

**IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD “SMC” BENCH, AHMEDABAD**

**BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER AND
Ms. SUCHITRA KAMBLE, JUDICIAL MEMBER**

(Conducted through Virtual Court)

**ITA Nos.798, 799, 800 & 801/Ahd/2015
Assessment Years: 2007-08, 2009-10, 2010-11 & 2011-12 respectively**

Shri Girish Vitthalbhai Patel,
D-202, Sarjan Tower,
Gurukul Road,
Ahmedabad – 380 052.
[PAN – ACRPP 7999 Q]
(Appellant)

vs. The Income Tax Officer,
Ward – 6(2), Ahmedabad.

(Respondent)

Appellant by : Shri P.B. Parmar, Advocate &
Shri Tushar Hemani, Sr. Advocate
Respondent by : Shri Anand Kumar, Sr. D.R.

Date of hearing : 10.12.2021
Date of pronouncement : 07.01.2022

ORDER

PER SUCHITRA KAMBLE, JUDICIAL MEMBER :

These four appeals are filed by the assessee against four separate orders, all dated 04.02.2015, passed by the CIT(A)-13, Ahmedabad for the Assessment Years 2007-08, 2009-10, 2010-11 & 2011-12.

2. Since the issue involved in all these appeals are identical and, therefore, we are taking up the appeal filed by the assessee for the Assessment Year 2007-08 as the lead matter.

3. The assessee has raised common grievance in all these appeals. Therefore, grounds raised in ITA No.798/Ahd/2015 for Assessment Year 2007-08 are reproduced as under :-

- “1. The Id. CIT(A) has erred in law and on the facts of the case in confirming the action of Id. AO in levying penalty of Rs.10,00,000/- u/s 271(1)(c) of the Act, which is wholly unsustainable in law and on facts and as such the appellant could not be charged with any guilt of furnishing inaccurate particulars of income or concealing particulars of income within mischief of Section 271(1)(c) of the Act. The levy of penalty being without jurisdiction and totally uncalled for deserves to be quashed.
2. Without prejudice to the above the learned CIT(A) has erred in law and on the facts of the case in confirming the action of Ld. AO of levying penalty on income which has already been disclosed by the appellant in his return of income filed u/s 153A of the Act.
3. Ld. CIT(A) ought to have appreciated the facts that the Ld. AO has made additions to the tune of Rs.16,05,010/- to the total income of the appellant while framing the assessment order under section 143(3) r.w.s 153A(1)(b) of the Act whereas penalty under section 271(1)(c) of the Act has been wrongly levied on an amount of Rs.17,95,013/-.
4. The Id. CIT(A) has erred in law and on the facts of the case in confirming the action of Id. AO in levying penalty without giving reasonable opportunity of hearing before levying penalty and hence the order of AO is against the principles of natural justice and without considering all the facts of the case and judicial decisions.
5. The learned CIT(A) has erred in law and on facts in confirming the action of AO in initiating and levying penalty under section 271(1)(c) of the Act without recording mandatory satisfaction as contemplated under the Act at the time of framing the assessment order.
6. In any case, the impugned penalty order is barred by limitation and thus without jurisdiction and illegal.
7. Without prejudice to the above the quantification of the penalty is erroneous and excessive.
8. Both the lower authorities have passed the orders without properly appreciating the fact and that they further erred in grossly ignoring various submissions, explanations and information submitted by the appellant from time to time which ought to have been considered before passing the impugned order. This action of the lower authorities is in clear breach of law and Principles of Natural Justice and therefore deserves to be quashed.

The appellant craves leave to add, amend, alter, edit, delete, modify or change all or any of the grounds of appeal at the time of or before the hearing of the appeal.”

4. The assessee is an individual engaged in the business of estate agent/broker. The search was carried out on 21.09.2010 and statement was recorded under Section 132(4) of the Income Tax Act, 1961. The assessee disclosed profit on sale of land and commission income as per the statement recorded under Section 132(4) of the Act. The assessee disclosed exempted profit on sale of land and commission in the revised computation of income filed before the Assessing Officer. The assessee disclosed Rs.1,33,540/- being profit on sale of agricultural land which is covered as per Section 2(14) of the Act and also exempted. The same was shown in revised computation of income and the assessee paid the taxes thereon. The assessee fulfilled all the conditions laid down in Section 2(14) of the Act and submitted population certificate and the distance certificate during the course of hearing before the Assessing Officer. Regarding the commission of Rs.2,71,500/- received from N.K. industries Limited which was voluntarily disclosed by the assessee in the revised computation of income as well as regarding commission of Rs.1,50,000/- admitted in the statement recorded under Section 132(4) of the Act, the assessee disclosed the same in the return of income filed in response to notice under Section 153A of the Act. The Assessing Officer accordingly passed Assessment Order vide order dated 28.03.2013 and initiated the penalty proceedings under Section 274 read with Section 271(1)(c) of the Act. The Assessing Officer has passed the penalty order without giving opportunity of hearing to the assessee on 24.09.2013.

