

IN THE INCOME TAX APPELLATE TRIBUNAL  
RAJKOT BENCH, RAJKOT  
(Conducted Through Virtual Court)

**Before: Ms. Annapurna Gupta, Accountant Member  
And Shri T.R. Senthil Kumar, Judicial Member**

**ITA No. 179/Rjt/2019  
Assessment Year 2012-13**

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| M/s. Vraj and Vaj<br>Construction A-20,<br>Indradeep Society,<br>Patel Colony,<br>Jamnagar-361008<br>PAN No: AAFFV9667F<br>(Appellant) | Vs | The ACIT, Circle-2,<br>Jamnagar<br>(Respondent) |
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**Appellant by : Shri Mehul Ranpura, A.R.  
Respondent by : Shri B.D. Gupta, Sr.D.R.**

Date of hearing : 29-08-2022  
Date of pronouncement : 07-09-2022

**आदेश/ORDER**

**PER : T.R. SENTHIL KUMAR, JUDICIAL MEMBER:-**

The present appeal has been filed by the Assessee against the order dated 27.05.2019 passed by the Commissioner of Income Tax (Appeals), Jamnagar partly confirming the penalty levied u/s. 271(1)(c) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') relating to the Assessment Year (A.Y) 2012-13.

2. The brief facts of the case is that the assessee is a Civil Contractor and undertake other Civil Construction Works. For the Assessment Year 2012-13, the assessee filed its Return of Income declaring income of Rs. 67,63,556/- on 30.09.2012. The assessment was completed u/s. 143(3) determining the income as Rs. 98,97,200/- making disallowance u/s. 36(1)(va), disallowance u/s. 40(a)(ia) addition of short contract receipts and disallowance of depreciation on JCB machines. The Assessing Officer initiated penalty proceedings on the above disallowances and levied minimum penalty of Rs. 81,725/- being the tax sought to be evaded on concealed income.

3. Aggrieved against the same the assessee filed an appeal before the Ld. CIT(A). The assessee submitted that it had furnished copy of the bank statement as well as ledger account of Garrison Engineers (GE), Ahmedabad. In spite of repeated request to Garrison Engineers, Ahmedabad to furnish total break up of 26AS being the State Government department, they have not provided the data to the assessee. In the circumstances, the assessee has surrendered the difference as its incomes as follows:

*"Regarding individual receipt of contract income viz-a-viz TDS appearing in Form 26AS in the matter of Deductor Garrison Engineer Ahmedabad appearing at serial no 13 of submission presented we are showing column-04 consisting of Receipt as per book amounting, to Rs. 6,29,000.00 and TDS as per book Rs.12,384.00 in column-05. This amount is considered as per books receipt while crediting the receipts on mercantile system followed by us. However, while filling the return of income claim of TDS is being made as per 26AS on the date of filling return amounting to Rs.17,956.00 on receipt of Rs. 7,51,723.00. Now as per our past experience this authority is revising its TDS returns off and on due to some government accounting system. In short we have accounted entire receipt on mercantile system and in book also we have debited TDS at Rs.17,956.00. In this*

*circumstances there is difference. In support of above we are showing our books and audit report where in fact of receipt and TDS are shown. Based on this fact we request your good self to please allow TDS as per latest data which is updated after considering revised TDS returns by TRACES sight of the government of India. At this out set we are discussing this issue with the GE Ahmedabad but this being old matter and in view of some problems in government accounting system we are not in a position of get the correct information from GE hence we request your good self to please Add Rs.1,22,723.00 in our income. We are consenting this to purchase mental peace and avoid unnecessary time consuming compilation with GE Ahmedabad without prejudice and to avoid long over drawn enquiry due to time barred assessment time. Please treat this in right spirit."*

*At this out set appellant say and submit that so far as assessment is concern above foci is considered. However, by submission of above surrender onus is proved by appellant. Now Before levy of penalty AG was to independently following things before levy of penalty."*

3.1. Thus the assessee pleaded that the declaration does not amount to concealment of income. The above explanation was not accepted by the Ld. CIT(A) and held that the A.O. has correctly levied penalty u/s. 271(1)(c) of the Act on this addition of Rs. 1,22,723/- on account of non declaration of sales in the books of accounts and therefore the confirmed the levy of penalty.

4. Aggrieved against the same the assessee is in appeal before us raising the solitary Ground of Appeal as follows:

*1. Ld CIT APPEAL erred in law as well as on fact to retained part of the penalty amounting to Rs.21427/-from the order passed by ITO who had levied penalty without establishing concealment - intentional furnishing in accurate particulars on merely technical grounds. In this circumstance arbitrary retained /confirmed penalty of Rs.21427/- may be deleted*

4.1. The Ld. Counsel Mr. Mehul Ranpura appearing for the assessee submitted before us, that there is no concealment of any

income by the assessee. He submitted during the assessment proceedings on the above details have been furnished before the Assessing officer vide letter dated 20.01.2015. The assessing officer without verifying the details with GE, Ahmedabad that they have paid Rs.7,51,723/- which is reflecting in 26AS and actual receipt accounted in the books by the assessee of Rs.6,29,000/- and the difference of Rs.1,22,721/- is treated as concealed income of the assessee. The ld. A.R. relied upon various case laws and held that there is no concealment of income and finally relied upon Supreme Court judgment in the case of Reliance Petro Products 322 ITR 158 wherein it was held mere making of the claim, which is not sustainable in law, by itself, will not amount to furnishing inaccurate claim of furnishing inaccurate particulars regarding the income of the assessee. The assessee having been explained the details before the Assessing Officer during the assessment proceedings itself, there is no concealment of income. Therefore the penalty levied u/s. 271(1)(c) is liable to be deleted.

5. Per contra, the ld. D.R. appearing for the Revenue supported the orders of the Lower Authorities and pleaded to confirm the same.

6. We heard the rival parties and perused the material available on record and we found that from the records as well as assessee's letter dated 20.01.2015 there is no concealment of income by the assessee. The assessee made all its efforts to get the details from GE, Ahmedabad which is a Govt. Company. As the details were not been available to the assessee, the assessee chosen to offer the

same as income in the hands of the assessee, the same cannot be treated as concealment of income, within the meaning of section 271(1)(c) of the Act. Therefore the levy of penalty is hereby cancelled.

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

Order pronounced in the open court on 07-09-2022

**Sd/-**  
**(ANNAPURNA GUPTA)**  
**ACCOUNTANT MEMBER True Copy**  
**Ahmedabad : Dated 07/09/2022**

**Sd/-**  
**(T.R. SENTHIL KUMAR)**  
**JUDICIAL MEMBER**

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

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार  
आयकर अपीलीय अधिकरण,  
राजकोट