

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

**Before: Smt. Annapura Gupta, Accountant Member
And Shri T.R. Senthil Kumar, Judicial Member**

**ITA No. 52/Rjt/2020
Assessment Year: 2010-11**

Ashwinkumar V. Mehta, A-91, Chanakya Appartment, 9 th Floor, Shroff Road, Opp. ShardaBaugh, Rajkot, Gujarat PAN No: ACTPM5538N (Appellant)	Vs	The ITO, Ward-1(2)(4), Rajkot (Respondent)
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Assessee Represented: None
Revenue Represented: Shri B.D. Gupta, Sr.D.R.

Date of hearing : 12-06-2023
Date of pronouncement : 14-06-2023

आदेश/ORDER

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

This appeal is filed by the Assessee as against the exparte Appellate order dated 26.08.2019 passed by the Commissioner of Income Tax (Appeals)-1, Rajkot, passed under section 271(1)(c) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') relating to the Assessment Year (A.Y) 2010-11.

2. The Registry has noted that there is a delay of 131 days in filing the above appeal by the assessee. However the assessee has not filed any Affidavit or Petition to Condone the Delay. It is further seen that no authorization is given by the assessee to any Counsel to represent the above appeal. When the case was fixed for 5th time of hearing namely on 17-05-2023, the assessee sent an email stating that he is engaging an Advocate to prepare the submission which will be available within a fortnight, therefore requested for an adjournment for 15 days. Taking note of the email adjournment letter the case was adjourned to 12-06-2022, today, however None appeared on behalf of the assessee, no submissions as well as Affidavit or Petition to Condone the Delay of 131 days is filed before us. This clearly shows that the assessee is not interested in pursuing the above appeal.

3. Further it is seen from record, the assessee is an individual and is engaged in the business of scrap trading. For the Assessment Year 2010-11, the assessee has not filed the Return of Income. The A.O. noticed that there were huge cash deposits of Rs. 1,05,59,900/- in the HDFC Bank Ltd. and Dharti Cooperative Bank Ltd. maintained by the assessee. Therefore there is escapement of income and assessment was reopened u/s. 147 by issuing notice.

3.1. In response to u/s. 142(1) notice, the assessee filed its Return of Income on 22-11-2017 declaring total income of Rs. 1,37,290/-. When the Assessing Officer issued show cause notice why the cash deposit of Rs. 1,05,59,900/- should not be added treating the same

as undisclosed income of the assessee. The assessee replied that the cash sales deposited in the banks to the tune of Rs. 70 to 80 lakhs remained to be unaccounted by oversight mistake and requested to take regular net profit declared by the assessee and assess the same. The Assessing Officer found that the gross profit rate @ 4.93% on the turnover and the declared net profit @ 1.28%. Therefore the A.O. determined 5% on cash deposit of Rs. 1.05 crores and determined Rs. 5,27,995/- as the unaccounted income of the assessee and demanded tax thereon. Thereafter the Assessing officer initiated penalty proceedings u/s. 271(1)(c) for furnishing inaccurate particulars and concealing of income and levied penalty of Rs. 1,06,694/-.

4. Aggrieved against the penalty order, the assessee filed an appeal before Ld. Commissioner of Income Tax (Appeals)-1, Rajkot. The assessee claimed that the levy of penalty is based on the estimated profit @ 5% determined by the Assessing Officer as against the net profit of @ 1.28% declared by the assessee. In such case of estimation of income, penalty cannot be levied. The Ld. CIT(A) considered the submissions of the assessee and held that there being unaccounted cash sales and unaccounted income which is not controverted by the assessee. It is not a case, the income has been assessed on estimation basis, but the assessee had unaccounted sales and unaccounted profit thereof, which was not declared in the Return of Income, which clearly attracts furnishing inaccurate particulars and concealment of income, therefore the

Ld. CIT(A) upheld the levy of Penalty and thereby dismissed the assessee's appeal.

5. Aggrieved against the penalty order, the assessee is in appeal before us raising the following Grounds of Appeal:

1. The grounds raised in this appeal are without prejudice to one another.

2. The Ld. A.O. grievously erred in law and on facts in levying the penalty u/s.271[1][c] and the Ld.CIT[A]-1 grievously erred in upholding the same when the same was not warranted on the facts of the case and was not in accordance with law. The penalty levied deserves to be deleted.

3. The grounds on the basis of which the impugned penalty has been levied are factually incorrect and are not in accordance with law and it is contended that the penalty levied deserves to be deleted.

4. Without prejudice it is respectfully submitted that the addition made is on estimated basis and therefore also no penalty is leviable.

5. Without prejudice it is respectfully submitted that the assessee has discharged the burden that lay upon him u/s. 271[1][c] and therefore no penalty is leviable.

6. The Ld. A.O. and the Ld. CIT[A] in this regard proceeded on erroneous presumptions and premises and the penalty levied deserves to be deleted.

7. Your appellant craves leave to add, alter, amend or withdraw any of the grounds stated here above.

6. However there is a delay of 131 days in filing the appeal for which no Affidavit explaining the delay or Petition to Condone the Delay in filing the above appeal. In the absence of the same, we have no other option than to dismiss the above appeal in limine.

7. In the result, the appeal filed by the Assessee is hereby dismissed in limine.

Order pronounced in the open court on 14-06-2023

Sd/-
(ANNAPURNA GUPTA)
ACCOUNTANT MEMBER True Copy
Ahmedabad : Dated 14/06/2023

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