5. Being aggrieved by the Assessment Order, the assessee filed appeal before the CIT(A). The CIT(A) dismissed the appeal of the assessee.

6. The Ld. AR submitted that the penalty order was passed without invoking proper limb of either that of Section 271(1)(c) or as per penalty proceedings in search cases or that of Section 271AAA of the Act. The assessee at any point of time was not given any hearing before finalizing the penalty order by the Revenue. Thus, it is ex-parte order. Besides that, the penalty levied was 180% rather than giving minimum penalty of 100%. No case was made out by the Revenue for levy of penalty at higher rate i.e. rate in excess of 100% of tax sought to be evaded. On merit, the Ld. AR submitted that land in question does not fall within the ambit of "capital asset", as defined u/s 2(14) and therefore, capital gain arising on sale of such lands is exempt. For A.Y. 2010-11, the Ld. AR submitted that the details related to foreign travel

expenses were totally explained by the assessee during the proceedings before the CIT(A). For A.Y. 2011-12, the Ld. AR submitted that penalty under Section 271(1)(c) cannot be levied in this assessment year as this is the search year and the provisions of Section 271AAA of the Act will be applicable. The Ld. AR relied upon the decision of the Tribunal in case of Dr. Naman A. Shastri vs. ACIT (2015) 155 ITD 1003. Thus, the Ld. AR submitted that in all the appeals penalty does not sustain.

7. The Ld. DR relied upon the assessment order, order of the CIT(A) and penalty order.

8. We have heard both the parties and perused all the relevant material available on record. In this particular case of the assessee, the Revenue is not invoked the proper limb of Section 271(1)(c) i.e. whether there is concealment of income or the assessee filed inaccurate particulars of the income. It is not at all mentioned by the Revenue authorities in the penalty notice dated 10.09.2013 relating to under which penalty limb of Section 274 r.w.s. 271(1)(c) of the Income Tax Act, 1961, the assessee's case will fall. The Revenue authorities while imposing penalty as well as invoking the penalty provisions cannot be vague in their invocation which is beyond the scope of Income Tax Statute. Besides that, the principles of natural justice were not at all followed by the Revenue in assessee's case. On merit also land in question does not fall within the ambit of "capital asset", as defined u/s 2(14) and therefore, capital gain arising on sale of such lands is exempt, this submission of the Ld. AR is correct and as per law. Therefore, the penalty does not sustain.

9. In the result, ITA No.798/Ahd/2015 for Assessment Year 2007-08 is allowed.

10. As regards ITA No.799/Ahd/2015 for Assessment Year 2009-10, the issue is identical to that of Assessment Year 2007-08 and hence the appeal of the assessee is allowed.

11. As regards ITA No.800/Ahd/2015 for Assessment Year 2010-11, in this assessment year also no particular limb was mentioned by the Revenue authorities in the penalty notice. Besides that the principles of natural justice of giving proper hearing to the assessee were also not followed while imposing the penalty and the

Assessing Officer/Revenue Authorities were not justified in invoking the proper penalty provisions, the assessee cannot be held responsible for the fault of Revenue. In fact, no cogent reasoning was given by the Revenue for imposing the penalty. On merit the details related to foreign travel expenses were totally explained by the assessee during the proceedings before the CIT(A) which was totally ignored by the Revenue. The said expenses were explained through cash withdrawals from capital account. Thus, the penalty order does not sustain. Hence, appeal of the assessee is allowed.

12. As regards ITA No.801/Ahd/2015 for Assessment Year 2011-12, penalty under Section 271(1)(c) cannot be levied in this assessment year as this is the search year in view of the provisions of Section 271AAA of the Act as the search took place on 21.09.2010, the reliance of the Ld. AR on the decision of the Tribunal in case of Dr. Naman A. Shastri vs. ACIT (2015) 155 ITD 1003 is apt in the present case. Thus, the Revenue has invoked incorrect provisions of the penalty and that cannot be said the fault of the assessee. Therefore, penalty does not sustain. Hence appeal of the assessee being ITA No.801/Ahd/2015 for Assessment Year 2011-12 is allowed.

13. In the result, all the appeals of the assessee are allowed. Order pronounced in the open Court on this 7th day of January, 2022.

Sd/-
(WASEEM AHMED)
Accountant Member

Sd/-
(SUCHITRA KAMBLE)
Judicial Member

Ahmedabad, the 7th day of January, 2022

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Copies to: (1) The appellant
(2) The respondent
(3) CIT
(4) CIT(A)
(5) Departmental Representative
(6) Guard File

By order

Assistant Registrar

*Income Tax Appellate Tribunal
Ahmedabad benches, Ahmedabad*