

IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER AND
DR. ARJUN LAL SAINI, ACCOUNTANT MEMBER
ITA No. 474/SRT/2019 (AY 2013-14)
(Hearing in Virtual Court)

Shri Chimanbhai A Kantesaria A-54, Trikam Nagar Society, Lambe Hanuman Road, Surat- 395006 PAN : ABEPP 7380 D	Vs	Income Tax Officer Ward-3(3)(5), Aaykar Bhavan, Majura Gate, Surat-395001
Appellant / Assessee		Respondent / Revenue

Assessee by	Shri Sapnesh R Sheth, CA
Revenue by	Ms. Anupama Singla – Sr-DR
Date of hearing	28.03.2022
Date of pronouncement	06.05.2022

Order under section 254(1) of Income Tax Act

PER PAWAN SINGH, JUDICIAL MEMBER:

1. This appeal by assessee is directed against the order of Id. Commissioner of Income tax (Appeals)-3, Surat [‘CIT(A)’ for short] dated 17.07.2019 for assessment year (AY) 2013-14, which in turn arises against the penalty under section 271(1)(c) of the Income Tax Act, 1961 (hereinafter referred to as ‘the Act’) dated 16.09.2016. The assessee has raised the following grounds of appeal:-

“1. On the facts and circumstances of the case as well as law on the subject, the learned Commissioner of Income-tax (Appeals) has erred confirming the action of assessing officer in imposing penalty of Rs.1,85,400/- u/s 271(1)(c) of the I.T. Act, 1961.

2.It is therefore prayed that penalty imposed by assessing officer and confirmed by Commissioner of Income-tax (Appeal s) may please be deleted.

3. Appellant craves leave to ad, alter or delete any grounds(s) either before or in the course of hearing of the appeal.”

2. Brief facts of the case are that scrutiny assessment for assessment year (AY) 2013-14 was completed under section 143(3) on 19.03.2016. The Assessing Officer while passing the assessment order made addition of Rs.6,00,000/- under section 68 of the Act. The Assessing Officer before making addition issued show cause notice to prove the genuineness of unsecured loan of Rs. 6.00 lakhs shown by the assessee and to furnish documentary evidence, to substantiate the identity and capacity of creditor and genuineness of the transaction of unsecured loan. The assessee submitted his reply dated 16.03.2016 and filed the bank statement of creditor, Shri Kishorbhai G Savani alongwith copy of extract 7/12. The reply of assessee was not accepted by Assessing Officer. The Assessing Officer held that the assessee furnished the copy of extract of land record in the form of 7/12, sales bill of Shri Kishorbhai G Savani, which pertains to assessment year 2016-17. Thus, assessee failed to furnish copy of agricultural income in assessment year 2013-14. Accordingly, Assessing Officer made addition under section 68 of the Act. The Assessing Officer initiated penalty under section 271(1)(c) while passing the assessment order. The show cause notice under section 274 r.w.s 271 of the Act was served upon the assessee. The Assessing

Officer recorded that neither the assessee appeared nor filed any written explanation. The Assessing Officer held that assessee furnished inaccurate particulars of his income to the extent of Rs.6,00,000/- knowingly and deliberately. Therefore, liable for levy of penalty under section 271(1)(c). The Assessing Officer levied penalty @ 100% of tax sought to be evaded. The Assessing Officer worked out penalty of Rs.1,85,400/- in his order dated 16.09.2016.

