

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

**BEFORE Ms. SUCHITRA KAMBLE, JUDICIAL MEMBER AND
SHRI WASEEM AHMED, ACCOUNTANT MEMBER**

**ITA No.44/RJT/2019
Assessment Year: 2009-10**

M/s. Anukul Construction Co., vs. Income Tax Officer,
C/o. D.R. Adhia, Ward – 1(2)(5), Rajkot.
“Om Shri Padamlaya”,
Trikamraiji Haweli,
16, Jagnath Plot,
Dr. Yaganik Road,
Opp. Imperial Hotel,
Rajkot - 360 001.
[PAN – AAKFA 2385 E]
(Appellant) (Respondent)

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

Date of hearing : 04.08.2022
Date of pronouncement : 14.09.2022

ORDER

PER SUCHITRA KAMBLE, JUDICIAL MEMBER :

This appeal is filed by the assessee against the order dated 23.01.2019 passed by the CIT(A), Jamnagar for the Assessment Year 2009-10.

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

- “1. The Ld. CIT (A) has erred in law and facts in confirming penalty u/s. 271(1)(c) to the extent of Rs.40,460/- out of total amount of penalty levied of Rs.94,000/-. The penalty needs deletion.
2. The Ld. CIT (A) has erred in law and facts in confirming penalty u/s. 271(1)(c) in respect of addition of Rs.1,30,928/-. The penalty needs deletion.
3. The Ld. CIT (A) has erred in law and facts in confirming penalty u/s. 271(1)(c) of Rs.40,460/- in respect of addition made on without proper verification and settled law. The penalty needs deletion.

4. *The Ld. CIT (A) has erred in law and facts in confirming penalty u/s. 271(1)(c) of Rs.40,460/-. Without accepting that the Ld. A.O. has passed order without giving adequate time and opportunity although the assessee specifically requested for the same. The penalty needs deletion.*
5. *Without prejudice, no reasonable opportunity has been given by the Ld. CIT(A) at appellate stage. The same needs annulment.*
6. *The Ld. CIT(A) has erred in not bringing any cogent material justifying levy of penalty. The penalty needs deletion.*
7. *The penalty order being bad in la needs cancellation*
8. *Without prejudice the penalty order having been passed beyond limitation prescribed needs cancellation.*
9. *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 assessee firm is engaged in civil construction work and filed return of income on 30.09.2009 declaring total income of Rs.4,12,105/-. The assessment order was passed on 22.12.2011 thereby making various additions/disallowances by the Assessing Officer and assessed the total income at Rs.54,14,990/-. The assessee has preferred appeal before the CIT(A) and the CIT(A) partly allowed the said appeal of the assessee and sustained the addition on account of unexplained contract receipt of Rs.5,25,184/- and restricted the same to the extent of profit impeded thereon i.e. Rs.1,30,928/-. The CIT(A) also sustained the disallowance to the extent of Rs.1,08,880/- in respect of no charge interest on loan and advances given to its partners. The Assessing Officer subsequently initiated penalty proceedings under section 271(1)(c) of the Act and the Assessing Officer has passed penalty order in respect of concealment of particulars of income to the extent of Rs.3,65,399/- and imposed penalty of Rs.94,317/- under Section 271(1)(c)

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

5. At the time of hearing, none appeared on behalf of the assessee despite giving notice. But the Ld. AR Shri D.R. Adhia has filed a Written Submission before us which are reproduced as below :-

“Written Submissions:

1.1 The Ld. A.O. made addition of Rs.525184 as mentioned at page 2 para 3 and 4 the submission of the assessee that a cheque of Rs.49906915 has been received through bank and therefore the difference between contrareceipt of Rs.50532099 has been received less by Rs.525184 as per tax audit report and without verifying this the Ld AO has made addition of an amt of Rs.525184 which is deducted from contract receipt directly.

1.2 Merely ledger a/c shows contract Rs. Including Rs.525184 but actual receipt of Rs.49906915 duly verified by the CA and shown in tax report is not accepted. On this amount of Rs.525184 which is subsequently reduced to Rs.130928 penalty has been levied by the Ld AO which stands established apparently from their own order that no contra entry has been made nor any reason not even cogent nor books of a/c are disclosed and not accepted the law does not approve such addition even then acceptance there of for penalty u/s section 271(1)(c) is not sustainable

1.3 At page 2 para 4.2 the Ld. AO has mentioned .that penalty proceedings are initiated for furnishing inaccurate particulars of income and for concealment of income. Thus without specific initiation penalty has been levied is bad in law and such vague charges itself are illegal.

1.4 A copy of penalty notice issued dated 22-12-2011 also does not indicate a specific charge this is also bad in law.

2. Total addition of Rs.525184 made has been reduced Rs.130000 thus an uninquired addition had been reduced on estimation basis and that to without rejecting books of a/c duly audited at least does not approve levy of penalty.

3. Moreover it is humbly submitted that the assessee has filed return declaring income of Rs.412105. Addition of Rs.5002882 has been deleted in appeal and deleting penalty in all amount of addition is also either not levied or canceled thus the only part survive for the levy of penalty of Rs.130928 on which tax leviable accounts to Rs.40460 only. The overall position of the assessee declaring huge income of Rs.412205 paying full tax thereon and deletion, cancelation and reduction of entire amount of addition by the first appellate authority itself shows that an assessee would not prefer not to disclose of Rs.130928 on which penalty levied is only Rs.40460. Thus the conduct of the assessee is accepted by the department but totally failure to consider the case as a levy of penalty is bad in law needs deletion.

4. The appeal therefore may kindly be allowed.”

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 as well as the written submission filed by the Ld. AR. In the assessment order the addition of Rs.5,25,184/- was made which was thereafter reduced to Rs.1,30,000/- There was no mention in assessment order that the books were rejected at any point of time and thus adequate material was present before the Assessing Officer during the assessment proceedings. Penalty under section 271(1)(c) of the Act is attracted only when there is concealment of particulars of income inaccurate particulars of income has been filed by the assessee. But in the present case the Assessing Officer at no point of time pointed out that these two elements were not complied by the assessee. In fact, the penalty notice has also not given any specific charge under Section 271(1)(c) of the Act and on this issue the Hon'ble Supreme Court in the case of CIT vs. SSA's Emerald Meadows (2016) 73 taxmann.com 248 (SC) has held that the notice under Section 271(1)(c) should satisfy the charge, otherwise order is bad in law. Thus, on merit as well as on sustainability of the penalty order the Revenue fails and hence appeal of the assessee is allowed.

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

Order pronounced in the open Court on this 14th day of September, 2022.

Sd/-
(WASEEM AHMED)
Accountant Member

Sd/-
(SUCHITRA KAMBLE)
Judicial Member

Ahmedabad, the 14th day of September, 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