

**IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD "A" BENCH, AHMEDABAD**

**BEFORE Ms. SUCHITRA KAMBLE, JUDICIAL MEMBER AND
SHRI WASEEM AHMED, ACCOUNTANT MEMBER**

**ITA No.85/Ahd/2019
Assessment Year: 2009-10**

Amjay Medimax India Pvt. Ltd.,
Medi Max House, 4th Floor,
Opp. Karnavati Hospital,
Ellisbridge,
Ahmedabad – 380 006
[PAN: AABCA 8241 R]
(Appellant)

vs. Dy. Commissioner of Income Tax,
Circle – 1(1)(1), Ahmedabad.

(Respondent)

Appellant by : Shri Aseem L. Thakkar, A.R.
Respondent by : Shri S.S. Shukla, Sr. D.R.

Date of hearing : 06.04.2022
Date of pronouncement : 06.05.2022

ORDER

PER SUCHITRA KAMBLE, JUDICIAL MEMBER :

This is an appeal filed by the assessee against the order dated 28.11.2018 passed by the CIT(A)-1, Ahmedabad for the Assessment Year 2009-10.

2. The assessee has raised the following ground of appeal :

“(1) The learned Commissioner of Income Tax (Appeals) has erred in confirming the penalty u/s. 271(1)(c) of the I.T. Act, 1961 on disallowance of Rs.94,385/- u/s.40(a)(ia) of the I.T. Act, 1961”.

3. The assessment was finalised under Section 143(3) of the Income Tax Act, 1961 vide order dated 01.12.2011 assessing total income at Rs.2,95,50,908/- as against returned income of Rs.2,63,31,960/- after making following additions/disallowances:

- “i) Disallowance u/s. 14A r.w. rule 8D of Rs.18,40,543/-
- ii) Employees' contribution to provident fund of Rs.32,204/-

- iii) AIR Information 13,200/-
- iv) Interest Income of Rs.6,13,116/-
- v) Disallowance u/s.40(a)(ia) of the Act of Rs.7,19,385/-”

4. Penalty proceedings under Section 271(1)(c) were initiated for furnishing of inaccurate particulars of income/concealment of income. Accordingly, a notice under Section 274 read with Section 271(1)(c) of the Act dated 01.12.2011 was issued to the assessee. Being aggrieved by the assessment order, the assessee preferred appeal before the CIT(A) and the CIT(A) vide order dated 11.07.2012 deleted the addition made on account of employees' contribution of PF and upheld the rest additions/disallowances. Against the order of the CIT(A) the assessee filed appeal before the Tribunal ITA No.1950/Ahd/2012. The Tribunal vide order dated 18.04.2017 granted partial relief to the assessee thereby deleting the disallowances under Section 14A read with Rule 8D and under Section 40(a)(ia) of the Act. The Tribunal upheld the additions related to interest income and disallowance under Section 40(a)(ia) amounting to Rs.94,385/-. At the time of penalty proceedings the Assessing Officer held that the assessee furnished inaccurate particulars of income in respect of the income to the tune of Rs.94,385/- and has concealed the income to the tune of Rs.6,13,616/- in respect of interest income and therefore imposed penalty of Rs.2,18,772/-.

5. Being aggrieved by the penalty order, the assessee filed appeal before the CIT(A). The CIT(A) partly allowed the appeal of the assessee.

6. The Ld. A.R. submitted that the penalty can be sustained only if the assessee has furnished inaccurate particulars of income or concealed the income but in the present case the assessee has given all the details at the time of assessment proceedings and the same cannot be said that while filing the return of income thereby not giving the proper explanation relating to Section 40(a)(ia) of the Act in relation to the amount paid on which the tax was not deducted at source should come under purview of Section 271(1)(c) of the Act. Ld. A.R. relied upon the decision of Hon'ble High Court of Gujarat in the case of Nayan C. Shah vs. ITO, 386 ITR 304.

7. The Ld. D.R. relied upon the assessment order, penalty order and the order of the CIT(A). Ld. D.R. submitted that the Tribunal has sustained the addition in respect of Section 40(a)(ia) of the Act and held that liability of TDS deduction does not arise. The Ld. D.R. further submitted that the said finding cannot be taken into account while deciding the penalty order under Section 271(1)(c) of the Act. In fact, the assessee at the time of filing return of income has not given the information relating to not deducting tax at source and thus tantamount to furnishing of inaccurate particulars of income.

8. We have heard both the parties and perused the relevant material available on record. Ld. A.R. relied upon the decision of the jurisdictional High Court in the case of Nayan C. Shah (supra) where the issue was similar to the present assessee's case. The Hon'ble High Court observed/held as under :-

“From the facts as emerging from the record, it appears that the assessee has made a claim of expenditure in relation to the payments made, which he may not have been entitled to claim in view of the provisions of section 40(a)(ia) of the Act, as tax on part of such amount had not been deducted at source and deposited in the Government account before the due date for filing return income. However, as held by the Supreme Court in the above decision, merely submitting an incorrect claim in law for the expenditure would not amount to furnishing inaccurate particulars of income. The impugned order passed by the Tribunal, therefore, cannot be sustained.”

9. From the perusal of the decision of the Hon'ble Jurisdictional High Court, which relied upon the decision of Hon'ble Apex Court in the case of CIT vs. Reliance Petroproducts (P) Ltd., 322 ITR 158 while invoking Section 271(1)(c) the concealment of particulars of income of the assessee has to be properly seen in the context of the additions made. By making inaccurate claim for not deducting tax at source does not tantamount to concealment of particulars of income or furnishing of inaccurate particulars of income. Merely submitting incorrect claim would not amount to furnishing of inaccurate particulars of income. In fact, notice has also not given a particular limb of Section 271(1)(c) of the Act. Therefore, the assessee cannot be penalised for any of the charge when the Assessing Officer has not made out as to exactly what was the inaccurate furnishing of particulars of income/concealment of income. Thus, the Assessing Officer was not right in imposing the penalty and the

CIT(A) has not taken the actual intention of Section 271(1)(c) of the Act. Therefore, penalty stands deleted.

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

Order pronounced in the open Court on this 6th day of May, 2022.

Sd/-
(WASEEM AHMED)
Accountant Member

Sd/-
(SUCHITRA KAMBLE)
Judicial Member

Ahmedabad, the 6th day of May, 2022

PBN/*

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