

**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.181/RJT/2019
Assessment Year: 2007-08**

Smt. Truptiben H. Sheth,
"Ramdoot",
13, Diamond Bungalows,
2, Jalaram,
University Road,
Rajkot - 360 005.
[PAN – ALZPS 0911 L]
(Appellant)

vs. The Income Tax Officer,
Ward – 1(1)(3), Rajkot.

(Respondent)

Assessee by : None
Revenue by : Shri B.D. Gupta, Sr. DR

Date of hearing : 23.01.2023
Date of pronouncement : 03.02.2023

ORDER

PER SUCHITRA KAMBLE, JUDICIAL MEMBER :

This appeal is filed by the assessee against order dated 17.06.2019 passed by the CIT(A)-1, Rajkot for the Assessment Year 2007-08.

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

- "1. CIT-1 Rajkot passed order under section 263 on dated 09.06.2015. For intimating the process of penalty which was initiated on dated 14.02.2019 which is time barred. As for initiation of penalty proceedings for the matter pertaining to Section 263 is of 6 months from the date of order which passed in December, 2015 only. And penal proceedings initiated on 14.02.2019 which is delayed.*
- 2. CIT-1 Rajkot passed order under section 263 on dated 09.06.2015. For initiating the process of penalty instead of that ITO Wd 1(1)(3), Rajkot started fresh assessment under section 143(3) RWS 147 of I.T. Act, 1961.*
- 3. CIT-1, Rajkot passed order under section 263 on dated 09.06.2015. For initiating the process of penalty if this is order for fresh assessment which was originally decided on dated 25.08.2014 then this all matters*

were decided by the Ld. ITO in past and no reopening of case “in case of change of opinion”. More grounds will be presented at time of hearing.”

3. The Assessing Officer passed the Assessment Order under Section 143(3) read with Section 263 of the Income Tax Act, 1961 on 07.03.2016 determining total income the assessee at Rs.3,52,090/-. The penalty proceedings under Section 271(1)(c) read with Section 274 of the Act was initiated and the Assessing Officer imposed penalty of Rs.1,11,900/- in respect of furnishing 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. At the time of hearing none appeared on behalf of the assessee despite giving notice. No address has been filed by the assessee. Therefore, we are proceeding on the basis of submissions reproduced in the assessment order as well as in the order of the CIT(A).

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. The assessee before the CIT(A) made contention that the penalty under Section 271(1)(c) of the Act could not be levied normally for making of claim which is not sustainable in law and thereby relied upon the decision of CIT vs. Reliance Petroproducts Pvt. Ltd., 323 ITR 158. From the perusal of the assessment order it can be seen that the Assessing Officer has not properly verified the genuineness of two gifts and the claim of cost of improvement as well as brokerage. This finding by the DCIT under Section 263 of the Act reiterate that the assessee has furnished all the relevant material at the time of assessment proceedings and never concealed any inaccurate particulars of income. Thus, the very cause of the penalty under Section 271(1)(c) of the Act does not arise. Hence, the penalty does not sustain.

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

Order pronounced in the open Court on this 3rd February, 2023

Sd/-
(WASEEM AHMED)
Accountant Member

Sd/-
(SUCHITRA KAMBLE)
Judicial Member

Ahmedabad, the 3rd day of February, 2023

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
Rajkot Bench, Rajkot