

**IN THE INCOME TAX APPELLATE TRIBUNAL
“RAJKOT” BENCH, RAJKOT**

[Conducted through E-Court at Ahmedabad]

**BEFORE SHRI MAHAVIR PRASAD, JUDICIAL MEMEBR
& SHRI WASEEM AHMED, ACCOUNTANT MEMEBR**

आयकर अपील सं./I.T.A. No. 173/Rjt/2018

(निर्धारण वर्ष / Assessment Year : 2007-08)

Rameshbhai B. Rangani Prop. of Panchnath Industries, Umakant Udyognagar, Rajkot	बनाम/ Vs.	The I.T.O. Ward 5(2), Rajkot
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : ABGPR6574F		
(Appellant)	..	(Respondent)

अपीलार्थी ओर से/Appellant by :	None
प्रत्यर्थी की ओर से / Respondent by :	Shri Aarsi Prasad, CIT.D.R.

सुनवाई की तारीख / Date of Hearing	30/05/2022
घोषणा की तारीख /Date of Pronouncement	31/05/2022

ORDER

PER MAHAVIR PRASAD, JM:

The appeal has been preferred by the assessee against the order of the Commissioner of Income Tax (Appeals)-3, Rajkot ('CIT(A)' in short) vide Appeal No. CIT(A)-3/A3/0810/14-15 dated 05.03.2018 arising in the penalty order dated 25.03.2014 passed by the Assessing

Officer (AO) under s. 271(1)(c) of the Income Tax Act, 1961 (the Act) concerning AY. 2007-08.

2. The ground of appeal raised by assessee reads as under:

- “1. *The Ld. CIT(A) has erred in law and facts in not keeping pending the appeal till quantum appeal is decided by the Hon. ITAT although specifically requested for the same. The action of the Ld. CIT(A) being contrary to the settled judicial position that the lower authority has always to await decisions from the higher corum to avoid duplication of matter and also the appeal never become time barred there was no hurriedness not to await quantum order from Hon. ITAT. The penalty needs cancellation.*
2. *The Ld. CIT(A) has erred in law and facts in confirming penalty levied U/s. 271(1)(c) of Rs. 5,74,065/-. The same needs deletion.*
3. *The Ld. CIT(A) has erred in law and facts in confirming penalty levied U/s. 271(1)(c) of Rs. 5,74,065/- on addition made on without proper verification and settled law. The penalty needs deletion.*
4. *The Ld. CIT(A) has erred in law and facts in confirming penalty levied U/s. 271(1)(c) of Rs. 5,74,065/- giving in adequate time and opportunity although the assessee specifically requested for the same. The penalty needs deletion.*
5. *The Ld. CIT(A) has erred in not considering that Ld. A.O. has erred in bringing any cogent material justifying levy of penalty. The penalty needs deletion.*
6. *The Ld. CIT(A) has erred in not giving proper and adequate opportunity. The penalty order being bad in law needs cancellation.*
7. *The penalty order being bad in law needs cancellation.*
8. *Taking into considering the legal position, statutory aspects and facts of the case no penalty ought to have been confirmed. The same deserves cancellation.*
9. *The Ld. CIT(A) has erred in not considering the reply of the assessee furnished on 29-1-2000 while passing appeal order on 5-3-2018 although there was more than sufficient time to give an*

opportunity to the assessee and thereby violated principals of natural justice and has not shown full decorum towards the higher corum to which he is subordinate. The penalty needs cancellation.

10. *The appellant craves leave to add / alter / amend and / or substitute any or all grounds of appeal before the actual hearing take place."*

3. In this case, the return of income showing total income of R.s. 1,18,070/- and agriculture income of Rs.1,61,364/- was filed on 18/10/2007. The case was re-opened on the basis of information received from the ITO Ward 1(1), Rajkot that the assessee has sold agricultural land in joint venture with his brother Shri Shamjibhai B. Rangani. The total sales consideration of Rs. 75,76,250/- has been received and 50% of the share thereof is received by the assessee. Further, it was found that the assessee has filed his Return of income but not filed Revised return in compliance to notice issued u/s 148 and has not offered the profit earned from the above sales consideration.

