

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

**Before: Shri Waseem Ahmed, Accountant Member
And Shri T.R. Senthil Kumar, Judicial Member**

**ITA Nos.298 to 300/Rjt/2019
Assessment Years 2012-13 to 2014-15**

ShriNizarali Bahadurbhai Hajiyani Gujarat Housing Board Morbi, Rajkot-363641 PAN No: AHKPH6602E (Appellant)	Vs	The ITO, Ward-3, Morbi (Respondent)
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Assessee Represented: None
Revenue Represented: Shri Shri B.D. Gupta, Sr.D.R.

Date of hearing : 09-03-2023
Date of pronouncement : 13-03-2023

आदेश/ORDER

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

These three appeals are filed by the Assessee as against the separate appellate orders dated 18.10.2019 passed by the Commissioner of Income Tax (Appeals)-3, Rajkot, confirming the levy of penalty under section 271(1)(c) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') relating to the Assessment Years (A.Ys) 2012-13 to 2014-15.

2. These appeals are listed for hearing 9th time today and none appeared on behalf of the assessee. In the previous occasion, the hearing notices was served through the Income Tax Department and duly acknowledged by the assessee on 12.12.2022 when the case was fixed for hearing on 26.12.2022, however none appeared on behalf of the assessee. The case was thus adjourned to 30.01.2023 again none appeared on behalf of the assessee and the case is adjourned to 09.03.2023 today. Again hearing notice was served through the Income Tax Department which was received and acknowledged by the assessee on 15.02.2023 fixing the case for hearing today namely 09.03.2023. In spite of the same, none appeared on behalf of the assessee. So with the assistance of Ld. D.R., we are deciding the appeals on merits. Since the assessee is not interested in pursuing the above appeals.

2.1. The Grounds of Appeals filed by the Assessee in ITA No. 298/Rjt/2019 for A.Y. 2013-13 are as follows:

1. The Learned CIT(A)-3, Rajkot has erred in law as well as on fact in confirming penalty u/s 271(1)(c) imposed by the A.O amounting to Rs. 29,767/-on following grounds:-

(a) Passing non speaking order as to how the case law relied upon by him is applicable to the present appeal,

(b) Passing no comments as to how case laws relied upon by the appellant are distinguishable,

(b) Failed to state any opinion as to applicability of penalty where NIL addition in the assessment order is made and Returned Income is accepted as such without any addition, where assessed Income and returned income are same.

2. Appellant request to allow to add, alter, modify any grounds of appeal during the course of appellate proceedings.

2.2. Similar grounds have been raised for the Assessment Years 2013-14 & 2014-15 wherein both the amounts are Rs.5,75,309/- and Rs.2,42,609/- respectively.

3. The findings of the Ld. CIT(A) is as follows:

5.1 I have carefully considered the penalty order u/s 271(1)(c) by the AO, the written submissions of the appellant and the rival contentions. The facts in this case are that the AO has levied penalty u/s 271(1)(c) of Rs.29,767/-. The assessee had filed his original return of income declaring total income at Rs.1,62,000/- on 13.02.2013. The department possessed information that the assessee had made unaccounted investment on terrace rights for an amount of Rs.2,87,200/- and undisclosed cash deposits worth Rs. 20,500/- in Development credit Bank. The assessee had neither disclosed these transactions in his regular return filed nor could explain the source of investments satisfactorily in proceedings Initiated by ITO(Inw.), Rajkot. The assessee also admitted in his statement recorded on oath that the above transactions are not disclosed in the regular return filed on 13.02.2013. The assessee filed return of income in response to notice u/s 148 and declared total income of Rs. 4,69,000/- including undisclosed value of terrace rights of Rs. 2,87,200/- and undisclosed cash deposits worth Rs. 20,500/- The assessment was finalized assessing the total Income at Rs. 4,69,000/-. During the course of penalty proceedings no one appeared before the AD and as, according to the AO, the assessee had not voluntarily surrendered undisclosed Income in his regular return filed and the bonafide of the assessee remained unproved, the impugned penalty was levied. During the course of appellate proceedings a written submission has been filed by the appellant as reproduced above. The main argument of the appellant during the course of Impugned proceedings is that the A.O has accepted and assessed income of the appellant without any addition to the declared Income at Rs. 4,69,000/- as In the return filed by the assessee in response to proceedings u/s 148. The assessee has also relied upon certain case laws in this regard.

5.2 The facts in the present case as elaborated above are that there were certain undisclosed transactions which the assessee had not disclosed while filing the original return of Income. It was only as a result of enquiries by the Investigation wing that the relevant transactions came to the notice of the department and the assessment for the relevant AY was reopened by the AO. In view of these facts, I do not find any strength in appellant's argument that to buy peace of mind appellant had declared the same as income. On the other hand, I find force in AO's stand that the bonafides of the assessee remained un-proved as he had revised his income only after the statutory proceedings were initiated by the department. As such, in the facts and circumstances of the case, the AO was fully justified in levying penalty u/s 271(1)(c) because it was only on the basis of Information in possession of the department that assessment was re-opened and assessee was left with no option but to admit such undisclosed transactions in the return of Income so filed. In this regard reliance is also placed on Hon. Supreme Court decision in the case of MAK Data P. Ltd vs. CIT (358 ITR 593), wherein the Supreme court observed as under:-

"8. Assessee has only stated that he had surrendered the additional sum of Rs. 40,74,000/- with a view to avoid litigation, buy peace and to channelize the energy and resources towards productive work and to make amicable settlement with the income tax department. Statute does not recognise those types of defences under the explanation 1 to section 271 (1)(c) of the Act..."

The case laws relied upon by the assessee are distinguishable on facts. In view of above discussion, the action of the AO of levy of penalty is confirmed. In result, the grounds of appeal of the appellant are dismissed.

6. In result, the appeal of the appellant is dismissed.

3.1. Similar is the finding of the Ld. CIT(A) for the Assessment Year 2013-14 wherein cash deposit of Rs. 22,07,500/- and interest income of Rs. 26,568/- not disclosed by the assessee and for the Assessment Year 2014-15 in disclosed cash deposit of Rs. 2,08,000/- and interest income of Rs. 1,15,626/- and undisclosed Flat purchase of Rs. 08,10,400/-. The findings given by the Authorities are not in dispute.

3.2. Even before the Ld. CIT(A) none appeared on behalf of the assessee and therefore with the available materials on record, the Ld. CIT(A) confirmed the levy of penalty u/s. 271(1)(c) of the Act. Even before us none appeared on behalf of the assessee in spite of personal service of hearing notices to the assessee and properly served to the assessee. Further we do not find any materials placed before any of the lower authorities to justify the grounds raised by the assessee. It is appropriate to record here that even the penalty proceedings, the assessee has not participated to the show cause notice issued by the Assessing Officer before levying of penalty. Thus consistent stand of the assessee is not filing any details and highly non-cooperative with the department.

4. In the above circumstances, we have no hesitation in confirming the appellate order passed by the Ld. CIT(A). Since no contra view can be taken by this Bench in the absence of any material or submissions from the end of the assessee. Therefore the above appeals filed by the assessee are devoid of merits and the same is liable to be dismissed.

5. In the result, all the appeals filed by the Assessee are hereby dismissed.

Order pronounced in the open court on 13-03-2023

Sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER True Copy
Ahmedabad : Dated 13/03/2023

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