

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ
IN THE INCOME TAX APPELLATE TRIBUNAL,
" C " BENCH, AHMEDABAD
(CONDUCTED THROUGH VIRTUAL COURT AT AHMEDABAD)

BEFORE SHRI RAJPAL YADAV, VICE PRESIDENT
And
SHRI WASEEM AHMED, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No. 2055/AHD/2018
निर्धारण वर्ष/Asstt. Year: 2009-10

The A.C.I.T., Mehsana Circle, Mehsana.	Vs.	Shri Maulikkumar Manilal Patel, Opp. Umiya Complex, Apollo Compound, Highway, Mehsana-384002. PAN: ABXPP3020D
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And

आयकर अपील सं./ITA No. 2056/AHD/2018
निर्धारण वर्ष/Asstt. Year: 2009-10

The A.C.I.T., Mehsana Circle, Mehsana.	Vs.	Shri Manankumar Manilal Patel, Opp. Umiya Complex, Apollo Compound, Highway, Mehsana-384002. PAN: ABXPP3019N
(Applicant)		(Respondent)

Revenue by :	Shri Alpesh Parmar, Sr.D.R
Assessee by :	Shri Anil Kshatriya, A.R

सुनवाई की तारीख / **Date of Hearing** : 23/12/2021
घोषणा की तारीख / **Date of Pronouncement**: 28/01/2022

आदेश/ORDER

PER WASEEM AHMED, ACCOUNTANT MEMBER:

These set of two appeal is filed by revenue, arising out of the order of the Commissioner of Income tax, Appeals, Gandhinagar, [here in after "the Ld. CIT(A)] passed on 27.07.2018 in appeal No. CIT(A)/GNR/165/2017-18 in the case of Shri Maulikumar Manilal Patel and order dated 27.7.2018 in appeal No. CIT(A)/GNR/166/2017-18 in the case of Shri Manankumar Manilal Patel. In both the case the penalty levied at Rs.84,11,392/- by the assessing officer. The Ld. CIT(A) has deleted the penalty and revenue has challenged both the order of "the Ld. CIT(A) by filling the appeal.

2. The issue in both the appeal is same and common and thus, disposed of with this common order by taking the lead case of Shri Maulik Manilal Patel, in ITA No. 2055/AHD/2018 and the facts and contention of this case is discussed accordingly here in below.

3. In the lead case of Shri Maulik Manilal Patel revenue has taken up the following grounds:

- i) *The Ld.CIT(A) has erred in law & on facts in deleting the penalty levied of Rs. 84,11,393/- u/s. 271(1)(c) of the Act.*
- ii) *It is, therefore, prayed that the order of the Ld. Commissioner of Income (Appeals) may be set aside and that of the Assessing Officer be restored.*
- iii) *The appellant prays for leave, to amend or alter any ground or add a new ground which be necessary.*

4. The facts of the assessee's case as sketched from the assessment order are that for the year under consideration the assessee has claimed long term capital gain of Rs. 1,85,60,000/- under the belief that the Sardar Sarovar and Narmada Nigam Limited (in short "SSNNL") is company floated by the Government of Gujarat and it was of the belief of the assessee that the debenture is listed in Ahmedabad

stock exchange. Therefore, exemption under section 10(38) was claimed, at the time of filling the return of income as long term capital gain exempt from tax. The assessee made this investment in the year 1993-94 since then the same is reflected in the books of the assessee as investment and no income was yielding on this investment. In view of above, long term capital gain has been claimed under the return of income filed by the assessee. Though, the assessee had computed LTCG on redemption of bonds and claimed exemption u/s 10(38), the SSNNL had treated the differential transaction of Rs. 1,85,60,000/- as interest on securities and accordingly deducted the tax on this amount at a rate of 10 %. The AO has referred a letter dated 11.08.2010 where in it is clarified by the SSNNL that the transaction made by the assessee is regarding redemption of Deep Discount Bonds and the transaction is not routed through stock exchange and question of payment of STT does not arise. Thus, it is clear that the assessee had not paid any STT on the transaction. As such it is noticed that the condition provided u/s 10(38) that STT should have been paid to claim exemption u/s 10(38) of the Act has not been fulfilled by the assessee. Therefore, placing all these facts the AO has disallowed the claim of the assessee that it is not covered by the provision of section 10(38) and hold that the gain is chargeable to tax and thus, the same was added in the income of the assessee. For this addition the assessing officer mentioned in his order that "Penalty proceedings are initiated on this issue for concealment / furnishing of inaccurate particulars of income, which came to be confirmed by the assessing officer vide order dated 28.08.2017 levying penalty of Rs. 84,11,393/- being 200 % of tax sought to be avoided. The observation of the assessing is extracted here in below for the sake of brevity of the facts:

" Considering the above fact and circumstances of the case, I am satisfied that this is a fit case for levy of penalty u/s. 271(1)(c) of the I. T. Act. Therefore, by virtue of provision of Explanation -1(B) to section 271(1)(c), penalty is leviable. As per the provisions of section 271(1)(c) of the IT Act, minimum penalty leviable is 100 percent of the tax sought to be evaded and the maximum penalty leviable is 300 per cent of the tax sought to be evaded. The penalty in this case is levied at the rate of 200 % because assessee has willingly and intentionally furnished inaccurate particulars of income arisen from transfer of deep discount bond as exempt u/s. 10(38) and concealed the income by making such income as part of total income."

Thus, he has ordered to levy the penalty at Rs. 84,11,392/- being 200 % of tax sought to be evaded.

5. Aggrieved by the order of the assessing officer dated 28.08.2017 levying the penalty the assessee has filed an appeal before "the Ld. CIT(A)". The assessee has raised various contentions and cited various decision challenging the levy of penalty @ 200 %. The Ld. CIT(A) has given detailed finding on each contention and the decisions relied upon. The brief final decision of "the Ld. CIT(A)" is that the assessee has considered the income arising out of the redemption of deep Discount bonds as capital gains, declared the amount in his return of income and claimed as exemption u/s 10 (38) of the Act. The AO has taken a view that looking to the fact of the gain arising out of the SSNNL is not a capital gain which is exempted u/s 10(38) but an income chargeable to tax which is not disputed by either party. The "the Ld. CIT(A)" following the contention of the assessee that the assessee has not furnished inaccurate particulars of income and relying on the decision of Hon'ble Supreme Court in the case of CIT Vs. Reliance Petro Products Ltd. reported in 322 ITR 158 deleted the levy of penalty and granted the relief based on the finding given in the order. The relevant finding of the CIT(A) is extracted here in below for the sake of convenience:

".....the question is has there been any concealment of income or furnishing of inaccurate particulars of income by the appellant so as to attract penalty u/s. 271(1)(c) of the Act? I find that the appellant presented all the facts in his return of income and all the facts and figures were also before the AO, during the assessment proceedings. Thus, it cannot be said that the appellant furnished inaccurate particulars of income. The appellant's case is squarely covered by the decision of the Hon'ble Supreme Court in the case of CIT Vs. Reliance Petro Products Ltd. reported in 322 ITR 158, where in the Hon'ble Apex Court has held as under:

"Merely because the assessee had claimed the expenditure, which claim was not accepted or was not acceptable to the Revenue, that by itself would not, in our opinion/attract the penalty under section 271(1)(c). If we accept, the contention of the Revenue then in case of every return where the claim made is not accepted by Assessing Officer for any reason, the assessee will invite penalty under section 271(1)(c), That is clearly not the intention of the Legislature."

Thus, it has been clearly held by the Hon'ble Supreme Court that merely rejection of claim made by the appellant cannot be a ground to levy penalty u/s. 271(1)(c) of the Act. There is a plethora of judgements which take the same view. In a recent

judgement the Hon'ble Gujarat High Court, in the case of PCIT Vs. Torrent Pharmaceuticals in Tax Appeal No. 208 of 2017 dated 03/04/2017, has also taken the same view relying on the decision of the Hon'ble Supreme Court in the case of CIT vs. Tips Industries Pvt. Ltd.

