

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ
IN THE INCOME TAX APPELLATE TRIBUNAL,
(Conducted through E-Court, Rajkot)

BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER
And
SHRI T.R SENTHIL KUMAR, JUDICIAL MEMBER

आयकर अपील सं./ITA No. 59/Rjt/2023
निर्धारण वर्ष/Asstt. Year: 2014-15

Jagani Vinodrai Gopaldas HUF, 62 – Suraj Appartment, No.1 Shroff Road, Opp. Church, Rajkot-360001. PAN: AAAHJ9710N	Vs.	Income-tax Officer, Ward-1(2)(4), Rajkot. NFAC, Delhi
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(Applicant)		(Respondent)
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Assessee by	:	Shri R.D Lalchandani, A.R
Revenue by	:	Shri K.L Solanki, Sr. D.R

सुनवाई की तारीख/**Date of Hearing** : **06/07/2023**
घोषणा की तारीख/**Date of Pronouncement**: **12/07/2023**

आदेश/ORDER

PER WASEEM AHMED ACCOUNTANT MEMBER:

The captioned appeal has been filed at the instance of the Assessee against the order of the Learned Commissioner of Income Tax (Appeals), NFAC, Delhi, (in short "Ld. CIT(A)") arising in the matter of penalty order passed under s. 271(1)(c) of the Income Tax Act 1961 (here-in-after referred to as "the Act") relevant to the Assessment Year 2014-15.

2. The only issue raised by the assessee is that the Ld. CIT(A), erred in confirming the penalty levied by the AO for Rs. 19,628 u/s 271(1)(c) of the Act.

3. Briefly stated facts are that the assessee in the present case is HUF and engaged in the business of share trading. The assessee in the year under consideration has shown a profit of Rs. 1,90,574/- on sales of shares and claimed exemption u/s 10(38) of the Act. However, the AO found that the shares were held as stock in trade and therefore the income on the sale of shares is qualified as business income and not income under the head long term capital gain. Accordingly, the AO treated the long-term capital gain of Rs. 1,90,574/- as business income of the assessee by adding to the total income of the assessee. Accordingly, the AO also initiated penalty proceedings u/s 271(1)(c) of the Act, which came to be confirmed by the AO for Rs. 19,628/- being 100% of amount of tax sought to be evaded on account of concealment of particulars of income. The action of the AO was subsequently confirmed by the Ld.CIT(A).

4. Being aggrieved by the order of the Ld.CIT(A), the assessee is in appeal before us.

5. The Ld. AR before us filed a paper book running from pages 1 to 68 and contended that the assessee has made full disclosure about exempted long term capital gain in the computation of income. The Ld. AR for this purpose drew our attention on page 22 of the paper book where the details of long-term capital gain being exempted income was disclosed in the statement of income. Accordingly, the Ld. AR submitted that the assessee has not concealed the particulars of income and therefore no penalty u/s 271(1)(c) of the Act, can be imposed.

5.1 The Ld. AR also contended that the AO in the Assessment Order has initiated penalty proceedings on the charge of furnishing inaccurate particulars of income whereas the penalty has been imposed on account of concealment of income in the penalty order. Thus, as per the Ld. AR the AO himself is not sure

under which charge penalty u/s 271(1)(c) of the Act, should be imposed. Thus, in such facts and circumstances the penalty u/s 271(1)(c) of the Act, cannot be levied.

6. On the other hand, the Ld. DR vehemently supported the order of the authorities below.

7. We have heard the rival contentions of both the parties and perused the materials available on record. On perusal of the computation of income place on page 22 of the paper book, we note that the assessee has disclosed income from the sale of shares and claimed exemption u/s 10(38) of the Act. Thus, it is transpired that the income was duly disclosed by the assessee. Therefore, it cannot be said that the assessee has concealed the particulars of income. If at all the penalty was to be imposed u/s 271(1)(c) of the Act, the same can be under the charge of furnishing inaccurate particulars of income.

7.1 Moving further, we note that it is a trite law that every addition or disallowance made during the assessment proceedings cannot be treated either concealment or furnishing inaccurate particulars of income and thereby levying the penalty. The phrase furnishing inaccurate particulars of income has not been defined under the provision of the Act.

7.2 Nevertheless, the income disclosed by the assessee has been assumed as business income and not the income under the head capital gain. At the most, such disclosure can be said as inaccurate claim made by the assessee which cannot be equated with the inaccurate particulars of income. In this regard, we place our reliance on the judgement of the Hon'ble SC in the case of CIT Vs. Reliance Petro Products Ltd. reported in 322 ITR 158 where in similar facts and circumstances deleted the levy of penalty and granted the relief to the assessee.

Merely because the assessee had claimed the expenditure, which claim was not accepted or was not acceptable to the revenue, that by itself would not, in our opinion, attract the penalty under section 271(1)(c). If we accept the contention of the revenue then in case of every Return where the claim made is not accepted by Assessing Officer for any reason, the assessee will invite penalty under section 271(1)(c). That is clearly not the intendment of the Legislature.

7.3 In view of the above, the claim made by the assessee not admitted by the AO cannot be termed as concealment of income or furnishing inaccurate particulars of income. Accordingly, we set aside the findings of the Ld. CIT(A) and direct the AO to delete the penalty levied by him. Hence, the ground of appeal of the assessee is allowed.

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

Order pronounced in the Court on 12/07/2023 at Ahmedabad.

Sd/-
(T.R SENTHIL KUMAR)
JUDICIAL MEMBER

Sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER

Ahmedabad; Dated 12/07/2023
Manish

(True Copy)