

**IN THE INCOME TAX APPELLATE TRIBUNAL
“C” BENCH, AHMEDABAD
[CONDUCTED THROUGH VIRTUAL AT AHMEDABAD]**

**BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER &
Ms. MADHUMITA ROY, JUDICIAL MEMBER**

I.T.A. No. 1365/Ahd/2019
(Assessment Year: 2016-17)

ACIT Central Circle-2(3), Ahmedabad	Vs.	Shri Natvarlal L. Patel C-2, Vande Matram Homes, Chainpur, Ahmedabad- 382470
[PAN No. AKSP1227C]		
(Appellant)	..	(Respondent)

Assessee by :	Shri V. K. Singh, Sr. DR
Revenue by :	Shri Suresh Gandhi, CA

Date of Hearing	24.01.2022
Date of Pronouncement	31.01.2022

ORDER

PER Ms. MADHUMITA ROY - JM:

The instant appeal filed by the Revenue is directed against the order dated 13.06.2019 passed by the Commissioner of Income Tax (Appeals)-12, Ahmedabad arising out of the penalty order dated 29.06.2018 passed by the DCIT, Central Circle-2(3), Ahmedabad under Section 271(1)(c) of the Income Tax Act, 1961 (hereinafter referred as to “the Act”) for A.Y. 2016-17.

2. The brief facts leading to the case is this that a search action under Section 132 of the Act was conducted on 02.11.2015 on Shri Nashabhai Laxmanbhai Dabhi at platform No. 1 Railway Station, Ahmedabad whereupon huge amount of cash and valuables were found and impounded. During the post proceedings the managing partner of the firm M/s. Patel Ambalal Laxmandas and Company namely Natwarlal Laxmandas Patel submitted by and under letters dated 03.11.2015 and 04.11.2015 stating that out of the total cash found

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from the possession of the said Mr. Nashabhai Laxmanbhai Dabhi, cash worth Rs. 2,20,00,000/- belongs to him. It is relevant to mention that in response to the notice under Section 153C the assessee requested by and under the letter dated 16.09.2016 to treat the Income Tax Return of 2016-17 filed on 01.08.2016 declaring total income of Rs. 2,29,72,680/- as the returned filed in response to the said notice issued under Section 153C of the Act. Finally the assessment was completed on 27.12.2017 without making any assessment and accepting the returned income filed by the assessee.

3. Penalty was also initiated under Section 271(1)(c) separately which was culminated into an order imposing penalty on 29.06.2018 in the following manner:

“5. In view of above circumstances, I am satisfied that the assessee has concealed the particulars of income and penalty u/s 271(1)(c) is therefore computed as under:-

CALCULATION OF PENALTY UNDER SECTION 271(1)(c) OF THE I.T. ACT

<i>Sr. No.</i>	<i>Particulars</i>	<i>Amount (In Rs.)</i>
1.	<i>Assessed Income</i>	<i>2,29,82,682/-</i>
2.	<i>Tax on assessed Income</i>	<i>76,10,139/-</i>
3.	<i>Assessed income as reduced by concealed income</i>	<i>9,82,682/-</i>
4.	<i>Tax on assessed income as reduced by concealed income for the purpose of penalty</i>	<i>1,25,182/-</i>
5.	<i>Tax sought to be evaded (C 1. 2 – C 1. 4)</i>	<i>74,84,957/-</i>
6.	<i>Minimum penalty leviable @ 100% of the tax sought to be evaded</i>	<i>74,84,957/-</i>
7.	<i>Maximum penalty leviable @ 300% of the tax sought to be evaded</i>	<i>2,24,54,871/-</i>
8.	<i>Penalty levied in the case</i>	<i>74,84,957/-</i>

6. As per the provision of section 271(1)(c) of the Act, penalty @ 100% to 300% of tax sought to be evaded can be levied. Considering overall facts of the case minimum penalty of Rs. 74,84,957/- is levied upon the assessee U/s 271(1)(c) of the I. T. Act. Issued demand notice & challan.”

4. Heard the parties, perused the records.

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5. The question before the Ld. CIT(A) as it appears had been considered by him is as to whether in the penalty proceeding under Section 271(1)(c) where Explanation 5A is applicable to the person other than the person searched under Section 132 of the Act. He has justified his order by relying upon the statutory provision under Explanation 5A of Section 271 of the Act to this effect that only in case of searched person penalty could have been levied even in a case where there is no addition to the income declared by the searched person in the return filed pursuant to search. Therefore, the section is confined to search person and cannot be extended to a person other than the searched person. It is an admitted fact that on the basis of the search conducted on Shri Nashabhai L. Dabhi on 02.11.2015 the penalty has been imposed finally upon the assessee before us, though, no addition was made in the original assessment order by the Ld. AO. Therefore, considering this particular aspect of the matter we do not find any justification in initiating penalty against the assessee before us and further imposing penalty by the Ld. AO which has rightly been taken into consideration in its proper perspective by the Ld. CIT(A) particularly applying the provision of law under Section 271(1)(c) and Explanation 5A therein and deleted the penalty without any ambiguity so as to warrant interference. We, thus, found the appeal filed by the Revenue devoid of any merit and, thus, dismissed.

6. In the result, the appeal preferred by the Revenue is dismissed.

This Order pronounced in Open Court on

31/01/2022

Sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER

Ahmedabad; Dated 31/01/2022

TANMAY, Sr. PS

TRUE COPY

Sd/-
(Ms. MADHUMITA ROY)
JUDICIAL MEMBER

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad