

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

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

**ITA No.2895/Ahd/2017
Assessment Year: 2008-09**

Bhikhabhai Ambalal Patel, vs. Income Tax Officer,
Prop. of Dhanlaxmi Printers, Ward-4, Mehsana.
Navjivan Shopping Centre,
Kalol.
[PAN: ABIPP 8641 B]

**ITA No.2896/Ahd/2017
Assessment Year: 2013-14**

Vijaykumar Bhikhabhai Patel, vs. Income Tax Officer,
Prop. Vijay Pet, Ward-4, Mehsana.
Plot No.139 GIDC
Kalol.
[PAN: BEPPP 7324 J]
(Appellants) (Respondents)

Assessee by : Shri Harshadbhai Parmar
(for Varis Isani)
Revenue by : Shri R.R. Makwana, Sr. D.R.

Date of hearing : 23.05.2022
Date of pronouncement : 27.05.2022

ORDER

PER SUCHITRA KAMBLE, JUDICIAL MEMBER :

These are appeals filed by two different assesseees against two different orders dated 04.08.2017 & 05.09.2017 passed by the CIT(A), Gandhinagar, Ahmedabad for the Assessment Years 2008-09 & 2013-14 respectively.

2. In ITA No.2895/Ahd/2017 the assessee has raised the following grounds of appeal:-

"The CIT(A), Gandhinagar has erred in law in

1. *Confirming the penalty order u/s. 271(1)(c) of the IT Act for the A.Y. 2008-09 passed by the Lrd. AO and a huge demand of Rs.1,11,750/-.*
2. *Confirming penalty initiated u/s. 271(1)(c) of IT Act by the Lrd. AO without giving proper opportunity of being heard.*
3. *Confirming penalty initiated u/s. 271(1)(c) of IT Act without considering meaning of "Inaccurate Particular" and "Concealment of Income" for levying Penalty u/s.271(1)(c) of Income Tax Act. The Lrd. AO has made penalty haphazardly without considering legality and factual position scenario of the nature of transaction & wrongly applied provision of IT Act. In Fact, the appellant has admitted the addition in assessment proceeding for avoiding repetitive litigation in further appeal. Merely acceptance of Assessment Order to avoid multiple litigation and related harassment does not lead to the amount of concealment of income and it does not fall in section 2781(1)(c) of the Income Tax Act."*

3. In ITA No.2896/Ahd/2017 the assessee has raised the following grounds of appeal:-

"The Hon'ble CIT(A), Gandhinagar has erred in law

1. *In passing the Appellant order for confirming a huge demand of Rs.3,05,870/- made by the Lrd. AO while passing penalty order passed u/s.271(1)(c) of IT Act.*
2. *To confirm penalty proceeding initiated against addition of Rs.4,96,888/- on account of Apparent Mistake in claim of depreciation by the Lrd. AO while passing penalty order passed u/s.271(1)(c) of IT Act.*
3. *In apply section 40(a)(ia) of the IT Act in respect of Interest Expense of Rs.88,745/- and confirming levied penalty thereon u/s.271(1)(c) of IT Act made by the Lrd. AO while passing penalty Order passed u/s.271(1)(c) of IT Act.*
4. *In that addition of Rs.4,00,000/- made on the basis of cash deposited in Bank Account during F.Y. 2012-13. However, cash credit for the previous year shown in the assessee's bank pass book does not fall within the ambit of Section 68 of Income Tax Act, 1961 as Bank Passbook does not consider as Books of Account of the assessee and confirming the penalty levied thereon u/s.271(1)(c) of the IT Act initiated by the Lrd. AO while passing penalty order passed u/s. 271(1)(c) of the IT Act.*

5. *In by confirming the penalty initiated by passing penalty order u/s. 271(1)(c) of IT Act against addition of Rs.4,231/- on account of nominal amount of Saving Bank interest made by the Lrd. AO while passing penalty order passed u/s.271(1)(c) of IT Act.*
6. *In by confirming penalty the penalty initiated by passing penalty u/s. 271(1)(c) of IT Act without giving proper opportunity of being heard even the Lrd. AO has not issued any show cause notice before making such addition."*

4. The assessee filed income tax return for the A.Y. 2008-09 declaring gross total income of Rs.2,85,560/- and for A.Y. 2013-14 on 28.09.2013 declaring gross total income of Rs.14,72,744/-. The Assessing Officer in A.Y. 2008-09 made addition of Rs.3,61,733/- on account of cash deficit and in A.Y. 2013-14 made addition of Rs.9,89,864/- on account of depreciation, disallowance under Section 40(a)(ia) of the Act as well as unexplained cash deposit and undisclosed interest income. The penalty under Section 271(1)(c) of the Act was imposed in both the assessment years by the Assessing Officer.

5. Being aggrieved by the penalty orders in both these years, the assessee filed appeals before the CIT(A). The CIT(A) dismissed the appeals of the assessee in both these assessment years.

6. The Ld. AR has filed adjournment application before us but since the matter is having an issue related to penalty under Section 271(1)(c), which is a clear case, we are taking the presence of the Ld. Representative of the assessee and proceeding in this matter. Before the CIT(A), the Ld. AR submitted that mere existence of addition during the assessment proceedings does not attract provisions of Section 271(1)(c) of the Act. The assessee relied upon the decision of CIT vs. Reliance Petroproducts Pvt. Ltd., 189 Taxman 322 (SC), Mak Data Limited vs. CIT [2013-ITRV-SC-140] as well as CIT vs. Manjunatha Cotton & Ginning [2013-ITRV-HC-KAR-093]

7. The Ld. DR relied upon the assessment Order, penalty order and the order of the CIT(A).

8. We have heard the Ld. DR as well as gone through the submissions, before the Assessing Officer as well as before the CIT(A) reproduced in the respective orders, by

the assessee. It is pertinent to note that in the present case, the CIT(A) has not pointed out as to on what basis the penalty was imposed. In fact, notice under Section 274 read with Section 271(1)(c) of the Act has also not revealed the proper limb of invocation of Section 271(1)(c) penalty. Besides, the additions made by the Assessing Officer does not contemplate that there is concealment of income or filing of inaccurate particulars of income on the part of the assessee. Therefore, the penalty does not survive. Hence, both the appeals of the assessee are allowed.

9. In the result, both the appeals filed by the assesseees are allowed.

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

Sd/-
(WASEEM AHMED)
Accountant Member

Sd/-
(SUCHITRA KAMBLE)
Judicial Member

Ahmedabad, the 27th day of May, 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