

**IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD “C” BENCH, AHMEDABAD**

**BEFORE SMT. ANNAPURNA GUPTA, ACCOUNTANT MEMBER AND
Ms. SUCHITRA KAMBLE, JUDICIAL MEMBER**

**ITA No.1683/Ahd/2019
Assessment Year: 2007-08**

Suchit Arvindbhai Patel, B-14, Madhav Vihar Bungalows, Tapovan Circle, S.P. Ring Road, Chandkheda, Gandhinagar, Gujarat. [PAN – ATHPP 6723 H] (Appellant)	Vs.	The Income Tax Officer, Ward – 4 Gandhinagar. (Respondent)
Assessee by	Shri Parin S Shah, AR	
Revenue by	Shri Ashok Kumar Suthar, Sr. DR	
Date of Hearing	21.02.2024	
Date of Pronouncement	17.04.2024	

ORDER

PER SUCHITRA KAMBLE, JUDICIAL MEMBER:

This appeal is filed by the assessee against order dated 30.08.2019 passed by the CIT(A)-13, Ahmedabad for the Assessment Year 2007-08.

2. The assessee has raised the following grounds of appeal :-

- “1. *Ld. CIT(A) erred in confirming penalty on addition of Rs.5,65,666/- by invoking provision under section 271(1)(c) of the Act ignoring submission of the appellant that there is neither concealment of income nor furnishing inaccurate particulars of income which leads to invocation of penalty.*
2. *Ld. CIT(A) ought to have considered the fact that appellant is the third co-owner of the bank account whose deposit has been added in case of appellant and accordingly it is not a fit case for the penalty.*

3. *Ld. CIT(A) failed to appreciate that Id. AO failed to record proper satisfaction as to penalty for concealment of income or furnishing inaccurate particulars of income and without proper satisfaction penalty order required to be quashed. It be so held now."*

3. Information AIR data reveal that during the financial year 2006-07 the assessee deposited cash of Rs.16,97,000/- in savings Bank Account. The assessee did not file return of income. The assessment was reopened after recording reasons and notice under Section 148 of the Income Tax Act, 1961 was issued on 25.03.2014. In response to the notice under Section 148 of the Act, the assessee did not file return of income. The assessee failed to comply with the statutory notices and, therefore, the assessment was finalised under Section 144 read with Section 148 of the Act on 29.12.2014 determining the total income at Rs.23,67,710/- making addition to that effect as undisclosed income from other sources being cash deposited, cheque deposits and interest income accrued in DCB Bank Account. Penalty proceedings under Section 271(1)(c) of the Act were initiated for concealment of income and notice under Section 274 read with Section 271(1)(c) of the Act was issued on 29.12.2014. The assessee did not file any reply as such and the Assessing Officer imposed penalty to the extent of Rs.7,40,871/- under Section 271(1)(c) of the Act.

4. Being aggrieved by the Penalty Order, the assessee filed appeal before the CIT(A). The CIT(A) partly allowed the appeal of the assessee.

5. The Ld. AR submitted that there was neither concealment of income nor furnishing of inaccurate particulars of income which needs invocation of penalty. In fact, the assessee was an NRI during the year under consideration and did not have any income chargeable to tax and, therefore, the assessee did not file any return of income. The Ld. AR submitted that no case for concealment of income or for furnishing of inaccurate particulars of income was made out by the Assessing Officer. The assessee is the third co-owner in respect of the Bank Account from which deposits have been added to assessee's income, therefore, this is not a fit case for penalty.

6. The Ld. DR relied upon the Assessment Order, Penalty Order and the Order of the CIT(A).

7. We have heard both the parties and perused all the relevant material available on record. It is pertinent to note that the Assessing Officer as well as the CIT(A) has not taken cognisance of the status of the assessee for the assessment year 2007-08 and without looking into the same, has simply imposed penalty without verifying whether there is concealment of income or furnishing of inaccurate particulars of income by the assessee. The fact that the assessee is the third co-owner of the Bank Account whose deposits have been added was also not taken into account either by the Assessing Officer or by the CIT(A). Thus, this amounts to non-application of mind by invoking Section 271(1)(c) of the Act which is penalty. Therefore, in the present assessee's case, the penalty does not sustain.

8. In the result, appeal of the assessee is allowed.

Order pronounced in the open Court on this 17th April, 2024.

Sd/-
(ANNAPURNA GUPTA)
Accountant Member

Sd/-
(SUCHITRA KAMBLE)
Judicial Member

Ahmedabad, the 17th day of April, 2024
PBN/*

Copies to:

- (1) *The appellant*
- (2) *The respondent*
- (3) *CIT*
- (4) *CIT(A)*
- (5) *Departmental Representative*
- (6) *Guard File*

By order

Assistant Registrar
Income Tax Appellate Tribunal
Ahmedabad benches, Ahmedabad