

**आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'A' अहमदाबाद ।**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**“A” BENCH, AHMEDABAD**

**BEFORE SMT. ANNAPURNA GUPTA, ACCOUNTANT MEMEBR**  
**& SHRI MAHAVIR PRASAD, JUDICIAL MEMEBR**

आयकर अपील सं./I.T.A. No. 476/Ahd/2019  
(निर्धारण वर्ष / Assessment Year : 2004-05)

<b>Shri Anil M. Jain</b> 221, Manekbaug Society, Ambawadi, Ahmedabad - 380015	<b>बनाम/</b> Vs.	<b>The ACIT</b> Circle -5(2), Pratyakshkar Bhavan, Ambavadi, Ahmedabad - 380015
<b>स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAXPJ8826G</b>		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी ओर से/Appellant by :	Shri Deepak Soni, A.R.
प्रत्यर्थी की ओर से / Respondent by :	Shri Alpesh Parmar, Sr. D.R.

सुनवाई की तारीख / Date of Hearing	06/06/2022
घोषणा की तारीख /Date of Pronouncement	09/06/2022

**ORDER**

**PER MAHAVIR PRASAD, JM:**

The appeal has been preferred by the assessee against the order of the Commissioner of Income Tax (Appeals)-5, Ahmedabad ('CIT(A)' in short) vide Appeal No. CIT(A)-5/ACIT Cir.5(2)/10353/2018-19 dated 28.02.2019 arising in the penalty order dated 26.03.2015 passed by the Assessing Officer (AO) under s. 271(1)(c) of the Income Tax Act, 1961 (the Act) concerning AY. 2004-05.

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

- “1.0 The CIT(A) erred in upholding order u/s 271(1)(c) framed by the assessing officer. The order passed by the assessing officer is bad in law since it is contrary to the provisions of law and the facts of your appellant's case. It is submitted that it be so held now.
- 2.0 The CIT(A) on the facts and in view of law ought to have held that :-
- 2.1 The order passed by the assessing officer on 26<sup>th</sup> March, 2015 u/s 271(1)(c) is bad in law as the order has been framed in violation of provisions of sections 274 and 275. The order be quashed.
- 2.2 The order passed u/s 271(1)(c) is bad in law as it has been framed ignoring the facts in the case of the appellant, the submissions placed on the records of the assessing officer and the provisions of law. The order is in violation of principle of natural justice. The order be quashed.
- 2.3 The order u/s 271(1)(c) is bad in law as there was neither concealment of income nor furnishing of any inaccurate particulars in respect of exemption u/s 10(13A). Each and every particular in respect of exemption was disclosed as per the provisions of law and each and every particular was correctly furnished. The order u/s 271(1)(c) is bad in law and be quashed. The order of the assessing officer be quashed.
- 2.4 The order u/s 271(1)(c) has been framed in violation of provisions of section 273B and notwithstanding the fact that there existed a reasonable cause. The order be therefore quashed.
- 3.0 The appellant without prejudice to above further submits that the penalty imposed by the assessing officer in any event is excessively high. The appellant submits that penalty be reduced.”

3. The brief facts of the case are that during the assessment proceedings, an addition of Rs.2,40,000/- was made u/s. 10(13A) of the Act. The assessee has claimed exemption of Rs. 2,40,000/- u/s. 10(13A) on expenditure incurred on rent of Rs.3,00,000/-. The AO stated that exemption was only applicable if a tax payer actually incurs an expenditure and that since in the instant case no evidence was available on records to indicate actual payment of rent was made. Therefore, the assessee was not entitled to the exemption. During the appellate proceedings, the CIT(A) stated that without prejudice the assessee on his part has failed to provide any confirmation from Smt. Jain (land lady) regarding payment of any house rent to her. The undated, unsigned ledger, account of Smt. Jain in

assessee books cannot be taken as reliable piece of evidence. The assessee has produced bank statement showing two entries of Rs.2,25,000/- and Rs. 75,000/- respectively dt. 22.01.2004 and 20.03.2004. The CIT (A) has stated that there is nothing to indicate that the said amounts were paid to Smt. Jain for any rental liabilities. Without prejudice it is difficult to accept that the said entries are towards payment of rent. It is general practice that rent payments are made monthly whereas in this as nine months rent was allegedly paid in January 2004 and three month rent was allegedly paid in March, 2004. The CIT(A) has dismissed the appeal of the assessee.

The same plea was also taken during the penalty proceedings that he had paid rent to land lady. Transactions were not questionable here also, but assessee has not produced the same was paid as rent and that he has not claimed any inadmissible deduction i.e. house rent allowance. The matter is already settled. The assessee has not produced any evidence regarding these payments were paid as rent. These arguments have been held to be purely concocted and an attempt by the assessee to mislead the department. Hence, the learned AO satisfied and stated that the assessee had deliberately and willfully furnished inaccurate particulars of income and concealed the particulars of his income. Thus, the assessee is liable to pay penalty of Rs.2,40,000/-.

4. Thereafter, assessee preferred first statutory appeal before the learned CIT(A), but, he confirmed the action of the learned AO.

5. We have gone through the relevant record and impugned order. Lower authorities dismissed the contention of the assessee on the ground that though amount was paid through cheque but no other documents were submitted before the lower authorities to prove the genuineness of the rent payment and lower authorities also confirmed that amount was paid only

twice in the year, however, normally, rent is payable on monthly basis. After going through the submission and paper filed by the assessee, we have seen that payment of rent was paid through cheque and recipient of the rent has also declared her income in her return of income and assessee has given all details before the learned AO wherein it is mentioned that the rent of Rs.3 Lakhs has been paid to one Smt. Sumitradevi M. Jain and address of the said person also been given and she shown the said amount in here tax return and also given the PAN details of the recipient.

6. We are of the considered opinion and considering the above details, the assessee has discharged his onus and in such scenario, penalty cannot be levied. Thus, penalty levied by the lower authorities is deleted.

7. In the result, the appeal filed by the Assessee is allowed.

**This Order pronounced in Open Court on 09/06/2022**

Sd/-

(ANNAPURNA GUPTA)  
ACCOUNTANT MEMBER

Ahmedabad: Dated 09/06/2022  
S.K.SINHA

Sd/-

(MAHAVIR PRASAD)  
JUDICIAL MEMBER

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**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,

उप/सहायक पंजीकार  
आयकर अपीलीय अधिकरण, अहमदाबाद ।