*Considering the details discussion above and the decision cited (supra) on this issue, I am of the view that penalty u/s. 271(1)(c) of the Act was not justified and is **deleted and the ground of appeal is allowed.**"*

6. Aggrieved from the order of the Commissioner of Income Tax, Appeals, Gandhinagar department has filed this appeal.

7. The learned DR has vehemently argued in detailed raising various contentions of the assessing officer as well as contentions not considered by the Ld CIT(A). The main contention repeatedly argued by the learned DR is that the assessee has wrongly claimed the income as exempt income and assessee did not come forward voluntarily for offering the income on account of wrong claimed by it. It was only first detected by the Assessing Officer as mentioned in the assessment order. He has further argued that considering that fact the view of the assessing officer is correct and looking the detailed finding given by the assessing officer, the penalty is deleted by the Ld. CIT(A) without considering these aspects. The Id. DR vehemently supported the order of the AO.

8. The learned AR appearing on behalf of the assessee pointed out that the there is no jurisdiction as there is no clear finding of the assessing officer to levy the penalty u/s. 271(1)(c) of the Act and that too @ 200 %. He drew our attention to the penalty notice issued u/s. 274 r.w.s. 271(1)(c) of the Act dated 26.12.2011 (a copy of which has been placed on page 38 of paper book no. Part-I filed by the assessee) and stated that **there is non application of mind while issue of notice and it is in standard format and the irrelevant portion of notice has not been struck off.**

9. On the above arguments of the AR of the assessee, the learned DR has pointed out that this is technical ground and is not decided by the CIT(A) and the assessing officer has incorporated and considered the arguments of the assessee

on this point and therefore he has relied upon that argument and stated the same is maintainable based on the detailed finding of the assessing officer.

10. The learned AR appearing on behalf of the assessee alternatively contended that even on merits this appeal is not maintainable as there is no dispute about the amount of income chargeable to tax and it is mere the bona fide belief while filing the return of income that the investment was very old and the same was only offered as capital gain and claimed as exempt and the contention of the department is that, this claim made u/s. 10(38) is not allowable. Thus, so far as income is considered it remain same and it is mere disallowance of claim only. This itself clear that there is neither concealment of income nor furnishing of any inaccurate particulars of income so far determination of income is concerned. He has further stated that there is no other income which is added and not disclosed in the computation of income already placed on record. The mere disallowance of claim only penalty cannot be levied as decided by the Hon'ble Supreme Court in the case of CIT Vs. Reliance Petro Products Ltd. The Id. AR vehemently supported the order of the Id. CIT-A.

11. We have considered the rival contentions which are based on the proceeding before the lower authorities. What is clearly coming out from the fact that it is not disputed by either party about the income arising as Capital Gain on SSNNL bond. It is mere claim of the assessee made in his return of income that the same is exempt u/s 10(38) is not considered by the assessing officer in the quantum order. Against the order of the quantum revenue and assessee has filed their respective appeals. In the case of Shri Manan Patel in ITA no. 1558 & 1702/Ahd/2013 and ITA No. 1559 & 1703/AHD/2013 in the case of Maulikumar M Patel. These four appeals of assessee and revenue which is in relation to the order of the Ld. CIT(A) it was decided by the tribunal that **the gain which is arising out of the SSNNL bond is capital gain and not interest on securities**. Therefore, as contended by AR of the assessee that when the tribunal has already contended that the gain arising

from the SSNNL bond is chargeable to **capital gain only** then the issue in the penalty proceeding is only disallowance of claim of the assessee and the case of the assessee is squarely covered with the decision of the Hon'ble Supreme Court in the case of CIT Vs. Reliance Petro Products Ltd. We find force in the argument of AR of the assessee that considering the overall facts, at the best, the claim of the assessee can be regarded as wrong which cannot be equated with the furnishing of inaccurate particulars of income. Considering, the decision of the Honourable Supreme Court on the issue, we hold that there is no error in the order of the Ld. CIT(A) in law as well as on facts and the appeal is of the revenue is not maintainable and is dismissed.

12. Since, the finding of the above fact and the grounds taken are similar, even for the levy of penalty amount is also same the appeal of revenue in the case of Shri Manankumar Manilal Patel in ITA No. 2056/Ahd/2018 for A. Y. 2009-10 shall also be dismissed on the facts and discussion made here in above.

13. In the result, both the appeals of the revenue are dismissed.

Order pronounced in the Court on 28/01/2022 at Ahmedabad.

**Sd/-
(RAJPAL YADAV)
VICE PRESIDENT**

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

Ahmedabad; Dated
Manish

(True Copy)
28/01/2022