

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'B' अहमदाबाद
IN THE INCOME TAX APPELLATE TRIBUNAL
"B" BENCH, AHMEDABAD

(Conducted Through Virtual Court)

BEFORE MS.ANNAPURNA GUPTA, ACCOUNTANT MEMBER
AND
T.R. SENTHIL KUMAR, JUDICIAL MEMBER

ITA No.1822/Ahd/2018
Assessment Year : 2010-11

Shri Mukesh Harjibhai Patel 9, Malhar Bungalows Shilaj Nandoli Road Kalol, Gandhinagar. PAN : ABVP P9561 H	Vs	ACIT, Cir.5(3) Ahmedabad.
--	----	------------------------------

अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)
------------------------	--	--------------------------

Assessee by :	Written Submissions
Revenue by :	Shri J.L. Bhatia, Sr.DR

सुनवाई की तारीख/Date of Hearing : 10/02/2022
घोषणा की तारीख /Date of Pronouncement: 16/02/2022

आदेश/O R D E R

PER T.R. SENTHIL KUMAR, JUDICIAL MEMBER:

This appeal is filed by the assessee against order dated 8.6.2018 in CIT(A)-5/ACIT Cir.5(3)/10028/2017-18 passed by the Ld.Commissioner of Income-tax (Appeals)-5, Ahmedabad [for short "Ld.CIT(A)] relating to the assessment year 2010-11 against confirmation of penalty under section 271(1)(c) of the Income Tax Act, 1961 (hereinafter referred to as "the Act" for short).

2. Grounds raised by the assessee as follows:

(I) Penalty on addition of Rs. 4,79,000/-:

During the assessment proceedings, assessee had agreed Rs. 4,79,000/- (Rupees Four lakhs Seventy Nine Thousands only) as his income from Malhar Dairy, which is not shown in total

income as Assessee has strong belief that income from Dairy Farming is exempt from Income Tax and so it is not disclosed while filing Income tax return.

It is held in C.I.T & Anr. v/s. Manjunatha Cotton & Ginning factory (2013) 359 ITR 565 that no penalty on income bonafidely disclosed during scrutiny proceedings be levied.

There is no concealment of income by the assessee and thus penalty on the amount of Rs. 4,79,000/- requires to be deleted.

(II) Penalty on addition of Rs. 10,88,357/-:

During the assessment proceedings, the Ld. Deputy Commissioner of Income Tax had made an addition of Rs. 43,53,429/- to the total- income of the assessee on account of bogus purchase. However, the Ld. Asst. Commissioner of Income Tax, Circle 5(3), Ahmedabad had restricted the bogus purchase to Rs. 10,88,357/- on estimated basis.

It is held in Etco Telecom Ltd. Mumbai v/s. Department of Income tax that no penalty is leviable on addition of Rs. 11,20,000/- sustained by C.I.T. (A) as addition/ disallowance is entirely on estimated basis which is not supported by concrete material. The Honourable C.I.T. (A) reduced the estimated disallowance of Rs. 11,20,000/- in place of Rs. 55,20,000/-made by A.O. such estimated addition is not subject to penalty u/s. 271(l)(c) of Income Tax Act.

So the addition of 10,88,357/- is made arbitrary and without any base. There is no concealment of income by the assessee and thus penalty on the amount of Rs. 10,88,357/-requires to be deleted.”

3. Brief facts of the case is that the assessee is an individual and Proprietor of M/s.Ghanshyam Builders. The assessee has filed his return of income on 26.9.2011 declaring total income at Rs.1,26,45,910/-. The case was selected for scrutiny assessment and Assessment Order under section 143(3) of the Act was passed on 28.3.2014 making few disallowances and determined the total income at Rs.2,06,94,410/-. Thereafter, the AO also initiated penalty proceedings under section 271(1)(c) of the Act for furnishing inaccurate particulars and concealment of income. Aggrieved by the

above assessment, the assessee filed appeal before the Ld. Commissioner of Income Tax (Appeals) against quantum appeal. The Ld.CIT(A) partly allowed the appeal of the assessee vide his order dated 11.6.2015 wherein Rs.4,79,000/- on account of undisclosed income from Malhar Dairy Farm was upheld and Rs.10,88,357/- on account of bogus purchase were being upheld.

4. It is thereafter, the Ld.AO vide order dated 31.3.2017 levied penalty of Rs.4,84,310/- on the ground that the assessee has concealed particulars of income to evade tax of such income. Aggrieved with the penalty order, the assessee filed appeal before the Ld.CIT(A). The Ld.CIT(A) by his impugned order confirmed levy of penalty following judgment of jurisdictional High Court in the case of A.M. Shah & Co. Vs. CIT, (200) 108 taxman 137 and Delhi High Court in the case of CIT Vs. Zoom Communication P.Ltd., 191 taxman 179. Thus, the Ld.CIT(A) dismissed appeal of the assessee. Aggrieved against this impugned order of the assessee is in further appeal before the Tribunal raising grounds mentioned (supra).

