, Ambawadi, Ahmedabad	बनाम/ Vs.	Income Tax Officer Ward 5(1)(3), Ahmedabad
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AQAPS7532D		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी ओर से /Appellant by :	Shri Hiren Trivedi, A.R
प्रत्यर्थी की ओर से / Respondent by :	Shri N. K. Goyal, Sr.D.R.

सुनवाई की तारीख / Date of Hearing	19/02/2020
घोषणा की तारीख /Date of Pronouncement	20/02/2020

आदेश/ORDER

PER PRADIP KUMAR KEDIA - AM:

The captioned appeal has been filed at the instance of the assessee against the order of the Commissioner of Income Tax (Appeals)-5, Ahmedabad ('CIT(A)' in short), dated 04.04.2018 arising in the penalty order dated 29.09.2016 passed by the Assessing Officer (AO) under s. 271(1)(c) of the Income Tax Act, 1961 (the Act) concerning AY 2006-07.

2. In the captioned appeal, the assessee seeks to challenge the imposition of penalty of Rs.8,02,870/- under s.271(1)(c) of the Act.

3. When the matter was called for hearing, the learned AR for the assessee submitted at the outset that the assessee has died on 29.10.2019. The learned AR further submitted that in the instant case, the return was filed for AY 2006-07 in question on 30.07.2006 declaring total income at Rs.88,080/-. Thereafter, the case was reopened on the basis of some information that cash deposits aggregating to Rs.24,00,024/- was made in HDFC Bank account. In the context, the learned AR for the assessee submitted that the cash was deposited out of sale of gold articles, the profit/loss whereof was duly declared in the return of income. The learned AR for the assessee thus submitted that reopening under s.147 of the Act merely because of cash deposits in bank account without reference to underlying return of income is not justified and quantum additions itself deserves to be deleted. The learned AR thus submitted that the imposition of penalty under s.271(1)(c) of the Act which is on a different pedestal and in the circumstances narrated, the invocation of penalty under s.271(1)(c) of the Act is not justified where the source of cash deposit from sale of gold is undeniable. It was contended that the AO has merely disputed the sale bills but not the sale of gold by the assessee *per se*. The purchaser of the gold has also given contradictory statements on issuance of bill to the assessee as disputed by AO.

4. The learned AR for the assessee thereafter raised a legal ground for unsustainability of penalty under s.271(1)(c) of the Act on cash deposits. It was pointed out that the AO himself has drawn vague satisfaction for 'concealing income and furnishing inaccurate particulars of income at the time of framing assessment'. The notice issued under s. 274 r.w.s. 271(1)(c) of the Act is also vague and the

specific charge towards concealment of particulars of income or furnishing inaccurate particulars of income is not known. The penalty culminated on the basis of such vague satisfaction has also not clearly specified the nature of default committed by the assessee. Under the circumstances, the imposition of penalty is not sustainable in law in view of the decision of the co-ordinate bench of Tribunal in *Multivision Infotech (P.) Ltd. vs. ACIT [2017] 88 taxmann.com 874 (Ahmedabad-Trib.)*. The learned AR accordingly urged for cancellation of penalty imposed on the assessee who is now deceased.

5. The learned DR, on the other hand, relied upon the order of the lower authorities.

6. We have heard the rival submissions. As narrated on behalf of the assessee, the correctness of imposition of penalty under s.271(1)(c) of the Act on alleged unexplained cash deposits is in question. As pointed out on behalf of the assessee, the satisfaction drawn by the AO at the time of assessment as well as show cause notice for proposed action remains undoubtedly vague and ambiguous. The penalty has been imposed for concealment of income in contradiction to the satisfaction formed. The ratio of the co-ordinate bench in *Multivision Infotech (P.) Ltd. (supra)* thus would squarely apply. The penalty under s.271(1)(c) of the Act cannot be fastened on this legal ground alone.

7. We however also advert to the other plank raised on behalf of the assessee. The case has been reopened merely on the premise that certain cash has been deposited without negating the claim of the assessee towards the source of cash deposited to be sale of gold articles. On merits, the assessee has produced sale bills to support the sale of gold. The sale bills appear to have been disputed in the quantum proceedings but however sale of gold article *per se* remains

undisputed. The source of cash deposit thus cannot outrightly rejected. The statement rendered by the purchaser is also marred with certain contradictions as pointed out on behalf of assessee in quantum proceedings. Under these circumstances, there is enough room to grant benefit of doubt to the assessee. In our view, mitigating circumstances exist which warrants deletion of penalty imposed under s.271(1)(c) of the Act. The order of the CIT(A) appealed against is thus set aside and the AO is directed to delete the penalty so imposed.

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

This Order pronounced in Open Court on 20/02/2020

Sd/-
(MAHAVIR PRASAD)
JUDICIAL MEMBER
Ahmedabad: Dated 20/02/2020

Sd/-
(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER

True Copy

S. K. SINHA

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. राजस्व / Revenue
2. आवेदक / Assessee
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद /
DR, ITAT, Ahmedabad
6. गार्ड फाइल / Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण, अहमदाबाद ।