

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'B' अहमदाबाद ।
IN THE INCOME TAX APPELLATE TRIBUNAL
"B" BENCH, AHMEDABAD

BEFORE MRS. ANNAPURNA GUPTA, ACCOUNTANT MEMBER
AND SHRI T.R. SENTHIL KUMAR, JUDICIAL MEMBER

ITA No. 1259/Ahd/2024

निर्धारण वर्ष/Assessment Year: 2014-15

Babul Products Pvt. Ltd. Urmin House, Sindhu Bhawan Road, Bodakdev, Ahmedabad Gujarat-380054 PAN : AABCB 1866 F	Vs.	The Dy. Commissioner of Income-tax, Circle-1(1)(1), Ahmedabad
अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)
Assessee by :		Shri Aseem Thakkar, AR
Revenue by :		Smt. Malarkodi R., Sr. DR

सुनवाई की तारीख/Date of Hearing : 16.10.2024

घोषणा की तारीख /Date of Pronouncement: 23.10.2024

आदेश/ORDER

PER ANNAPURNA GUPTA, ACCOUNTANT MEMBER:

Present appeal has been filed by the assessee against the order of the learned Commissioner of Income-tax (Appeals), Ahmedabad-11 [hereinafter referred to as "CIT(A)" for short] dated 22.04.2023 passed under Section 250 of the Income-tax Act, 1961 [hereinafter referred to as "the Act" for short], confirming the levy of penalty imposed by the Assessing Officer u/s. 271(1)(c) of the Act of Rs.2,36,762/- for the Assessment Year (AY) 2014-15.

2. The grounds raised by the assessee are as under:-

"1. The learned Commissioner of Income Tax (Appeals) has erred in confirming the Penalty of Rs.2,36,762/- levied by the Assessing Officer u/s.271(1)(c) the L.T. Act, 1961 which is illegal and bad in law. Hence the same should be cancelled.

2. *The Appellant craves leave to add, alter, amend or modify any of the grounds of appeal on or before the date of hearing of appeal."*

3. As transpires from the orders of the authorities below, the penalty was levied by the Assessing Officer on the disallowance made of "*payment and provision to employees*" amounting in all to Rs.7,89,206/-. The assessee had debited an amount of Rs.18,78,411/- to the profit and loss account. The Assessing Officer had disallowed the entire amount except Rs.3 lakhs for the reason that the assessee was noted to be not carrying out any business activity and considering the explanation of the assessee that the staff was required for its administrative work including accountant, peon, clerk, record keeper etc., the AO considered Rs.3 lakhs to be reasonable for the incurrence of such expenditure on staff for administrative purposes.

4. The disallowance of Rs.15,78,411/- by the Assessing Officer was confirmed by the Id. CIT(A), but this disallowance was restricted to Rs.7,89,206/- by the ITAT; and it was on this disallowance confirmed by the ITAT in quantum proceedings, that penalty for concealment/furnishing of inaccurate particulars of income was levied by the Assessing Officer in terms of provisions of Section 271(1)(c) of the Act, amounting to Rs.2,36,762/- being 100% of the tax sought to be evaded on the disallowance.

5. The contention of the Id. Counsel for the assessee before us was to the effect that the disallowance made was only an estimate; that there was no concrete finding of the salary debited and claimed by the assessee as being ingenuine or inflated. That, this is evidenced by the fact that even the Assessing Officer accepted the assessee to have employed staff for its administrative work and he only estimated the reasonable expenditure to be

incurred on the same to the amount of Rs.3 lakhs only, which in turn was estimated by the ITAT at a higher figure resulting in disallowance of only Rs.7,89,206/-. It was contended that even the ITAT accepted the fact that staff was employed by the assessee. Ld. Counsel for the assessee pointed out that during the assessment proceedings, statement of 3 employees of the assessee was recorded by the Assessing Officer who had admitted that they were rendering services for performance of work of the assessee-company during the year under consideration. It was, therefore, contended that the fact of employees having worked for the assessee-company not being disputed; the disallowance therefore of the salary paid to them was a mere estimation warranting no levy of penalty for concealment or furnishing of inaccurate particulars of income.

6. The ld. DR, on the other hand, countered by saying that though the rendering of services by employees to the assessee is not disputed, but as a matter of fact, even the ITAT noted the fact that these employees had also rendered services to other group concerns of the assessee and, based on this finding, had held that reasonable disallowance should be 50% of the expenditure incurred, thus restricting it to Rs.7,89,206/-. The ld. DR contended that considering this fact noted by the ITAT that the employees had also rendered services to some other companies of the group concern, it is evident that the assessee had furnished inaccurate particulars/concealed particulars of income relating to salary paid to these employees and, therefore, the penalty was rightly levied u/s 271(1)(c) of the Act.

7. We have heard the contentions of both the parties. The issue before us is levy of penalty on disallowance of salary paid to employees of the assessee-company to the tune of Rs.7,89,206/-. The fact that these employees had

rendered services to the assessee is not in dispute and has been concurrently noted by both the Assessing Officer and also by the ITAT. In fact, during the assessment proceeding itself, three employees' statements were recorded who had confirmed rendering services to the assessee. Therefore, the fact of rendering of services by the employees to the assessee is an undisputed and admitted fact. The disallowance, therefore, is only in relation to the quantum of salary which can be solely attributed to the services rendered by them. The ITAT has held that since these employees were rendering services to other companies of the group also, therefore, 50% of the salary paid to them was held to be reasonable for services rendered to the assessee company. It is evident that 50% of the salary claimed by the assessee as paid to the employees was disallowed merely on the basis of estimation. There is no evidence on record to establish that 50% of the salary could not be attributed as paid for services rendered to these employees by the assessee. We agree with the Id. Counsel for the assessee that the disallowance is a mere estimate. In such circumstances, there can be no case of charging the assessee to have concealed or furnished inaccurate particulars to the tune of salary disallowed in its hands of Rs.7,89,206/-. The reliance placed by the assessee on the decision of the Hon'ble Jurisdictional High Court in the case of CIT vs Valimkbhai H Patel (2006) 280ITR 487 (Guj) is apt wherein it was held that any addition/disallowance on estimate basis could not be visited with penalty u/s 271(1)(c) of the Act. In the facts of the said case the loss on account of cyclone of salt kept in open heaps was subject matter of varying estimations by AO & CIT(A). And in the light of this fact, the Hon'ble High Court held that the assessee could not be visited with penalty on the addition made to his income on account of estimation of loss.

8. In view of the same, we agree with the Id. Counsel for the assessee that the penalty levied in the present case u/s 271(1)(c) of the Act is not tenable in law and we accordingly direct deletion of the same.

The appeal of the assessee is accordingly allowed.

9. In effect, the appeal of the assessee is allowed.

Order pronounced in the open Court on 23/10/2024 at Ahmedabad.

Sd/-

**(T.R. SENTHIL KUMAR)
JUDICIAL MEMBER**

Ahmedabad; Dated 23/10/2024

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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, अधिकरण अपीलीय आयकर , /DR,ITAT, Ahmedabad,
6. गार्ड फाईल /Guard file.

TRUE COPY

Sd/-

**(ANNAPURNA GUPTA)
ACCOUNTANT MEMBER**

आदेशानुसार/ BY ORDER,

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