

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ
IN THE INCOME TAX APPELLATE TRIBUNAL,
" B " BENCH, AHMEDABAD
(CONDUCTED THROUGH VIRTUAL COURT AT AHMEDABAD)
BEFORE SHRI MAHAVIR PRASAD, JUDICIAL MEMBER
And
SHRI WASEEM AHMED, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No. 2672/AHD/2017
निर्धारण वर्ष/Asstt. Year: 2013-2014

Shri Navnit Mulchand Shah, 12, Darpan Society, Naranpura, Ahmedabad-380013. PAN: AJWPS7649Q	Vs.	D.C.I.T, Kheda Circle, Nadiad.
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(Applicant)		(Respondent)
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Assessee by :	Shri K.P. Shah, A.R
Revenue by :	Shri R.R. Makwana, Sr.D.R

सुनवाई की तारीख/**Date of Hearing** : **10/06/2021**
घोषणा की तारीख /**Date of Pronouncement**: **23/06/2021**

आदेश/ORDER

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)-2, Vadodara, dated 16/08/2017 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") relevant to the Assessment Year 2013-2014.

2. The assessee has raised the following grounds of appeal:

1. *The learned CIT (Appeals)-2, Vadodara grossly erred in law and on facts in upholding penalty of Rs.2,32,240/- u/s.271(1)(c) in respect of addition of Rs.2,11,575 for Cessation of liability and addition of Rs.5,00,000 in respect of Income from other sources.*

2. *The learned CIT(Appeals) erred in not appreciating legally and factually the submission dt.31/07/2017.*

3. The interconnected issued raised by the assessee is that the learned CIT (A) erred in confirming the penalty of Rs. 2,32,240/- imposed under section 271(1)(c) of the Act.

4. Briefly stated facts are that, the assessee is an individual and engaged in the business of merchant exports of pharmaceuticals formulations. During the year under consideration, the additions were made by the AO on account of cessation of liability and income from other sources for Rs. 2,11,575/- and 5,00,000/- respectively in the assessment framed under section 143(3) of the Act vide order dated 29/01/2016. Accordingly the AO initiated penalty proceedings under section 271(1)(c) of the Act, for furnishing inaccurate particular of income and concealing the particular of income in respect to both the addition respectively.

4.1 However, the assessee submitted that the liability to the parties is very much appearing in in his books of accounts. As such the liability of Rs.2,11,575/- has not ceased to exist. Furthermore, non-replies from the parties in response to the notice issued under section 133(6) of the Act cannot be construed against the assessee. Additionally, all the disclosures with respect to such liability were duly disclosed in the books of accounts.

4.2 The assessee regarding the receipt of ₹5 lakhs submitted that such amount was received in connection with the transfer of the property as confirming party and the same was duly recorded in the books of accounts. However, the same was not offered to tax inadvertently in the income tax return under the bona fides believe. As such, the assessee has made the disclosure of the same in his books of accounts.

In view of the above the assessee requested to drop the penalty proceedings initiated under section 271(1)(c) of the.

4.3 However, the AO disregarded the contention of the assessee by observing that the assessee has furnished the inaccurate particulars of income and concealed the particulars of income and levied the penalty of Rs.2,32,240/- being 100% of the amount of tax sought to be evaded .

5. Aggrieved assessee preferred an appeal before the learned CIT (A) who confirmed the penalty imposed by the AO by holding as under:

4.2.1. In respect of addition of Rs.2,11,575/- being the Cessation of liability u/s 41(1), I find that the notices issued u/s 136 were returned unserved with the remark "left" . When the factual position was pointed out to the appellant vide Order Sheet dated 18.01.2016, it was clarified that these parties have closed their business and the appellant did not remember the nature of transaction. Under these circumstances, the assessee also agreed for the addition. Now the Id.AR has claimed that the liabilities have been paid-off in March 2015 by cheque. This claim of appellant, cannot be accepted because no proof in this regard was filed either during the course of assessment proceedings or penalty proceedings. It is also not proved that the payment has actually been made to the concerned parties since the appellant even did not remember the nature of transaction with them. Under these circumstances, I am of the considered view that the appellant has tried to mislead the department in respect of the bogus liabilities and accordingly, the addition made u/s 41(1) amounts to furnishing of inaccurate particulars of income. Hence the penalty imposed on this account is confirmed.

4.2.2. During the course of assessment proceedings, the AO examined various details furnished and noticed that the appellant received a sum of Rs. 5,00,000/- as a confirming party in respect of sale of Shed No.21, Tirupati Estate, Narol Cross Road, Ahmedabad. The property was sold by Shri Manibhai Chhaganbhai, Partner of M/s Tirupati Associates to Shri Mam'shbhai Thakorabhai Shah. This amount was not disclosed by the appellant in the return of income. When the AO raised the query, the appellant claimed that he had incurred legal expenses of Rs.17,500/- and cost of construction of godown at Rs.4,46,320/- and hence the income was not disclosed. Undisputedly, the appellant has never disclosed these facts in the return of income and also failed to furnish documentary evidences in respect of above claim of expenditure. In fact, the appellant has tried to mislead the department by not disclosing income of Rs.5,00,000/- consciously and hence I hold that the appellant is liable for penal consequences on this account for concealment of particulars of income. Accordingly, the penalty imposed on this account is confirmed.

6. Being aggrieved by the order of the Id. CIT-A, the assessee is in appeal before us.

7. The Id. AR before us filed a paper book running from pages 1 to 38 and submitted that the liability of Rs. 2,11,575/- has been paid by the assessee in the subsequent assessment years. For this purpose the learned AR drew attention on pages 8 to 13 of the paper book where the copies of the ledgers of the parties were placed.

7.1 The learned AR regarding the addition of ₹5 lakhs contended that the assessee has recorded such receipts in the books of accounts but failed to offer to tax inadvertently. The books of accounts of the assessee were duly audited and no infirmity was pointed out therein in the course of assessment proceedings. In view of the above, the learned AR submitted that there cannot be any penalty under the provisions of section 271(1)(c) of the Act.

8. On the other hand the Id. DR vehemently supported the order of the authorities below.

9. We have heard the learned AR and the DR and perused the materials available on record. In the present case the penalty has been levied with respect to the addition made on account of cessation of liability and income from other sources. The controversy before us arises so as to adjudicate whether the assessee has furnished inaccurate particulars of income and concealed the particulars of income with respect to the above items of addition as discussed aforesaid. The term inaccurate particular of income has not been defined under the provisions of section 271(1)(c) or elsewhere in the Act the Act. However, the meaning of the term inaccurate has been discussed by the Hon'ble Supreme Court in the case of **Reliance Petroproducts (P) Ltd reported in 189 taxman 322** wherein it was held that the term 'inaccurate' signifies deliberate act or omission on the part of the assessee. As such, the details/informations contained in the return of income /financial statements /audit report which are not correct according to truth, and were furnished by the assessee with the dishonest intent shall be treated as inaccurate particulars. In holding so, we find support and guidance from the

judgment of Hon'ble Supreme Court in the case of **Reliance Petroproducts (P) Ltd (supra)**.

We are not concerned in the present case with the mens rea. However, we have to only see as to whether in this case, as a matter of fact, the assessee has given inaccurate particulars. In Webster's Dictionary, the word "inaccurate" has been defined as :—

"not accurate, not exact or correct; not according to truth; erroneous; as an inaccurate statement, copy or transcript."

We have already seen the meaning of the word "particulars" in the earlier part of this judgment. Reading the words in conjunction, they must mean the details supplied in the Return, which are not accurate, not exact or correct, not according to truth or erroneous. We must hasten to add here that in this case, there is no finding that any details supplied by the assessee in its Return were found to be incorrect or erroneous or false

9.1 Now, if we analyse the facts of the present case in the light of the above stated discussion, we find that it cannot be alleged that the assessee has furnished inaccurate particulars of income with respect to the liabilities which ceased to exist in the books as alleged by the Revenue. It is because the assessee in the subsequent year has made the payment of such liabilities. This fact can be verified from the copies of the ledgers which are available on record. Accordingly, it cannot be concluded that the assessee has furnished inaccurate particulars of income and thus question of penalty under section 271(1)(c) of the Act does not arise.

9.2 Regarding the addition made for ₹5 lakhs on account of the money received by the assessee as confirming party, we find that the assessee contended that such receipt was duly recorded in the books of accounts which were subject to audit. The contention of the assessee was not challenged by the authorities below. In view of the above, we are of the opinion that the assessee has made sufficient disclosures in the financial statements. Therefore, the assessee should not be penalized on account of the mistake committed by him inadvertently as discussed above. Therefore, we are reluctant to confirm the penalty levied by the authorities below.

9.3 In holding so, we find support and guidance from the judgment of Hon'ble Supreme Court in the case of **Price Waterhouse Coopers Pvt. Ltd. vs CIT reported in 25 taxmann.com 400** wherein, it was held as under:

"The contents of the Tax Audit Report suggest that there is no question of the assessee concealing its income. There is also no question of the assessee furnishing any inaccurate particulars. It appears that all that has happened in the present case is that through a bona fide and inadvertent error, the assessee while submitting its return, failed to add the provision for gratuity to its total income. This can only be described as a human error which we are all prone to make. The caliber and expertise of the assessee has little or nothing to do with the inadvertent error. That the assessee should have been careful cannot be doubted, but the absence of due care, in a case such as the present, does not mean that the assessee is guilty of either furnishing inaccurate particulars or attempting to conceal its income.

Given the peculiar facts of this case, the imposition of penalty on the assessee is not justified. The assessee had committed an inadvertent and bona fide error and had not intended to or attempted to either conceal its income or furnish inaccurate particulars"

9.4 After considering the facts in totality as discussed above, we feel that there was no deliberate intention/ act on the part of the assessee to furnish the inaccurate particulars of income/ concealing the particulars of income. We also find strength from the fact that the assessee has declared the income of Rs. 44,35,33,330/- in the income tax return and the amount involved in the dispute is of negligible value in comparison to the income. Thus we reverse the order of the authorities below and direct the AO to delete the penalty imposed by him under section 271(1)(c) of the Act. Hence the ground of appeal of the assessee is allowed.

10. In the result, the appeal of the assessee is **allowed**.

Order pronounced in the Court on 23/06/2021 at Ahmedabad.

**Sd/-
(MAHAVIR PRASAD)
JUDICIAL MEMBER**

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

Ahmedabad; Dated
Manish

(True Copy)
23/06/2021