

**आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'B' अहमदाबाद ।**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**“B” BENCH, AHMEDABAD**

*(Convened through Virtual Court)*

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

आयकर अपील सं./I.T.A. No. 1764/Ahd/2018

(निर्धारण वर्ष / Assessment Year : 2012-13)

<b>M/s. Ratnakar Securities Pvt. Ltd.</b> 304, Sankalp Square II, Near Jalaram Mandir Crossing, Ellisbridge- Paldi, Ahmedabad 380006	<b>बनाम/</b> Vs.	<b>ACIT</b> Circle-1(3), Ahmedabad
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAACR7287D		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी ओर से /Appellant by :	None
प्रत्यर्थी की ओर से / Respondent by :	Shri R. R. Makwana, Sr.D.R.

सुनवाई की तारीख / Date of Hearing	19/01/2021
घोषणा की तारीख /Date of Pronouncement	22/01/2021

**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)-10, Ahmedabad ('CIT(A)' in short), dated 23.07.2018 arising in the penalty order dated 27.03.2017 passed by the Assessing Officer (AO) under s. 271(1)(c) of the Income Tax Act, 1961 (the Act) concerning AY 2012-13.

2. As per its grounds of appeal, the assessee has challenged the imposition of penalty of Rs.46,600/- on disallowance of donation amounting to Rs.1,50,620/-.

3. Briefly stated, the assessee filed return of income declaring total income at Rs.45,30,090/-. In the scrutiny assessment, an addition of Rs.1,50,620/- was *inter alia* made on account of disallowance of donation given to Jain Derasar. The AO noted that the assessee has wrongly claimed donation paid amounting to Rs.1,50,620/- as business expenditure. The AO disallowed the aforesaid claim and also observed that the donation given does not qualify for deduction under s.80G of the Act. Consequently, addition of Rs.1,50,620/- was *inter alia* made to the total income of the assessee and penalty under s. 271(1)(c) was imposed thereon by the AO vide order dated 27.03.2017 @ 100% thereon.

4. In the first appeal, the CIT(A) also confirmed the penalty so imposed.

5. Further aggrieved, the assessee preferred appeal before the Tribunal.

5.1 None appeared for the assessee when the matter was called for hearing.

5.2 The learned DR for the Revenue relied upon the findings of the CIT(A) and AO.

6. We have considered the submissions made on behalf of the Revenue and perused the orders of the authorities below. The controversy involves imposition of penalty u/s.271(1)(c) of the Act on disallowance of donations paid as non-business expenses. We straightway note that in order to attract penalty u/s.271(1)(c) of the

Act, it is necessary that there must be concealment by the assessee of the particulars of his income or furnishing of inaccurate particulars. The disallowance of certain expenditure actually incurred on the grounds of lack of commercial expediency is neither concealment of any particulars of income *per se* nor can be regarded as furnishing of inaccurate particulars as such. Needless to say, before penalty can be imposed, the entirety of circumstances must reasonably point to the conclusion that the disputed amount represents income and the assessee has concealed the particulars thereof or furnished inaccurate particulars. It is not the case of the AO that assessee has in fact not incurred any donation expense as claimed. The AO in the assessment order himself has noted in para 5 that payment of donation has been shown distinctly in the financial statement but however the expenses have not been excluded while determining the taxable income. A conspectus of the Explanation – 1 to Section 271(1)(c) of the Act makes it clear that the statute visualized the assessment proceedings and penalty proceedings to be wholly distinct and independent of each other. While the AO may be justified in making disallowance of donation expenses as non-business expenditure in quantum proceedings, such disallowance cannot automatically invite imposition by way of penalty. When all material facts relevant to the said claim were placed on record, the presence or absence of commercial instinct in a given case is a matter of inference. Such adverse inference against assessee would not attract imposition of penalty. The claim of expenditure towards donation made, at best, be taken as erroneous claim by the assessee. Such claim made in a bonafide manner cannot lead to imposition of penalty. Although such claim may not be maintainable for the purposes of quantum proceedings however, in the absence of any falsity *per se* in such claim, making an incorrect claim for deduction is not at par with concealment or inaccurate particulars of income.

7. We also take note of the decision of the Hon'ble Bombay High Court in the case of *CIT vs. Dalmia Dyechem Industries Ltd. Income Tax Appeal No. 1396 of 2013* judgment dated 06.07.2015 to observe that the penalty cannot be imposed unless the action of the assessee per se is dishonest, malafide and amounting to concealment of facts. There, being no concealment of fact *per se* imposition of penalty is not justified. The penalty, in our view, is clearly not maintainable in the absence of any contumacious or dishonest conduct. Consequently, we set aside the order of the CIT(A) and direct the AO to delete the penalty on disallowance of estimated interest expenditure.

8. In the result, appeal of the assessee is allowed *ex parte*.

**This Order pronounced on 22/01/2021**

Sd/-  
(MAHAVIR PRASAD)  
JUDICIAL MEMBER  
Ahmedabad: Dated 22/01/2021

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 ।