

आयकर अपीलिय अधिकरण, अहमदाबाद न्यायपीठ, अहमदाबाद ।
IN THE INCOME TAX APPELLATE TRIBUNAL
" C " BENCH, AHMEDABAD

BEFORE SMT.ANNAPURNA GUPTA, ACCOUNTANT MEMBER
AND
MS. SUCHITRA KAMBLE, JUDICIAL MEMBER

ITA No.1424/Ahjd/2019
Assessment Year : 2015-16

Shri Dilawarbhai Hussainbhai Kaliwala 404-B, Jagdish Pandya Marg Prabhudas Talav, Bhavnagar, Gujarat 364 001	Vs	The Dy.CIT Circle-1 Bhavnagar
PAN: AGCPK 2175 Q		

अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)
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Assessee by :	Shri Shri Hiren J. Trivedi, CA
Revenue by :	Ms.Pooja Parekh, Sr.DR

सुनवाई की तारीख/Date of Hearing : 28/09/2022
घोषणा की तारीख /Date of Pronouncement: 21/10/2022

आदेश/O R D E R

PER MS.SUCHITRA KAMBLE, JUDICIAL MEMBER

1. This appeal is filed by the Assessee against the order dated 26/06/2019 passed by the Commissioner of Income-tax (Appeals)-6, Ahmedabad ["CIT(A)" in short] for Assessment Year 2015-16.

2. The Grounds of appeal are as under :-

- The learned CIT(A) has erred both in law and on the facts in dismissing the appeal of the appellant.*
- The learned CIT(A) has erred both in law and on the facts in not adjudicating on one of the grounds taken by the appellant that notice issues u/s.271(1)(c) r.w.s.274 of the Income Tax Act, as issued by the Ld.AO was invalid ab-initio.*

3. *Both the lower authorities have passed the orders without properly appreciating the facts and they further erred in grossly ignoring various submissions, explanations and information submitted by the appellant. This action of the lower authorities is in clear breach of law and Principles of Natural Justice and therefore deserves to be quashed.*
4. *The Ld.CIT(A) has erred on law and facts by not accepting the fact similar appeal filed by the appellant for the AY 2014-15, on the similar facts and grounds and of the exactly similar amount, was allowed by the then Ld.CIT(A), without elaborating the facts and reasons as to how he has arrived at his decision which is totally contrary to one as passed by his predecessor.*
5. *The learned CIT(A) has erred both in law and on the facts of the case in confirming the action of AO in imposing penalty u/s.271D of the act of Rs.2,75,000/-.*

3. The return of income was filed by the assessee on 30.09.2015 declaring total income of Rs. (-) 42,76,708/-. The Assessment Order u/s 143(3) was passed on 12.12.2017 determining the taxable income at Rs. 25,97,418/- by making addition on account of Director's remuneration amounting to Rs.24,00,000/-, addition on account of advances without interest amounting to Rs. 1,97,418/-. The Assessing Officer initiated the penalty proceedings u/s 271(1)(c) of the Act. The assessing Officer imposed penalty of Rs.6,22,353/- for willfully furnishing inaccurate particulars of income u/s 271(1)(c) vide order dated 28.06.2018.

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. The Ld. AR submitted that in A.Y. 2014-15, the penalty u/s 271(1)(c) of the Act was deleted by the CIT(A) and no further appeal was filed by the revenue. In the said assessment year also addition was on account of

Director's remuneration. The Ld. AR further submitted that there is no furnishing of inaccurate particulars of income on part of the assessee as the assessee has given the details of the remuneration of Director as income from other sources. Merely the opinion of the Assessing Officer has changed that the said amounts to salary income. Therefore, the same cannot be treated as furnishing of inaccurate particulars of income. Besides this, relating to addition on account of advances without interest cannot be said as furnishing of inaccurate particulars of income as well. Therefore, the Ld. AR submitted that the penalty under Section 271(1)(c) of the act is not just and proper and the same may be deleted.

6. The Ld. DR relied upon the Assessment Order, Penalty order and the order of the CIT(A).

7. We have heard both the parties and perused all the relevant material available on record. It is pertinent to note that the addition on account of director's remuneration was related to the change of head by the Assessing Officer by not treating the same as income from other sources but as salary income. This cannot be treated as concealment of income or furnishing of inaccurate particulars of income under Section 271(1)(c) of the Income Tax Act, 1961. It is merely the view of the Assessing Officer which is different than the assessee while applying the treatment of head of income for particulars of income. Therefore, the Assessing Officer as well as the CIT(A) was not right in imposing the penalty under Section 271(1)(c) of the Act. As regards to addition on account of advances without interest, it is the prerogative of the assessee while giving the advances to the parties with or without interest as per the need of the business exigencies. This again

cannot be treated as furnishing of inaccurate particulars of income or concealment of income under Section 271(1)(c) of the Act. Hence, the penalty imposed by the Assessing Officer does not sustain. The appeal of the assessee is allowed.

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

Order pronounced in the Court on 21st October, 2022 at Ahmedabad.

Sd/-
(ANNAPURNA GUPTA)
ACCOUNTANT MEMBER

Sd/-
(SUCHITRA KAMBLE)
JUDICIAL MEMBER

Ahmedabad, Dated 21/10/2022

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)-6, Ahmedabad
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण , राजकोट/DR, ITAT, Ahmedabad,
6. गार्ड फाईल /Guard file.

आदेशानुसार/ BY ORDER,

त्यापित प्रति //True Copy//

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