3. Aggrieved by the penalty levied under section 271(1)(c), the assessee filed appeal before Ld. CIT(A). Before Ld. CIT(A), the assessee filed detailed written submission as recorded in para-5 of the impugned order. In the submission, assessee submitted that he availed unsecured loan of Rs.6,00,000/- from Shri Kishorbhai G Savani who is an agriculturist, Shri Kishorbhai G Savani is not maintaining his books of account and is not required to file return of income as his income below tax limit. During assessment, the assessee made best efforts to collect copy of bank statement and copy of sales bill of creditors / Shri Kishorbhai G Savani. The assessee received loan through account payee cheque. The assessee furnished the address of party / creditor and copy of pass-book. The assessee also furnished PAN card and claimed that assessee proved the identity and genuineness of transaction and creditworthiness of the creditor. The assessee

also contended that he had no intention of suppressing truth and there was no concealment of income. No appeal in the quantum assessment was filed to avoid litigation. Merely not filing of appeal in quantum assessment cannot debar the assessee from challenging the levy of penalty being not sustainable. The assessee submitted that he has duly co-operated in assessment proceedings and furnish all required documents which were available with him. The penalty was imposed due to inability to furnish complete documents. The assessee prayed for deleting the penalty. The assessee contended that his explanation was *bona fide* which was not found to be false by Assessing Officer. The contention of assessee was not accepted by Ld. CIT(A), he has taken a view that assessee failed to prove the creditworthiness of creditor and that he was having sufficient fund to grant loan of Rs.6,00,000/- and upheld penalty levied by Assessing Officer. Further, aggrieved the assessee has filed present appeal before us.

4. We have heard the submission of Ld. Authorized Representative (AR) for the assessee and the Ld. Senior Departmental Representative (Sr.DR) for the Revenue and have gone through the orders of authorities below. The Ld. AR of the assessee submits that during the assessment, the Assessing Officer made addition of Rs.6,00,000/- on account of loan received from Shri Kishorbhai G Savani by treating the same as unexplained cash credit and

initiated penalty for furnishing in accurate particulars of income. During assessment the assessee furnished copy of bank statement, copy of sales bills of creditor / Shri Kishorbhai G Savani for assessment year 2016-17. The assessee also filed copy of land record in the form of Extract 7/12. The assessee clearly proved the identity and source of income of creditor/Shri Kishorbhai G Savani. The Assessing Officer held that assessee was required to furnish the details relating to assessment year 2013-14 but assessee could not file such details as it was beyond the control of assessee. Ld. AR of the assessee submits that Assessing Officer has not disproved the contention of assessee about the identity and creditworthiness of creditor. The loan was availed by assessee for a *bona fide* need. Thus, the assessee also proved the genuineness of transaction. The assessee has filed copy of PAN of creditor as well as bank pass book and statement shown transaction in banking channel. Thus, the discharge is primary onus. The Ld. AR of the assessee submits that the Assessing Officer has not investigated nor issued any notice or summons to the creditor. Thus, the explanation furnished by assessee remained unproved. Thus, no penalty under section 271(1)(c) is leviable as explanation of assessee has not disputed by Assessing Officer. To support his contention, Ld. AR of the assessee relied upon the decisions of Hon'ble jurisdictional High Court in the case of National Textiles Vs. CIT (1981) 249

ITR 125 (Guj) and CIT vs. Jalaram Oil Mills (2001) 253 ITR 192 (Guj). Ld. AR for the assessee further submits that though no appeal is filed in quantum assessment by assessee. However, it is settled legal position that penalty proceedings and assessment are separate proceedings, though finding of the assessment order may be relevant but cannot be conclusive for levy of penalty. To support his contention, Ld. AR of the assessee relied upon the decision of Hon'ble Madras High Court in the case of CIT vs. V.L. Balakrishnan (1981) 130 ITR 138 (Mad). Ld. AR for the assessee also relied upon the decision of Hon'ble Supreme Court in the case of Anantharam Veersinghaiah & Co. Vs. CIT 123 ITR 457 (SC) and the decision of Hon'ble Allahabad High Court in the case of CIT Vs. Rawalpindi Flour Mills Pvt. Ltd. 125 ITR 243 (All).

5. In alternative submission, Ld. AR of the assessee submits that in the show cause notice, the Assessing Officer has not struck out the inappropriate portion, wherein the penalty is levied on furnishing inaccurate particulars or concealment of income. Therefore, the Assessing Officer has not specific charge of penalty is not sustainable. To support his contention, Ld. AR of the assessee relied upon the decision of Hon'ble jurisdictional High Court in the case of Nayan C. Shah Vs. ITO 386 ITR 304 (Guj).

