

**IN THE INCOME TAX APPELLATE TRIBUNAL
“SMC” BENCH, AHMEDABAD
[CONDUCTED THROUGH VIRTUAL COURT]**

**BEFORE SHRI AMARJIT SINGH, ACCOUNTANT MEMBER &
Ms. MADHUMITA ROY, JUDICIAL MEMBER**

I.T.A. No. 2151/Ahd/2018
(Assessment Year: 2014-15)

Shri Kasturchand Popatlal- HUF, 18, Ashwamegh Bunglows, 132 Ft Ring Road, Shivrajani Cross Road, Satellite, Ahmedabad [PAN No. AABHK 3445C] (Appellant)	Vs.	ITO Ward-3(3)(2) Room No. 502, 5 th Floor, Pratyaksh Kar Bhavan, Ambawadi, Ahmedabad-380015 (Respondent)
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Appellant by : Shri Vartik Chokshi, AR
Respondent by : Shri Dilip Kumar, Sr. D.R.

Date of Hearing	01.06.2020
Date of Pronouncement	30.07.2020

ORDER

PER Ms. MADHUMITA ROY - JM:

The instant appeal filed by the assessee is directed against the order dated 28.08.2018 passed by the Commissioner of Income Tax (Appeals) – 3, Ahmedabad arising out of the order dated 27.03.2017 passed by the ITO, Wd-3(3)(2), Ahmedabad under section 271(1)(c) of the Income Tax Act, 1961 (hereinafter referred as to ‘the Act’) for Assessment Year 2014-15.

2. The brief facts leading to the case is this that the assessee filed its return of income for the A.Y. 2014-15 declaring total income at Rs. 7,49,290/- on 26.07.2014 which was finalized under section 143(3) of the

Act on 28.09.2016 determining total income at Rs. 7,49,380/- after making addition to the tune of Rs. 19,79,419/- on account of long-term capital loss. In fact, during the course of assessment proceeding the assessee was asked to furnish the details of long-term capital loss of Rs. 42,10,057/-. However, the long-term capital loss was allowed to the tune of Rs. 22,30,368/- only for the relevant assessment year under review since there was a error in computing long-term capital loss. It is the case of the assessee that the error took place because of the particular reason that the property sold was purchased in phased manner i.e. shop No. 4 was purchased in F.Y. 1997-98 and the other two shops being No. 5 & 6 were purchased in F.Y. 2000-01. Inadvertently the purchased date of all shops was taken as if purchased in the F.Y. 1997-98. After accepting the error the assessee submitted the revised working of the indexed acquisition cost and revised long-term capital loss which was duly acknowledge by the authorities below. However, penalty proceeding was initiated under section 271(1)(c) by the Ld. AO for furnishing inaccurate particulars of income by claiming excess long-term capital loss which was otherwise not entitled. Finally the penalty proceeding was concluded by imposition of penalty of Rs. 4,07,761/- under section 271(1)(c) of the Act on the committed default on account of furnishing of inaccurate particulars of income/thereby leading to concealment. The same was, in turn, confirmed by the First Appellate Authority. Hence, the assessee is before us.

3. At the time of the hearing of the instant appeal the Ld. Counsel appearing for the assessee submitted before us that the penalty does not fulfill the criteria laid down u/s. 271(1)(c) of the Act. Furthermore, the Ld.

AR submitted before us that while imposing penalty both the limbs being furnishing of inaccurate particular of income and concealment of income has been alleged by the Ld. AO which is ambiguous and vague as well. Since the AO has not specified the alleged guilt committed by assessee by furnishing of inaccurate particulars of income or concealment of income which is nothing but non-application of mind. In this aspect, Learned AR relied upon the judgment passed by the Hon'ble Jurisdictional High Court in the matter of Snita Transport Pvt. Ltd-vs-ACIT reported in 42 taxmann.com 54 where it was held that while imposing penalty u/s 271(1)(c) of the Act the AO should apply his mind and make it clear as to whether he has proceeded and finalized on the basis that the tax payer has concealed his income or he had furnished inaccurate particulars of income, which according to the Learned AR, has not been followed in the instant case by the Learned AO while imposing penalty against the assessee at the final stage as also argued by the Ld. AR.

The Learned AR also relied upon the judgment passed by the Gujarat High Court in the case of CIT-vs-Jyoti Ltd. reported in [2013] 34 taxmann.com 65 (Gujarat), the order passed by the Hon'ble Tribunal, Ahmedabad Benches in the case of Dharmesh Dhulabhai Prajapati-vs-ITO in ITA No.1570/Ahd/2017 for A.Y. 2011-12 and also the matter of Smt. Ushaben Atulbhai Shah in ITA No.197/Ahd/2017 for A.Y 2012-13.

