

**IN THE INCOME TAX APPELLATE TRIBUNAL
RAJKOT BENCH, RAJKOT
(Conducted through E-Court at Ahmedabad)**

**BEFORE SHRI MAHAVIR PRASAD, JUDICIAL MEMBER AND
SHRI WASEEM AHMED, ACCOUNTANT MEMBER**

**ITA Nos.165 & 166/RJT/2018
Assessment Years: 2011-12**

Shri Hasmukhrai Amrutlal Jobanputra vs. The Income Tax Officer,
C/o. D.R. Adhia, Ward – 5(3), Morbi.
"Om Shri Padmalaya"
Beside Trikamraji Haweli,
Opp. Hotel Imperial Palace,
16, Jaganath Plot,
Dr. Yagnik Road,
Rajakot.
[PAN – ABKPJ 9071 F]
(Appellant) (Respondent)

Appellant by : Written Submission
Respondent by : Shri B.D. Gupta, Sr. D.R.

Date of hearing : 01.06.2022
Date of pronouncement : 08.06.2022

ORDER

PER WASEEM AHMED, ACCOUNTANT MEMBER :

The captioned appeals have been filed at the instance of the assessee against two different orders of the Learned Commissioner of Income Tax (Appeals)-3, Rajkot, dated 19.02.2018 & 16.02.2018 arising in the matter of assessment orders passed under Section 143(3) of the Income Tax Act, 1961 (here-in-after referred to as "the Act") relevant to the Assessment Years 2011-12.

2. The only interconnected issue raised by the assessee is that the learned CIT-A erred in confirming the addition made by the AO for ₹ 3,12,325.00 on account of mismatch of the cash shown in the cash book viz a viz audited financial statement at the end of the financial year as on 31st of March 2011.

The facts in brief are that the assessee in the present case is an individual and engaged in the activity of tours and travelling. The assessee in his balance sheet as on 31 March 2011 has shown cash balance of ₹ 2,96,249.00 whereas the cash book filed in the course of the assessment the cash balance was shown at ₹ 6,08,574.00 leading to a difference of ₹ 3,12,325.00 which was treated as unexplained/unaccounted income of the assessee. Thus, the AO added the same to the total income of the assessee.

3. Aggrieved assessee preferred an appeal to the learned CIT-A who also confirmed the order of the AO by observing as under:

"In his submissions before me the Ld. AR has tried to argue that cash balance as per audit report stands verified and therefore there was no scope for any addition even if cash book submitted before the assessing officer during assessment proceeding was showing different cash balance because this cash book was nothing but a rough work. This argument of AR is not only strange but also self defeating. Ld AR has not appreciated the fact that this cash book was submitted before the AO utilised to explain the cash deposits in the appellant bank account. In other words if cash book is treated rough noting having no evidentiary value then appellant would have suffered addition on account of unexplained cash deposit in the bank account. It is needless to say there is no force in the argument of the Ld. AR. I do not find any infirmity in the order of the assessing officer. The addition stands confirmed."

4. Being aggrieved by the order of the learned CIT-A, the assessee is in appeal before us.

5. The learned AR in the written submission stated that there was the opening cash balance of ₹ 1,93,755.00 which has not been reduced from the addition made by the authorities below. It was further stated in the written submission that the cash balance shown in the audited financial statement should be relied upon for the reason that it has been duly verified and attested by the qualified chartered accountant. Accordingly, the cash balance shown in the cash book should be ignored and therefore no addition is warranted merely on account of difference in the cash balance as discussed above.

6. On the contrary, the learned DR vehemently supported the order of the authorities below.

7. We have heard the learned DR and perused the materials available on record. Admittedly, there was the difference in the amount of cash balance shown in the cash book viz a viz audited financial statement as on 31 March 2011 amounting to ₹ 3,12,325.00 which was treated by the authorities below as unexplained/unaccounted income of the assessee.

8. Before we dwell upon the issue raised by the assessee, it is pertinent to appreciate whether the difference in the cash balance between the cash book viz a viz audited financial statement as on 31 March 2011 gives rise to the taxable income of the assessee. To our understanding, merely observing the difference in the manner as discussed above does not give any authority to draw an inference that there was unaccounted/undisclosed income of the assessee. The income cannot be determined merely on the basis of documents/papers until and unless it is corroborated by the tangible materials. There can be numerous reasons for the difference in the cash balance as discussed above but that difference does not lead to draw any adverse inference against the assessee. For example, there was the advance received by the assessee in cash which was entered in the cash book but the same was not incorporated in the balance sheet. Such advance received cannot be categorized as income of the assessee. Likewise there can be receipt of money from the debtors which can again not be categorized as income of the assessee. In nutshell, we are not in agreement with the basis adopted by the authorities below to draw an inference that there was unaccounted income/undisclosed income of the assessee until and unless it is based on some tangible materials. Accordingly, we set aside the finding of the learned CIT-A and direct the AO to delete the addition made by him. Hence the ground of appeal of the assessee is allowed.

9. In the result the appeal filed by the assessee is allowed.

Coming to ITA 166/RJT/2018

10. The assessee has challenged the confirmation of the penalty by the learned CIT-A which was levied by the AO under the provisions of section 271(1)(c) of the Act for ₹ 32,169.00 being hundred percent of tax sought to be evaded on account of furnishing inaccurate particulars of income.

11. At the outset, we note that the addition on the basis of which the penalty was levied upon the assessee by the AO has ceased to exist. In other words, the quantum addition made by the AO has already been deleted by the ITAT as evident from the finding of the ITAT in ITA No.165/RJT/2018 vide paragraph No.8 of this order. Thus, the question of furnishing the inaccurate particulars of income does not arise and therefore the penalty cannot be sustained. Under the provisions of section 271(1)(c) of the Act the amount of penalty has been specified which shall not be less than hundred percent of the amount of tax sought to be evaded subject to the maximum limit of 300% of such amount. Under explanation 4 to section 271(1)(c) of the Act, the manner for quantifying the amount of tax sought to be evaded has been specified which has direct nexus with the additions/ disallowances made during the quantum proceedings. Therefore, where the quantum additions/disallowances have been deleted, then the manner of quantifying the amount of penalty under explanation 4 to section 271(1)(c) of the Act as discussed above fails. Accordingly, we are of the view that that there cannot be any penalty with respect to the quantum additions which have been deleted whether on merit or on technical grounds. Thus, we find no reason to uphold the order of the learned CIT-A and therefore the AO is directed to delete the penalty levied by him. Hence, the ground of appeal of the assessee is allowed.

12. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open Court on this 8th day of June, 2022.

Sd/-
(MAHAVIR PRASAD)
Judicial Member

Sd/-
(WASEEM AHMED)
Accountant Member

Ahmedabad, the 8th day of June, 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
Rajkot Bench, Rajkot