

IN THE INCOME TAX APPELLATE TRIBUNAL, RAJKOT BENCH, RAJKOT
BEFORE DR. ARJUN LAL SAINI, AM.

&

DINESH MOHAN SINHA, JM

आयकर अपील सं./ITA No. 342/RJT/2023
(निर्धारण वर्ष / Assessment Year: (2013-14)
(Hybrid Hearing)

Assistant Commissioner Of Income Tax, Circle – 1(1), Room No. 502, Aayakar Bhavan, Race Course Ring Road, Rajkot – 360001 Gujarat	Vs.	Kamrudinbhai R. Makhani 104, Vruj Bhumi Apartment, Marutinagar Rajkot, Gujarat
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: ALWPM7994A		
(Appellant)		(Respondent)

Appellant by : Shri Abhimanyu Singh Yadav, Ld. Sr. DR
Respondent by : None
Date of Hearing : 18 /12 /2024
Date of Pronouncement : 20 /01 /2025

आदेश / ORDER

PER DINESH MOHAN SINHA, JM:

Captioned appeal filed by the assessee is directed against the order passed by the National Faceless Appeal Centre [(in short “NFAC/Ld. CIT(A)”) vide order dated 16.08.2023, which in turn assessment order passed by Assessment Unit, Income Tax Department / Assessing Officer under section 154 of the Income Tax Act, 1961 (in short “the Act”).

2. Grounds of appeal raised by the Revenue are as followed:

1) The Learned CIT(A) has erred in law and on facts in deleting the penalty of Rs. 1,25,67,335/- levied u/s. 271(1)(C) of the I. T. Act when department appeal against the order of the Hon'ble High Court of Gujarat.

3. Facts of the case are that the appellant is an individual engaged in the business of money transfer on commission basis. Consequent to the search/survey action at the residential/business premises of the appellant, additions were made to the total income of the appellant on account of cash deposited in HDFC Bank treating. It as unexplained cash in all the three years under consideration. In first appeal, the Ld. CIT(A) confirmed 30% of the addition made by the AO, estimating the profit of the appellant. On this addition confirmed by the Ld. CIT(A). The Ld. AO initiated penalty proceeding u/s. 271(1)(C) of the Act, while levying the penalty Ld. AO observed that looing to the nature of the Ld. CIT(A) considering to the nature of defeat by the assessee. I am Satisfied that it is a fit case for levy of penalty on the assessee.

4. The assessee filed an appeal before the Ld. CIT(A) against the order of penalty dated 04.03.2019. The Ld. CIT(A) has decided the appeal in favour of the assessee and deleting the penalty.

“When the very addition on which penalty has been leived u/s. 271(1)(C) has been deleted, the penalty levied u/s. 271(1)(C) also does not survive. Therefore, the penalty levied u/s. 271(1)(C) of the Act of Rs. 1,25,67,335/- is directed to be deleted. The grounds of appeal are therefore, allowed.”

5. That the revenue has filed an appeal before us.

6. The case was fixed for hearing on 18.12.2024. no-one is attended on behalf of the assessee. However, the Ld. DR has submitted that assessee has committed default of concealment of income, therefore penalty of Rs. 1,25,67,335/- levied by Ld. ITO.

7. We have heard the Ld. DR and perused the matter and available on record. We note that the case was fixed for hearing on 09.05.2024, 04.07.2024, 30.09.2024 and 29.10.2024. However, In the interest of justice, the Bench has granted final opportunity for hearing on 18.12.2024 to the assessee. That notice has been sent through Registered Post and through Ld. DR on 30.11.2024 & 04.10.2024. served notice on the assessee through Jurisdictional Assessing Officer (ACIT Circle – 1,

Rajkot) receipt of Notice is placed on record. None appeared on behalf of the assessee.

8. Ld. Sr. DR has submitted that an addition was made in the Assessment and was duly confirmed by Ld. CIT(A) and upon appeal before this Tribunal against the order of the appeal were registered in IT(SS)A No. 420 & 440/Rjt/2017 by this Tribunal, that addition in total income was deleted by this Tribunal vide order dtd: 04.06.2020, that Revenue has challenged the validity of order by filing an appeal against the order of this Tribunal before the Hon'ble High Court of Gujarat in the same is pending for adjudication.

In view of the above facts and circumstances, we are of the view that the order of that Ld. CIT(A) is hereby set aside and the order of the Ld. AO is affirmed.

In the result, the appeal of the Revenue is allowed.

Order pronounced in the open court on 20-01-2025

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

Rajkot

दिनांक/ Date: 20/01/2025

Copy of the Order forwarded to

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

Sd/-
(DINESH MOHAN SINHA)
JUDICIAL MEMBER

By Order

Assistant Registrar/Sr. PS/PS
ITAT, Rajkot