

IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT (SMC) BENCH
BEFORE SHRI DR. A. L. SAINI, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.618/SRT/2023

Assessment Year: (2014-15)

(Physical Hearing)

Sanjay Kumar Choudhary HUF, 408, Saryu Diamond Complex, Jadakadi, Mahidharpura, Surat – 395003.	Vs.	The ITO, Ward- 2(3)(6), Surat
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AAQHS5732R		
(Appellant)		(Respondent)

Appellant by	Shri Himanshu Gandhi, CA
Respondent by	Shri Vinod Kumar, Sr. DR
Date of Hearing	16/10/2023
Date of Pronouncement	30/10/2023

आदेश / O R D E R

PER DR. A. L. SAINI, AM:

Captioned appeal filed by the assessee, pertaining to Assessment Year (AY) 2014-15, is directed against the order passed by the Learned Commissioner of Income Tax (Appeals), [in short “the ld. CIT(A)”], National Faceless Appeal Centre (in short ‘the NFAC’), Delhi, dated 30.08.2023, which in turn arises out of a penalty order passed by the Assessing Officer u/s 271(1)(c) of the Income Tax Act, 1961 (hereinafter referred to as “the Act”), dated 28.03.2019.

2. At the outset itself, Learned Counsel for the assessee informs the Bench that assessee does not wish to press ground no.1; therefore I dismiss the ground no.1 raised by the assessee, as not pressed.

3. Brief facts *qua* the issue are that the assessee has filed his return of income for the year under consideration on 01.10.2014 declaring

total income at Rs.4,85,450/-. The assessee's case was selected for scrutiny under CASS and notice u/s 143(2) was issued on 31.08.2015. A search action u/s. 132 of the Income tax Act was carried out at the premises of Rajendra Jain & others Group on 03.10.2013. During the course of search action in the case of Rajendra Jain Group, it was revealed that group of companies/ concern has indulged in giving accommodation entries. The seizure /impounding made at place of Rajendra Jain, C-805, Oberoi Spendor Building JVL Road, Andheri (E), Mumbai and their office premises comprise of back up of Computer, Mobile and Pen drives which contains details of group companies including details belonging to Sanjay Kumar Choudhary - HUF (Prop. Mayank Impex), Looking at the nature of the transactions, the seized material carry a clear implication over the income of the assessee, Shri Rajendra Jain and Shri Surendra Jain in their statements recorded on oath during the search proceedings, has categorically admitted that they were operating the business of providing accommodation entries through various companies/firms/concerns. Sanjay Choudhary (prop. Mayank Impex) is one of the concerns in which Rajendra Jain & Surendra Jain has done accommodation entries. In light of above discussion, and after considering facts and circumstances of the case, the Assessing Officer was satisfied that the assessee has furnished inaccurate particulars of income thereby concealed the income to the tune of Rs.4,97,863/-. Thus, the assessee is liable for penalty under section 271(1)(c) of the I.T. Act.

4. After considering the assessment records and reply of the assessee, the Assessing Officer concluded that assessee has furnished

inaccurate particulars of income, therefore imposed the penalty to the tune of Rs.95,230/-.

5. On appeal, ld. CIT(A) confirmed the penalty imposed by the Assessing Officer.

6. Aggrieved by the order of ld. CIT(A), the assessee is in appeal before us.

7. At the outset, Ld. Counsel for the assessee submitted that the Assessing Officer has made the addition based on estimation and penalty has also imposed on estimation. The Ld. Counsel submitted that penalty on estimation should not be imposed, for that Ld. Counsel relied on the judgment of the Co-ordinate Bench of ITAT, Surat in the case of *Nazar Impex Pvt. Ltd. vs. ITO, in ITA Nos.132/SRT/2021 & 133/SRT/2021, for AYs.2007-08 & 20014-15*, order dated 30.06.2022 wherein the Tribunal held as follows:

“7. Considering the fact that addition in the assessment order, on the basis of which the penalty was levied, is purely an estimated addition. It is settled position in law that no penalty under section 271(1)(c) can be levied on additions made on estimation. The similar view was taken by the Hon'ble Jurisdictional High Court in Manish Dhirajlal Mehta Vs. ACIT, Vijay Proteins Ltd., Vs. CIT (supra), in Vijay Proteins Vs CIT (supra) and other various cases. No contrary facts or law is brought to our notice by the ld. Sr. DR for the revenue at the time of hearing of these appeals. Therefore, considering the totality of facts and circumstances, we direct to delete the penalty levied under Section 271(1)(c) of the Act.”

7. I have heard both the parties and carefully gone through the submissions put forth on behalf of the assessee. I note that Assessing Officer has made the estimated addition in the assessee's case vide assessment order dated 28.01.2016 passed by the Assessing Officer under section 144 of the Act, wherein the Assessing Officer has made the estimated addition, observing as follows:

“7. In the light of all foregoing discussion, .it is held that the assessee is not doing actual business and earned only commission income on sales, import and loan entry. Hence, books of accounts maintained by the assessee is not reliable and rejected u/s 145(3) of the Income Tax Act, 1961 and order is being passed u/s 144 of I.T. Act on best judged assessment basis. It is held that when assessee is doing import on behalf of client who is "not identified by the assessee" it is held that all expenses like exchange loss, VAT payment, octroi payment, custom duties and all statutory expenses are also met by such client on whose behalf the goods are imported. Due to such reason the books of a/c & audit prepaid by assessee is rejected & assessment of income is on the basis of commission income earned by assessee.

Working of commission on Total import, Local sales, Loan entries:-

Sales	Amount	Rate of commission	Commission income
Total turnover	1,02,51,48,382/-		
Total Import	37,71,17,250/-		
Total turnover (Excluding import & group turnover)	59,04,52,798/-	@ 0.02%	1,18,091/-
Import made	37,71,17,250/-	@ 0.20%	7,54,235/-
Loan outstanding at year end	46,23,012/-	@ 0.50%	23,115/-
Total Commission income earned			8,95,441/-
Deduction of expenses of 25% is given for paper transactions & related cost as the such			2,23,860/-
Income Assessed			6,71,581/-

(Net business income is assessed at Rs. 6,71,581/-)

8. The present return of income has been filed by assessee in compliance to notice u/s 153C of the I.T. Act disclosing income at Rs. 4,85,450/-. As observed in forgoing discussion income of the assessee has been determined at Rs.6,71,581/-. Thus, the assessee furnished inaccurate particulars of income and sought to evade taxes as observed above. Therefore, penalty proceedings u/s 271(l)(c) are Initiated separately.”

8. I note that penalty on estimation addition should not be levied and this issue is no longer *res integra* and has been decided by the Co-ordinate Bench of ITAT, Surat in the case of **Nazar Impex Pvt. Ltd. (supra)**, wherein the penalty levied on estimation was deleted by the Tribunal, therefore respectfully following the binding precedent of

Co-ordinate Bench in the case of *Nazar Impex Pvt. Ltd. (supra)*, I delete the penalty.

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

Order is pronounced on 30/10/2023 in the open court.

Sd/-
(Dr. A.L. SAINI)
ACCOUNTANT MEMBER

सूरत /Surat

दिनांक/ Date: 30/10/2023

SAMANTA

Copy of the Order forwarded to

1. The Assessee
2. The Respondent
3. The CIT(A)
4. CIT
5. DR/AR, ITAT, Surat
6. Guard File

By Order

// TRUE COPY //

Assistant Registrar/Sr. PS/PS
ITAT, Surat