6. On the other hand, Ld. Sr.DR for the Revenue supported the orders of lower authorities. Ld. Sr.DR for the Revenue submits that during the assessment, assessee failed to substantiate his genuineness of loan of Rs.6,00,000/- received from Kishorbhai G Savani. The assessee could not substantiate the creditworthiness of creditor, therefore the Assessing Officer made the addition under section 68. No appeal was filed by assessee against addition in quantum assessment, thus, such addition attained finality. No reply to show cause notice was filed by assessee despite repeated show cause issued by Assessing Officer. The Assessing Officer levied penalty @ 100% of tax sought to be evaded. Before Ld. CIT(A), the assessee could not substantiate the creditworthiness of the creditor and onus lying upon the assessee to prove the identity of lender, creditworthiness in genuineness of transaction. The assessee is miserable failed to discharge his onus. Thus, penalty is invited on the addition made in the assessment order. The assessee is now ready to hypothecate technical use which is not sustainable in absence of discharge of onus lies upon assessee. Ld. Sr.DR for the Revenue prayed for dismissal of appeal.
7. We have considered the rival submission of both the parties and have gone through the orders of lower authorities. We have also deliberated on various case laws relied upon by Ld. AR of the assessee before us and the lower

authorities. We find that during the assessment, the Assessing Officer made addition under section 68 of Rs.6,00,000/- on the unsecured loan availed by assessee from Shri Kishorbhai G Savani. Before making addition, the Assessing Officer issued show cause notice to the assessee noted above. The Assessing Officer has noted that assessee failed to prove the creditworthiness of creditor and made addition under section 68 by treating the unsecured loan as unexplained cash credit. We find that no appeal in quantum assessment was filed by assessee. Thus, the addition made in the quantum assessment attained finality. We are of the conscious of the fact that penalty proceedings are separate and independent proceedings though the observation on the addition in the quantum assessment may have bearing in the penalty proceedings. However, such observation are not conclusive. We find that the identity of creditor including PAN and details of agricultural procedure was filed by the assessee and the assessee claimed that loan amount was received through banking channel. We find that the Assessing Officer has not made any independent investigation nor issued any show cause notice or summons to the creditor to bring other adverse material against the assessee. It is also fact that the assessee could not prove his contention about the unsecured loan. However, we find merit in the submission of Ld. AR of the assessee that the explanation offered by assessee has not been disproved by the

Assessing Officer. The Hon'ble jurisdictional High Court in the case of National Textiles (supra) and Jalaram Oil Mills (supra) held that where the circumstances do not lead to the reasonable and positive inference that the assessee's Explanation is false, the assessee must be held to have proved that there was no mens rea or guilty mind on his part. In view of the aforesaid factual discussion, we are of the view that in absence of material on record to disprove the explanation offered by assessee about the creditworthiness and genuineness of transaction, the Assessing Officer was not justified in levying penalty under section 271(1)(c). Therefore, grounds raised by assessee is allowed. Considering the facts that we have allowed the appeal of the ae on the primary submissions of Id AR of the ae therefore, consideration and adjudication on other alternative submissions have become academic.

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

Order pronounced on 06/05/2022 by placing the result on the Notice Board as per Rule 34(5) of the Income Tax (Appellate Tribunal) Rule, 1963.

Sd/-
(Dr ARJUN LAL SAINI)
ACCOUNTANT MEMBER
Surat, Dated: 06/05/2022
Dkp. Out Sourcing P.S

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

Copy to:

1. Appellant-
2. Respondent- ITO, Wd-3(3)(5), Aaykar Bhavan, Majura Gate, Surat-395001
3. CIT(A)-Surat-3
4. CIT
5. DR
6. Guard File

By order

// True Copy //

Assistant Registrar, ITAT, Surat