5. The assessee has filed final (written) submissions and not represented by counsel. As far as the addition of Rs.4,79,000/- is concerned, the assessee was of strong believe that dairy farming income was exempt under Income Tax Act. Therefore, he has not declared income from Malhar Dairy while filing income tax return, however, accepted this income during the assessment proceedings by the assessee. Thus, he has no intention to conceal income for evading tax. He also invited our attention towards the decision of Karnataka High Court in the case of CIT Vs. Manjunatha Cotton & Ginning Factory, 359 ITR 565. Karnataka High Court wherein it was held that no penalty on income *bona fide* disclosed during the scrutiny proceedings.

6. On the second addition of Rs.10,88,357/-, the ld.AO made addition of Rs.43,53,429/- on account of bogus purchase for the Asstt.Year 2010-11. However, on appeal, the Ld.CIT(A) restricted to bogus purchases to Rs.11,20,000/- on estimate basis, and that order has attained finality. Against the estimation of income, the ld.AO has levied penalty under section 271(1)(c) of the Act which are against the decision of jurisdictional High Court in the case of CIT Vs. Subhas Trading Co., 22 ITR 110 (Guj) and CIT Vs. Valmikibhai H. Patel, 280 ITR 487 (Guj). The assessee further pleaded that this addition was made on estimate basis does not prove either inaccurate particulars is furnished or income is concealed by the assessee. Therefore, levy of penalty is liable to be deleted.

7. In reply, the Ld.DR has strongly relied upon the orders passed by the CIT(A) and that of the AO. He submitted that the assessee's ignorance cannot be a good ground of excuse for non-payment of taxes and the same would amount to furnishing inaccurate particulars only, and therefore the levy of penalty is to be upheld.

8. We have given thoughtful consideration and gone through records placed before us. As it can be seen from the penalty order, during the assessment proceedings, the assessee himself accepted that an amount of Rs.4,79,000/- from Malhar Dairy firm was an undisclosed income. Further, the assessee's business being in the nature of dairy and vegetable, the assessee would not be knowing that whether income from dairy firm was liable to tax or not. However, during the assessment proceedings, the assessee offered this as undisclosed income which has been confirmed in appeal before the ld.CIT(A) and the issue has attained finality. On examination of the facts on hand, it is apparent that the claim was

neither mala fide nor false. It was under bona fide belief that the income generated out of purchase and sales of dairy products are exempt from the income tax. The assessee in the assessment proceedings disclosed this fact and offered the same to tax. In these circumstances, the assessee fulfilled both the conditions to be outside the purview of Explanation (1) to Section 271(1)(c) of the Act.

9. In the present case, on account of bogus purchase, the ld.CIT(A) has restricted addition to Rs.11,88,357/- from Rs.43,53,429/- on estimate basis. Such an estimation is made without any concrete material but on adhoc basis. Hon'ble jurisdictional High Court in the case of CIT Vs. Valimkbhai H. Patel (supra) has held that where addition has been made on estimation basis, no penalty under section 271(1)(c) could be made qua such addition. Relevant observation of this judgment the jurisdictional High Court reads as follows:

".....Therefore, loss on account of cyclone and rain would be on an estimated basis. In fact this is what the Commissioner (Appeals) has found as a matter of fact that one estimate was substituted by another estimate. According to the Commissioner (Appeals), in the circumstances, the assessee could not be visited with penalty merely because the assessee was not in a position to substantiate the claim in quantity. In the light of the aforesaid factual position it is not possible to interfere with the final conclusion of the Tribunal. Both the Commissioner (Appeals) and the Tribunal have found and come to the conclusion that the penalty is not leviable in the present case, though for different reasons.

In the light of the peculiar facts of the case, without entering into any discussion as to the legal position, the Tribunal's order requires no interference in the light of the findings of fact recorded by the Commissioner (Appeals). The question referred is, therefore, answered in the affirmative, i.e., in favour of the assessee and against the revenue only to the extent of upholding the Tribunal's order that it was justified in deleting the penalty levied under section 271(1)(c) of the Act."

10. By following the above judicial precedents, we have no hesitation in reversing the order passed by the Id.CIT(A) and cancelling the penalty levied under section 271(1)(c) of the Act and allow the appeal of the assessee.

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

Order pronounced in the Court on 16th February, 2022 at Ahmedabad.

**Sd/-
(ANNAPURNA GUPTA)
ACCOUNTANT MEMBER**

**Sd/-
(T.R. SENTHIL KUMAR)
JUDICIAL MEMBER**

Ahmedabad, dated 16/02/2022
*vk**