

IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT
BEFORE SHRI PAWAN SINGH, JM & DR. A. L. SAINI, AM

आयकरअपीलसं./ITA No.1210/AHD/2017

(निर्धारणवर्ष / Assessment Year: (2006-07)

(Virtual Court Hearing)

Shri Anuragraji Vallabhraji Goswami, 10/137, Mota Mandir, Chauta Bazar, Surat – 395003.	V s.	The Income Tax Officer, Ward-2(2)(1), Surat.
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: ABHPG 3482 G		
(Assessee)		(Respondent)

Assessee by : Shri Yogesh B. Shah - AR

Respondent by : Shri Sita Ram Meena – Sr.DR

सुनवाईकीतारीख/ Date of Hearing : 29/07/2021

घोषणाकीतारीख/Date of Pronouncement: 29/07/2021

आदेश / O R D E R

PER DR. A. L. SAINI, ACCOUNTANT MEMBER:

Captioned appeal filed by the assessee pertaining to the Assessment Year 2006-07, is directed against the order passed by the Id.Commissioner of Income Tax(Appeals)-1, Surat dated 25.04.2017.

2. At the outset itself, Shri Yogesh B. Shah, Id.Counsel for the assessee, pleads that in assessee's case, Id.CIT(A) adjudicated the issue on merits and confirmed the penalty, levied by assessing officer, under section 271(1)(c) of the Act to the tune of Rs.1,41,571/-. However, Id CIT(A) did not condone the minor delay of six days but passed the order on merits also by confirming the penalty imposed by the assessing officer under section 271(1)(c) of the Act. The Id Counsel contends that assessee does not wish to press the issue of 'condonation of delay' which was before the Id CIT(A). The Id.Counsel further submits that in assessee's case the Tribunal has passed the order in ITA No.1331/AHD/2015, for the A.Y. 2006-07, order dated 13.02.2020, wherein the Tribunal has condoned the delay in filing the quantum appeal and then deleted the quantum addition on which the penalty was levied. Since the quantum addition has been deleted, therefore, penalty imposed under section 271(1)(c) of the Act may be deleted.

3. On the other hand, the ld.Departmental Representative for the Revenue has relied on the penalty order passed by the Assessing Officer.

4. We have heard both the parties and perused the material available on record. We note that Tribunal in assessee's own case in ITA No.1331/AHD/2017 for the A.Y. 2006-07 has deleted the quantum addition observing as follows:

"8. Being aggrieved, the assessee filed this appeal before this Tribunal. The ld. counsel for the assessee submitted that the assessee is a Maharaj of Vaishnav cult and is a pujari of Mota Mandir, Surat. He is engaged in performing vaidic rituals etc., undertakes religious trips to Vrundavan, Kumbhemala etc. on no profit no loss basis. He is not a business man. He does not carry out any business activity. He may not be aware of the different obligations of the Government to be observed at the different stage in the wordly life. He has received gift of Rs.3,00,000/- through transfer from savings bank A/c. No.42012 of his father Shri Vallabhraiji Maharaj, with Bank of India, Main branch, Surat on 08-08-2005. He further received an amount of Rs.5200/- from devotees on Janmashtmi, Dipawali, Holi and Raxabandhan. The gift of assessee received from his father with love and affection and same should not be added in his return of income. Further, the gifts of Rs.1,15,390/- were the gifts outside the ambit of section 56(v) as stood before 31.03.2006 and such these gifts were not chargeable to income tax under the head income from other sources. The ld. counsel supported this arguments by placing reliance on the decision of ITAT, Mumbai Bench in the case of Nirmal P. Athvale v. ITO (2008) 22SOT 197 (Mumbai).

9. Per contra, the ld. sr. DR relied on the order of lower authorities.

10. We have heard the rival submission and perused the material available on record. We find that the gift of Rs.3,00,000/- were received from the father of the assessee which is duly reflected in the bank account of Bank of India dated 08.08.2005 appearing at paper book page 28 with regard to others the same amount of Rs.5,200/- being small gifts and gifts of Rs.1,15,390/- received from the followers which also not chargeable to tax in the light of decision of ITAT (Bombay) in the case of Nirmala P. Athavale (supra) wherein it was held that whether where assessee who was a well known social reformer and philosopher having lakhs of followers spread all over world and who used to charge no fee or remuneration from his followers or persons who attended his lectures, had received voluntary gifts of certain sum from his followers in recognition of his personal qualities and noble thoughts, gifted sum could not be termed as benefit or perquisite within meaning of section 28(iv) of the Act. Similar finding was rendered by the Hon'ble Bombay High Court in the case of Dilip Kumar Roy v. CIT (1974) 94 ITR 1 (Bombay) whenever an amount is paid as personal gift for personal qualities of assessee and as token of personal esteem and veneration, it cannot be subjected to tax as income arising out of business, profession or vocation. Since, the gift is reflected of Rs.300000/- reflected in the balance account and others were received

from followers, therefore, we are of the considered opinion that the addition is not sustainable and the same is directed to be deleted.”

5. It is abundantly clear that since the Tribunal has deleted the quantum addition on which the Assessing Officer has imposed the penalty under section 271(1) (c) of the Act, therefore, the penalty should not survive and will die. When foundation is removed then superstructure would automatic falls, meaning thereby, when quantum relating to penalty has been deleted then there would not be any base to levy penalty, hence, we quash the penalty order.

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

Order is pronounced on 29/07/2021 by placing result on Notice Board.

**Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER**

**Sd/-
(Dr. A.L. SAINI)
ACCOUNTANT MEMBER**

Surat /दिनांक/ Date: 29/07/2021 /sgr

Copy of the Order forwarded to

1. The Assessee
2. The Respondent
3. The CIT(A)
4. Pr.CIT
5. DR/AR, ITAT, Surat
6. Guard File

By Order

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Assistant Registrar/Sr. PS/PS
ITAT, Surat