

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

**BEFORE SMT. ANNAPURNA GUPTA, ACCOUNTANT MEMBER AND
SHRI T.R. SENTHIL KUMAR, JUDICIAL MEMBER**

**ITA No.643/Ahd/2015
Assessment Year: 2008-09**

Shri Gurinder Kahlon,
23, Dhanushya Society,
New Sama Road,
Baroda – 390 008.
[PAN – AAZPK 4731 H]
(Appellant)

vs. Income Tax Officer,
Ward-1(1), Baroda.

(Respondent)

Appellant by : None
Respondent by : Shri R.R. Makwana, Sr. D.R.

Date of hearing : 19.04.2022
Date of pronouncement : 27.04.2022

ORDER

PER T.R. SENTHIL KUMAR, JUDICIAL MEMBER :

This is an appeal filed by the assessee against the order dated 22.12.2014 passed by the Ld. Commissioner of Income Tax (Appeals)-1 (*hereinafter referred to as “the CIT(A)”*), Vadodara against confirmation of penalty levied under Section 271(1)(c) of the Income Tax Act, 1961 (*hereinafter referred to as “the Act”*) relating to Assessment Year (A.Y.) 2008-09.

2. The brief facts of the case are that the assessee is an individual and engaged in contract business. For the A.Y. 2008-09, the assessee has not filed the return of income. However, the assessee has received a contract receipt of Rs.42,45,566/- from M/s. Alphageo India Limited. Therefore, notice under Section 148 of the Act was served on the assessee on 22.12.2010. The assessee filed its return of income on 25.03.2011 after issuance of notice under Sections 148, 143(2) and then 142(1) of the Act and the assessment was completed based on the revised Profit & Loss Account and Balance Sheet furnished by the assessee and determined the total income at Rs.13,25,098/-. The Assessing Officer also initiated penalty proceedings under

Section 271(1)(c) of the Act for concealing the income and furnishing inaccurate particulars of income. Pursuant to the penalty notice the assessee filed its reply stating that the entire income of Rs.1,31,32,037/- received from M/s. Alphageo India Limited was accounted and offered during the year under consideration on receipt basis. However, while completing the assessment under Section 143(3) of the Act, the income to the extent of Rs.88,86,449/- out of the total receipt of Rs.1,31,32,037/- was assessed in the immediately preceding year namely A.Y. 2007-08 on the basis of TDS certificate issued by the party. Consequently, the income was assessed and returned the income of Rs.13,25,098/- without considering the fact that when the part of total receipt have already been assessed in the immediately preceding year, deduction should not have been allowed to that extent during the year under consideration i.e. 2008-09.

3. The Ld. Assessing Officer, after considering the above reply, has held that the assessee has not filed return of income for the A.Y. 2008-09 voluntarily under Section 139(1) of the Act. However, on issuance of notices under Sections 148, 143(2) & 142(1) the assessee finally declared the income and filed its return of income. Had the case not been reopened by the Department, the income of Rs.13,25,098/- would have escaped assessment. So, this is nothing but a concealment of income only and thereby the Assessing Officer levied penalty of Rs.1,87,938/- being 100% tax to be evaded on the addition of Rs.6,14,178/-.

4. Aggrieved by the addition, the assessee filed appeal before the Ld. CIT(A)-1, Vadodara. The Ld. CIT(A) has confirmed the levy of penalty as under :-

"5. I have considered the facts of the case as well as the order of the AO and the submission of the AR of the appellant. The submission of AR of the appellant is not found to be tenable. The admitted and undisputed fact is that the appellant had not filed the return of income for AY 2008-09 i.e. the year under consideration. The return of income for the year under consideration was filed by the appellant by declaring total income of Rs.9,29,480/- on 25.03.2011 only in pursuant to notice issued u/s 148 of the IT Act and not suo moto. Then again it was the appellant who had revised its return of income by declaring total income at Rs.13,25,098/-. The assessment was completed by the AO u/s 143(3) r.w.s.147 of the IT Act by considering this revised return of income declaring the income at Rs.13,25,098/-. In other words the AO completed the assessment u/s 143(3) r.w.s. 147 in the case of appellant for the year under consideration assessing the total income at Rs.13,25,098/-. Thus, it

is very clear that the income was disclosed by the appellant by way of filing of return of income only in pursuant to notice u/s148 of the IT Act and not suo moto and voluntarily. Thus, this is a clear case of concealment of particulars of income and therefore Explanation 1 to section 271(1)(c) of the IT Act is applicable in the case of appellant. I therefore confirm the penalty of Rs.1,87,938/- as levied by the AO u/s.271(1)(c) of the Act. Thus, the grounds of appeal of the appellant are dismissed.”

5. Aggrieved by the Appellate Order the assessee is before us raising the following ground :-

“The learned Commissioner of Income Tax (Appeals) has erred in law and on facts in confirming the penalty of Rs.1,87,938/- levied under section 271(1)(c) of the Act for the alleged concealment and/or furnishing of inaccurate particulars of income in respect of additions made on account of confirming the total income at Rs.13,25,098/- without allowing any deduction on account of income already assessed and added in the immediately preceding year viz., Asst. Year 2007-08.”

6. This appeal is listed for 30th hearing before this Tribunal. Though notice has been served and the acknowledgement is being placed before this Tribunal, none appeared on behalf of the assessee. So, with the assistance of Ld. Departmental Representative and available material on records we need to proceed with the above case. Ld. D.R. submitted that the Assessing Officer has levied the penalty of Rs.1,87,938/- as against the addition of Rs.6,14,178/- and not against Rs.13,25,098/- which is escaped income as per the reassessment order. This penalty has been confirmed by the Ld. CIT(A) also as the assessee has not filed regular return of income under Section 139 (1) of the Act, but after issuance of 148 and other statutory notices. Therefore, the confirmation of penalty is correct in law, which does not require any interference and pleaded to dismiss the appeal filed by the assessee.

7. We have given our thoughtful consideration and perused the material available on record. We do not find any merits in the ground raised by the assessee namely without allowing any deduction on account of income already assessed in the A.Y. 2007-08. Both the Ld. Assessing Officer and the Ld. CIT(A) has levied and confirmed the penalty only on the addition of Rs.6,14,178/-. Therefore, the ground raised by the assessee is rejected and the appeal is dismissed

8. In the result, appeal of the assessee is dismissed.

Order pronounced in the open Court on this 27th day of April, 2022.

Sd/-
(ANNAPURNA GUPTA)
Accountant Member

Sd/-
(T.R. SENTHIL KUMAR)
Judicial Member

Ahmedabad, the 27th day of April, 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