3.1 Since the gain arising from the sale of the said land was very much under the purview of Capital Gain, the case was re-opened u/s 147 of the Act and a notice u/s 148 was issued on 15-02-2010 and duly served upon the assessee. Addition of Rs. 36,34,125/-being Capital Gain on sale of land was added to the total income of the assessee and the assessment was finalized on 24-12-2010 at assessed income of Rs. 37,55,020/-. Penalty proceedings u/s 274 r.w.s. 271(l)(c) dated 22-12-2010 was initiated for concealment of income. The proceedings were kept in abeyance as the assessee had preferred an appeal before the C.I.T. (A) - IV, Rajkot.

3.2 The Ld. CIT (A)-IV, Rajkot vide order dated 13-09-2012 has confirmed the addition of Rs. 36,34,125/- on account of capital gain on sale of plot of land. However, the CIT(A), allowed deduction of Rs. 19,30,320/- in the short term capital gain as cost of improvement being amount of premium paid for conversion of land. Accordingly a final opportunity of being heard in the matter of penalty proceedings was given to the assessee vide this office letter no. 5(2)/RBR/Penalty/2013-14 dated 10/03/2014.

3.3 In response to said letter, assessee did not file any written submission/reply till date and has also not availed opportunity of being heard within the time allowed. Therefore, it is presumed that the assessee has nothing to say in the matter and has no objection on levying penalty. Accordingly, penalty u/s 271(1) (c) of the Act is leviable.

3.4 The assessee has neither filed revised return of income in response to notice u/s 148 dated 15-02-2010 nor given any clarification on the issues covered therein. Also in the return of income filed on 18-10-2007 declaring total income at Rs. 1,18,070/- and agricultural income of Rs. 1,61,364/-, the assessee has not shown Capital Gain in Return of Income part B-TI i.e.(computation of income) as well as schedule CG i.e. Capital Gain and in schedule EI i.e. Exempt Income. The assessee failed to comply in response to notice u/s 142(1) dated 06-12-2010 even after the assessee was supplied with a copy of reasons for re-opening. The assessee did not submit any reply to the final show cause notice dated 06-12-2010 and also did not submit any details in response to the proposal to tax the sale of land as Capital Gain. No evidences during the course of assessment proceedings were also submitted by the assessee.

3.5 In view of the above facts, it is clearly established that the assessee has concealed his particulars of income of Capital Gain. The act of the assessee is nothing but willful attempt on his part to conceal the income with a view to evade the tax. By doing so, the assessee has squarely rendered himself liable for penal action u/s 271(l)(c) of the Act.

3.6 Accordingly, penalty u/s.271(l)(c) of the I.T.Act,1961 was levied at Rs. 5,74,065/-which is minimum being 100% of tax sought to be evaded as against maximum of Rs.17,22,165/- being 300% of tax sought to be evaded.

4. Thereafter, assessee preferred first statutory appeal before the learned CIT(A). Before learned CIT(A), it was contended by the assessee that matter was decided ex parte by the learned AO and even before the learned CIT(A), assessee could not file his submission. As mentioned in the statement of facts, learned CIT(A) did not grant him enough time to submit his document. Learned CIT(A) has mentioned that despite of the fact that several opportunities were given to the assessee to file his submission but he could not file the relevant papers for the reason best known to him.

5. On the other hand, assessee contended in his appeal memo that learned CIT(A) did not grant him enough time and opportunity to file relevant papers in support of his case before learned CIT(A). Therefore, in such facts and circumstances and in the interest of justice, we set aside this matter back to the file of the learned AO subject to the condition that a penalty of Rs.1000/- shall be imposed on the assessee as he has wasted precious time of the Revenue authority and did not file any relevant

details in support of its case and same to be deposited with the department within 60 days from the receipt of this order. Thereafter, the AO shall decide the matter after giving an opportunity of being heard to the assessee and pass the order as per law.

6. In the result, the appeal filed by the Assessee is allowed for statistical purposes.

This Order pronounced in Open Court on 31/05/2022

Sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER
Ahmedabad: Dated 31/05/2022

Sd/-
(MAHAVIR PRASAD)
JUDICIAL MEMBER

True Copy

S.K.SINHA

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. राजस्व / Revenue
2. आवेदक / Assessee
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद /
DR, ITAT, Ahmedabad
6. गार्ड फाइल / Guard file.

By order/आदेश से,

Deputy/Asstt. Registrar
ITAT, Rajkot