

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

**BEFORE SHRI P.M. JAGTAP, VICE PRESIDENT AND
Ms. SUCHITRA KAMBLE, JUDICIAL MEMBER**

**ITA No.509/Ahd/2019
Assessment Year: 2010-11**

Shri Sanjaybhai D. Patel,
F-102, Shreeji Enclave,
Anandnagar Char Rasta,
Satellite,
Ahmedabad – 380 015.
[PAN – AVXPP 6805 A]
(Appellant)

vs. Income Tax Officer,
Ward - 3(3)(5), Ahmedabad.

(Respondent)

Appellant by : None
Respondent by : Smt. M.M. Garg, Sr. D.R.

Date of hearing : 29.06.2022
Date of pronouncement : 15.07.2022

ORDER

PER SUCHITRA KAMBLE, JUDICIAL MEMBER :

This appeal is filed by the assessee against the order dated 30.01.2019 passed by the CIT(A)-3, Ahmedabad for the Assessment Year 2010-11.

2. The grounds of appeal are as under:

- “1. *Looking to the facts and circumstances of the case, the Learned CIT (Appeal) has erred in confirming the levy of penalty under section 271(1)(c)(iii) of Rs.1,05,224/-. The Learned CIT (Appeals) ignored the fact the return filed in response to notice u/s 147/148 is accepted as such by the AO. The Learned CIT (Appeals) has failed to appreciate that the Appellant has reasonable cause for not filing the return as he was under bonafide belief that since the entire income was received after deduction of tax at source, no return is required to be filed. Accordingly, the appellant prays that the penalty of Rs.1,05,224/- levied under section 271(1)(c) be deleted.*
2. *The Learned CIT (Appeals) has failed to adjudicate and give any direction or finding with respect to the interpretation of the term 'tax sought to be evaded' as defined under Explanation 4(b) given below*

section 271(1)(c)(iii). As the tax deduction at source was more than the tax payable on returned income, the tax sought to be evaded comes to Nil and not as determined by the AO at Rs.1,05,224/-.. The appellant has filed application for rectification u/s.154 against the order of the Learned CIT (Appeals) praying for the appropriate finding or direction on this ground. The said application is pending for disposal as on the date of filing this appeal. Accordingly, the appellant prays that the penalty of Rs.1,05,224/- levied under section 271(1)(c) be deleted.

3. *The Learned CIT (Appeals) has completely ignored the fact that the AO levied penalty of Rs.5000/- under section 271F for non filing of return in time specified under section 139. The learned CIT (Appeals) has failed to appreciate that penalty under two different provisions cannot be levied for a single default i.e. not filing return of income. Accordingly, the appellant prays that the penalty of Rs.1,05,224/- levied under section 271(1)(c) be deleted.*

3. The assessee has not filed return of income for the A.Y. 2010-11. The information was received by the Revenue Authorities that the assessee received contract receipt of Rs.87,45,898/- and accordingly the case was reopened under Section 147 of the Income Tax Act, 1961. Notice under Section 148 of the Act was issued on 28.03.2017. In response thereto, the assessee filed return of income on 03.10.2017 declaring income of Rs.6,60,530/-. The assessment was completed on 22.12.2017 accepting returned income declared by the assessee. As the assessee has not filed return of income under Section 149(1) of the Act, penalty proceedings initiated for concealment of income of Rs.6,60,530/-. Notice under Section 274 read with Section 271(1)(c) of the Act for concealment of income was issued on 22.12.2017. The assessee did not file reply to the said notice. The Assessing Officer imposed penalty of Rs.1,05,224/- for concealment of income/or furnishing of inaccurate particulars of income.

4. Being aggrieved by the penalty order, the assessee filed appeal before the CIT(A). The CIT(A) dismissed the appeal of the assessee.

5. None appeared on behalf of the assessee despite giving notice and no fresh address has been given by the assessee. Therefore, we are proceeding on the basis of the submissions made before the Assessing Officer as well as before the CIT(A) by the assessee.

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

7. We have heard the Ld. DR and perused all the relevant material available on record. It is pertinent to note that the assessee has filed return of income in response to notice issued under Section 148 of the Act and that cannot be treated as concealment of income or furnishing of inaccurate particulars of income. The Assessing Officer has accepted the return of income filed in response to the notice under Section 148 of the Act and thus the CIT(A) as well as the Assessing Officer has not taken proper cognisance of the provisions of Section 271(1)(c) of the Act. The Assessing Officer in the return of income filed by the assessee could not point out any concealed income or inaccurate particulars while levying the penalty. Therefore, the penalty does not sustain. Hence, appeal of the assessee is allowed.

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

Order pronounced in the open Court on this 15th day of July, 2022.

Sd/-
(P.M. JAGTAP)
Vice President

Sd/-
(SUCHITRA KAMBLE)
Judicial Member

Ahmedabad, the 15th day of July, 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