

आयकर अपीलिय अधिकरण, अहमदाबाद न्यायपीठ, अहमदाबाद ।
IN THE INCOME TAX APPELLATE TRIBUNAL
"SMC" BENCH, AHMEDABAD

BEFORE SMT. ANNAPURNA GUPTA, ACCOUNTANT MEMBER

ITA No.810/Ahd/2023
Assessment Year : 2010-11

Babubhai Ramanbhai Patel 14, Darshak Swastik Society Punjabi Hall Lane, Navrangpura Ahmedabad - 380 009 PAN: ABYPP 8048 A	Vs	Dy. Commissioner of Income Tax Circle-1(1)(1) Ahmedabad
अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)
Assessee by :		Shri Hemanshu Shah, CA
Revenue by :		Shri N.J. Vyas, Sr.DR

सुनवाई की तारीख/Date of Hearing : 15/01/2024
घोषणा की तारीख /Date of Pronouncement: 17/01/2024

आदेश/ORDER

This appeal filed by the Assessee is directed against the order dated 30/09/2023 passed by the Ld. Commissioner of Income-tax (Appeals), National Faceless Appeal Centre, Delhi ["CIT(A)" in short] under section 250 of sub-section (6) of the Income Tax Act, 1961 for Assessment Year 2010-11.

2. At the outset, the ld.counsel for the assessee stated that he has come before us against a very peculiar order passed by the Ld.CIT(A) in appellate proceedings against order of the Assessing Officer levying penalty on the assessee u/s.271(1)(c) of the Act.

2.1. The Id.counsel for the assessee pointed out that the addition on which penalty was levied by the Assessing Officer u/s.271(1)(c) of the Act for concealing/furnishing inaccurate particulars of income was deleted by the ITAT in quantum proceedings before it. That, the Ld.CIT(A) in the appellate penalty proceedings was aware of this fact and noted the same also at Paragraph No.4.2 of his order which was pointed out to us, as under:

“Ground of Appeal No.2 pertains to penalty of Rs.2,65,526/- u/s.271(1)(c) of the Act, 1961 by the A.O. During the course of appellate proceeding the appellant mentioned that the quantum amount of this case is already deleted by the Hon’ble ITAT. He has also attached this order in his submissions.”

2.2. That, after noting the same, he held that the penalty levied by the Assessing Officer is deleted. This he pointed out from Paragraph No.4.2 of Id.CIT(A)’s order as under:

“ Keeping in view of these facts the penalty levied by A.O. is deleted. ”

2.3. However, he went on to reproduce the findings of the Assessing Officer on the merits of the issue and thereafter agreed with the Assessing Officer that penalty under the said section was leviable, which is reproduced hereunder:

“The Ld.A.O. has elaborately discussed the issue in his order. I have noticed that there are inaccurate particular furnished by the appellant and there were noticed by the A.O. in the assessment proceedings. Had the case not pick for the scrutiny this default would not have come into light. It means the appellant has deliberately suppressed fact related to his income. I agree with the view of A.O. that penalty under the said section is leviable.”

2.4. The Ld.CIT(A) , it was pointed out thereafter confirmed the order of the AO levying penalty on merits, but directed the Assessing Officer not to operationalize his findings as the quantum appeal stood decided in favour of assessee by the ITAT. Findings of the Ld.CIT(A), in this regard, were pointed out to us, as under:

“The penalty order of the A.O. is confirmed on merits, however the A.O. is directed not to operationalized these findings as the quantum appeal is already decided in the favour of the appellant by the Hon’ble ITAT. The appeal is allowed for statistics purpose.”

2.5. The ld.counsel for the assessee contended that the addition being deleted by the ITAT admittedly on which the penalty was levied by the Assessing Officer, there was no case at all with the Ld.CIT(A) for having confirmed the order of the Assessing Officer levying penalty in any case. He contended that the order of the Ld.CIT(A) was perverse and pleaded deletion of his findings that the penalty order of the Assessing Officer is confirmed.

3. The Ld.DR fairly agreed with the same. The Ld.DR was unable to counter the contentions of the ld.counsel for the assessee made before us.

In the light of the above, I completely agree with the ld.counsel for the assessee that the order of the ld.CIT(A) confirming the penalty order of the Assessing Officer is not sustainable to this effect. The Ld.CIT(A)’s order surely is a very strange order with contradictory findings stating at one point that the penalty is not leviable in the present case since the addition on which penalty was levied stood deleted by the ITAT in quantum

proceedings and thereafter in the same breadth confirming the penalty order of the Assessing Officer in another portion of his order. The order passed by the Ld.CIT(A) is contradictory. But the fact that the Ld.CIT(A) has categorically noted the fact that the addition on which the penalty was levied stood deleted, Penalty levied in the present case is clearly not sustainable and is directed to be deleted. The findings of the Ld.CIT(A) with respect to the confirmation of the order of the Assessing Officer on merits is directed to be deleted.

4. In effect, the penalty levied is deleted and appeal of the assessee is allowed as above.

Order pronounced in the Court on 17th January, 2024 at Ahmedabad.

**Sd/-
(ANNAPURNA GUPTA)
ACCOUNTANT MEMBER**

Ahmedabad, Dated 17/01/2024

टी.सी.नायर, व.नि.स.।T.C. NAIR, SY. PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)-
5. विभागीय प्रतिनिधि,आयकर अपीलीय अधिकरण ,राजकोट/DR,ITAT, Ahmedabad,
6. गार्ड फाईल /Guard file.

आदेशानुसार/ BY ORDER,

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सहायक पंजीकार (Asstt. Registrar)
आयकर अपीलीय अधिकरण, ITAT, Ahmedabad