4. We have heard the respective parties, we have also perused the relevant materials available on record. We find that the order imposing penalty has not specified the guilt committed by the assessee for such penalty as already discussed by us while dealing with facts of the case

hereinabove. The First Appellate Authority, however has not taken into consideration the particular aspect of the matter. The penalty order passed by the Ld. AO states as follows:-

“9. In view of the above, on the basis of the facts and circumstances of the case, I am satisfied that the assessee has committed default u/s 271(1)(c) of the Act by way of furnishing of inaccurate particulars of income/thereby leading to concealment. It is held that the assessee is liable for penalty under section 271(1)(c) of the Act, it is therefore directed that the assessee shall pay by way of penalty in addition to the amount of tax, a sum calculated as under:

		Rs.
1.	Total Income as per Return of Income filed	7,49,380
2.	Concealed Income	19,79,419
3.	Assessed Income	7,49,380
4.	Tax on Returned Income [as per (1) above]	82,254
5.	Tax on Assessed Income [as per (3) above]	82,254
6.	Notional Tax effect on disallowance of excess long term capital loss claimed of Rs. 19,79,419/-. (Tax 20% Rs. 19,79,419/-) = Rs. 3,95,884 + 3% EC Rs. 11,877/- = 4,07,761/-	4,07,761
7.	Minimum Penalty leviable : 100% of the tax evaded / sought to be evaded	4,07,761
8.	Maximum penalty leviable : 300% of the tax evade / sought to be evaded	12,23,283”

5. In a nut shell, it appears from the penalty order that the Learned AO has not levied the penalty on the specific charge as mandated u/s 271 (1)(c) of the Act. In such facts and circumstances the Hon'ble Jurisdictional High Court in the case of Snita Transport Pvt. Ltd. Vs. Assistant Commissioner of Income Tax reported in 42 taxmann.com 54 has held that penalty cannot be imposed without mentioning the specific charge. The relevant extract of the order is reproduced below:

“9. Regarding the contention that the Assessing Officer was ambivalent regarding under which head the penalty was being imposed namely for concealing the particulars of income or furnishing inaccurate particulars, we may record that though in the assessment order the Assessing Officer did

order initiation of penalty on both counts, in the ultimate order of penalty that he passed, he clearly held that levy of penalty is sustained in view of the fact that the assessee had concealed the particulars of income. Thus insofar as final order of penalty was concerned, the Assessing Officer was clear and penalty was imposed for concealing particulars of income. In light of this, we may peruse the decision of this Court in case of Manu Engineering Works (supra). In the said decision, the Division Bench came to the conclusion that language of "and/or" may be proper in issuing a notice for penalty, but it was incumbent upon the Assessing Authority to come to a positive finding as to whether there was concealment of income by the assessee or whether any inaccurate particulars of such income had been furnished by them. If no such clear cut finding is reached by the authority, penalty cannot be levied. It was a case in which in final conclusion the authority had recorded that "I am of the opinion that it will have to be said that the assessee had concealed its income and/or that it had furnished inaccurate particulars of such income." It was in this respect the Bench observed that "Now the language of "and/or" may be proper in issuing a notice as to penalty order or framing of charge in a criminal case or a quasi-criminal case, but it was incumbent upon the IAC to come to a positive finding as to whether there was concealment of income by the assessee or whether any inaccurate particulars of such income had been furnished by the assessee. No such clear cut finding was reached by the IAC and, on that ground alone, the order of penalty passed by the IAC was liable to be struck down."

The principles laid down by the Hon'ble Jurisdictional High Court in the above case are squarely applicable to the facts of the case in hand. We, thus, find force in such submission made by the Ld. Authorised Representative. It is apparent on the face of it and AO has not mentioned the specific charge in its penalty order whether it was levied for concealment of income or for furnishing inaccurate particulars of income by the assessee. In that view of the matter, we find that the penalty levied by the AO and confirmed by the learned CIT (A) is not sustainable in the eye of law. The penalty, therefore, is deleted. Hence, the ground of appeal of the assessee is allowed.

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As we have deleted the penalty imposed by the Learned AO & confirmed by the Learned CIT(A) on the technical ground, i.e. no specific charge has been invoked as discussed above, we are inclined to refrain ourselves from adjudicating the grounds of appeal of assessee raised on merits.

5. In the result, assessee's appeal is allowed.

This Order pronounced in Open Court on	30/07/2020
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Sd/-
(AMARJIT SINGH)

ACCOUNTANT MEMBER

Ahmedabad; Dated 30/07/2020

TANMAY, Sr. PS

TRUE COPY

Sd/-
(Ms. MADHUMITA ROY)
JUDICIAL MEMBER

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

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

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)

आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad