

आयकर अपीलीय अधिकरण, राजकोट न्यायपीठ, राजकोट ।
**IN THE INCOME TAX APPELLATE TRIBUNAL
RAJKOT BENCH, RAJKOT**
[Conducted through E-Court at Ahmedabad]

**BEFORE MS. SUCHITRA KAMBLE, JUDICIAL MEMBER &
SHRI WASEEM AHMED, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No. 110/Rjt/2019
(निर्धारण वर्ष/Assessment Year : 2011-12)

Vijay J. Faldu 303-Balaji Apartment Porbrandar Road Upleta	बनाम/ Vs.	The ITO Ward-1(4) Rajkot
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAMPF 1651 L		
(अपीलार्थी/ Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी ओर से/ Appellant by :	Written Submission
प्रत्यर्थी की ओर से/ Respondent by :	Shri B.D. Gupta, DR

सुनवाई की तारीख/ Date of Hearing	23/08/2022
घोषणा की तारीख / Date of Pronouncement	07/09/2022

आदेश / O R D E R

PER SUCHITRA KAMBLE, JUDICIAL MEMBER:

This appeal is filed by the assessee against the order dated 26/04/2019 passed by the Commissioner of Income Tax (Appeals)-1, Rajkot [CIT(A)] for Assessment Year (AY) 2011-12.

2. The assessee has raised the following grounds of appeal:-

- 1. The CIT(A) has erred in law and facts in confirming penalty u/s.271(1)(c) of Rs.65,869/-. The penalty needs deletion.*
- 2. The CIT(A) has erred in law and facts in confirming penalty u/s.271(1)(c) of Rs.65,869/- in respect of addition made on without proper verification and settled law. The penalty needs deletion.*

3. *The CIT(A) has erred in law and facts in confirming penalty u/s.271(1)(c) of Rs.65,869/- without properly considering that Ld.A.O. has erred in not giving adequate time and opportunity although the assessee specifically requested for the same. The penalty needs deletion.*
4. *The CIT(A) has erred in not bringing any cogent material justifying levy of penalty. The penalty needs deletion.*
5. *The CIT(A) has erred in not giving proper and adequate opportunity. The penalty order being bad in law needs cancellation.*
6. *The penalty order being bad in law needs cancellation.*
7. *Taking into considering the legal position, statutory aspects and facts of the case no penalty ought to have been levied. The same deserves cancellation.*

3. The assessment u/s.143(3) of the Income Tax Act, 1961 (hereinafter referred to as "the Act") was finalized on 10/01/2014 determining total income of Rs.6,87,380/- as against return income of Rs.2,35,250/-. The Assessing Officer initiated penalty proceedings u/s.271(1)(c) of the Act, thereby giving notice dated 10/01/2014. After taking detailed submissions from the assessee on record, the Assessing Officer imposed penalty of Rs.65,869/- u/s.271(1)(c) of the Act.

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

4. At the time of hearing, none appeared on behalf of assessee despite giving notice. However, the Ld.AR of the assessee filed written submissions before us which are taken on record. The same are reproduced as under:

"1.1 The Ld. A.O. has levied penalty of Rs. 65,869/- in respect of addition of Rs.4,52,127/- on deposit of Rs.46,13,045/-. Thus the addition is sustained on estimated basis.

1.2 It is settled law that when addition is sustained on estimated basis penalty U/s. 271(1)(c) is not leviable. The assessee humbly rely on the

order passed by the Hon. ITAT in the case of Varia Navneet Muljibhai wherein the Hon. ITAT has been please to delete the penalty levied.

1.3 It may also be submitted that the Ld. A.O. has made addition of profit elements on estimate basis therefore penalty cannot be levied assessee also placed reliance on decision given by Hon. High Court Of Punjab & Haryana 258 ITR 85 it was held that provision of Sec.271(1)(c) are not attracted to cases where income of an assessee is assessed on estimate basis arid addition are made therein on that basis thus penalty levied may kindly be deleted.

1.4 It is also submitted that the amount retain at 10% is also purely on estimated basis and no solid proof / evidence for determining income as mentioned above are established.

1.5 Over and above amount of addition of Rs. 4,52,127/- is totally on presumption and estimated basis. It is settled law no penalty in respect of addition made on estimated basis can be levied. The assessee relies on the following:

- 1. 106 ITR6 72(All) – Mussadilal Singh*
- 2. 150 ITR 714 (P&H) - Metal Products of India*
- 3. 258 ITR 85 (P&H) - Harigopal Singh*
- 4. 140 ITR 943 (Bom.) - Devendas Eprumal Co.*
- 5. 360 ITR 580 (Raj.) - Krushi Tire Rt. & Rubber Ind.*

2.1.1 It may also be submitted that at Para 3.2 page no. 3 of the assessment order the Ld. A.O. has mentioned that from above facts, it is clear that the assessee has shown inaccurate particulars and concealment of his income. This default of the assessee attracts a penalty leviable u/s 271(1)(c) of the IT Act, 1961. I, therefore, proposed to initiate penalty proceedings u/s 271(1)(c) of the IT Act, 1961.

2.1.2 Thus no specific charge is mention as to whether it is concealment of income or for furnishing inaccurate particulars of income.

2.1.3 The Hon. Gujarat High Court in the case of New Sorathiya Engineering Works 282 ITR 642 (Guj) and Jyoti Ltd., 34 TAXMAN.com 65 (GUJ). Hon. Karnataka High Court in the case of CIT vs. Maganur Builders ITA No. 616/2015 and in the case of Manjunatha Cotton &

Ginning factory 359 ITR 565 (Karn) has been pleased to hold that no penalty can be levied without specifying proper charge.

3.1 Reliance is also placed on the decision of Hon. ITAT Rajkot in the case of Paraskumar V. Kataria ITA No. 542/RJT/2012 it was held that it is requisite of law that the notice to the assessee should be specific it therefore must follow that the notice issued proposing penalty were illusory and the assessee was incapacitated to defend its case.

3.2 At Para 2 page no. 2 of the penalty order the Ld. A.O. has mentions that simultaneously penalty proceedings U/s. 271(1)(c) of the IT Act, 1961 were initiated for furnishing inaccurate particulars and concealment of income.

3.3 Whereas the notice is issued dated 10/01/2014, 15/07/2014 and 22/07/2014 (Copy enclosed) through which, the penalty proceedings are initiated and completed describes as under.

That you have concealed the particulars of your income or furnished inaccurate particulars of such income.

3.4 From the above its clear that the notice issued by the Ld. AO is not specifying proper charges and thus it is bad in law it also submitted that the without issuing proper notice penalty cannot be levied. Kindly delete the penalty levied.

3.5 It is settled law that when charges are not specified as to whether it is levied for concealment or for furnishing inaccurate particulars, the levy of penalty is illegal bad in law and not sustainable in the eye of law. The Hon. ITAT Rajkot, Ahmedabad, Kolkata, Delhi, Bombay and others has also been kind enough to delete penalty levied when it is not specifically for a particular charge.

4. Assessee also rely on the decision of Hon. ITAT Rajkot in the case of Sureshbhai Makanshi Gadesha ITA No.203 & 204/Rjt/2013, it was held that penalty proceeding initiated for one offence and finding the assessee guilty of another offence or finding him guilty of either one or other cannot be sustained in law thus kindly quashed the penalty proceeding.

5. It is therefore requested that the penalty levied may kindly be cancelled considering the merits of the case and being levied on non-specific charge."

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

6. We have heard both the parties and perused all the relevant material available on record along with written submissions filed by the Ld.AR. It is pertinent to note that the notice issued u/s.274 r.w.s. 271(1)(c) of the Act dated 10/01/2014 has not specified any particular limb for imposing the penalty as relates to whether it is concealment particulars of income or furnishing of inaccurate particulars of income. Thus, the Revenue is not specifying any limb and simply imposed penalty u/s.271(1)(c) of the Act without staking any default on the part of the assessee at the time of assessment proceedings related to information of income of the assessee. In the original assessment order, the addition was made in respect of peak credit balance and addition of bank interest. From the perusal of the records, it can be seen that the assessee has requested the Assessing Officer to treat the incurred cash deposit as his total sales receipts of trading activities of chalk lumps and offered profit at 8% of 9% of total turnover. Once the assessee has offered the same cash deposits, the Assessing Officer cannot observe that the same is inaccurate particulars of income or concealment of particulars of income. We respectfully follow the decision of Hon'ble Apex Court in the case of CIT vs. SSA's Emarld Meadows (CC No.11485/2016) order dated 05/08/2016 which confirmed the decision of the Hon'ble Karnataka High Court in the case of Manjunatha Cotton & Ginning Factory reported in (2013) 359 ITR 565 (Karn.). As regards addition on merit is concerned, the assessee at no point of time has furnished inaccurate

particulars of income or concealed any particulars of income. Hence, the Assessing Officer as well as CIT(A) was not right in imposing the penalty.

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

This Order pronounced in Open Court on	07/09/2022
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Sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER

Sd/-
(SUCHITRA KAMBLE)
JUDICIAL MEMBER

Ahmedabad; Dated 07/ 09 /2022

टी.सी.नायर, व.नि.स./T.C. NAIR, Sr. PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)-1, Rajkot
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Dy./Asstt.Registrar)

आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad