

आयकर अपीलीय अधिकरण, सूरत न्यायपीठ, सूरत
IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER AND
SHRI BIJAYANANDA PRUSETH, ACCOUNTANT MEMBER
आयकर अपील सं./ITA No. **1192/SRT/2024** (AY 2015-16)
(Virtual court hearing)

Utkarsh Vasantkumar Mehta, C-/2, Plot No. 40, Standard House, Danuyog Sahakari Sang Pipara, Silvasa-369230 [PAN : AACPM 6232 E]	बनाम Vs	DCIT-Circle Vapi, Vapi.
अपीलार्थी/Appellant		प्रत्यर्थी /Respondent

निर्धारिती की ओर से /Assessee by	Shri Gopalakrishnan Aiyar, CA
राजस्व की ओर से /Revenue by	Shri Mukesh Jain- Sr-DR
सुनवाई की तारीख/Date of hearing	17.02.2025
उद्घोषणा की तारीख/Date of pronouncement	17.02.2025

Order under section 254(1) of Income Tax Act

PER PAWAN SINGH, JUDICIAL MEMBER:

1. This appeal by assessee is directed against the order of learned Commissioner (Appeals)/ NFAC dated 25th September 2024, in confirming penalty levied under section 271(1)(c) of the Income Tax Act (Act). Though, the assessee has raised multiple grounds of appeal, however the substantial ground of appeal is to upholding the action of assessing officer in levying penalty of ₹ 23,900/- under section 271(1)(c) of the Act.
2. Brief facts of the case are that while passing the assessment order the AO made addition on account of undisclosed duty drawback of 70,299/-. The addition was made by taking view that during assessment, assessing officer noted that assessee has credited an amount of ₹ 1,75,523/- on account of duty drawback, in profit and loss account, in its return of income. However, in Form 26 AS, statement of amount of duty drawback claimed and received is shown at Rs. 2,45,822/-. Thus, the assessee has shown less duty drawback to the extent of

Rs. 70,299/-. The assessee was issued show cause notice, in the reply the assessee stated that duty drawback is accounted on receipt basis, the duty drawback of Rs. 1,75,253/- received actually from Custom Department was accounted as income in the return of income. The reply of assessee was not accepted by AO by taking view that assessee should have accounted the entire amount of claim of duty drawback as income during the year and if any amount out of the total duty drawback claimed remained to be received at the end of year, the same should have been shown as receivable in the balance sheet on asset side. On the basis of such observation the assessing officer made addition of ₹ 70,299/- and initiated penalty proceedings. The assessing officer, before levying the penalty issued a show cause notice dated 25th October 2017. The AO noted that the assessee has not furnished his reply to show cause notice nor filed evidence of filing appeal against the addition in the assessment order. The assessing officer issued 2nd show cause notice dated 16th April 2018. In response to such notice, the assessee filed his reply and is submitted that he was following mercantile system of accounting for recognition the amount of duty drawback received during the year was shown as income. The reply of assessee was not accepted by AO. The AO levied penalty at the rate of 100% of tax sought to be evaded and worked out the penalty of ₹ 23,900/- in his order dated 26th October 2018. Aggrieved by the penalty, the assessee filed appeal before learned Commissioner (Appeals), wherein action of AO was upheld. Further aggrieved, the assessee has filed present appeal before the tribunal.

3. We have heard the submission of learned authorised representative (Id.AR) of the assessee and the learned senior departmental representative (Id Sr-DR) for the revenue and with their assistance of have gone through the orders of lower authorities carefully. The Id. AR of the assessee submits that the assessee neither concealed any particular of his income nor furnished inaccurate particulars thereof. The assessee furnished complete details before the AO. The AO made disallowance of duty drawback, which was never received by the assessee. The assessee was following Mercantile system of accounting and has shown the amount of duty drawback in his profit and loss account as income. There is neither concealment of income nor furnishing inaccurate particulars thereof. To support his submission, the Id A.R. of the assessee relied upon the decision of Hon'ble Supreme Court in Excel Industries Limited (2013) 38 taxmann.com 100 (SC), decision of Bombay High Court in Matchwell Electrical (I) Ltd (2003) 127 Taxmann 159 (Bom) and Rajasthan High Court in case of Oriental Power Cable Ltd (2008) 174 Taxmann 74 (Raj).
4. On the other hand, the Id. Sr DR for the revenue supported the order of lower authorities.
5. We have considered the rival submission of the parties and again produce the material available on record. We find that there is very limited issue before us that if the part of duty draw back if not received, still can be treated as income of the assessee, when the assessee was following mercantile system of accounting. On careful perusal of facts of the case and the record, we find that the AO made disallowance of duty drawback, which was never received by the assessee. The assessee was following Mercantile system of accounting and has

shown the amount of duty drawback in his profit and loss account as income. In our view, there was neither concealment of income nor furnishing inaccurate particulars thereof, thus, there is no justification of levying penalty under section 271(1)(c) of the Act. Hence, the AO is directed to delete the entire penalty levied under section 271(1)(c) of the Act. In the result, the grounds of appeal raised by the assessee are allowed.

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

Order pronounced in the open court on 17/02/2025 at the time of hearing.

Sd/-
(BIJAYANANDA PRUSETH)
लेखा सदस्य/Accountant Member

Sd/-
(PAWAN SINGH)
न्यायिक सदस्य/Judicial Member

सूरत / Surat Dated: 17/02/2025

Self / dragon

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

- अपीलार्थी/ The Appellant
- प्रत्यर्थी/ The Respondent
- आयकर आयुक्त/ CIT
- विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, सूरत/ DR, ITAT, SURAT
- गार्ड फाईल/ Guard File

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By order/आदेश से,

सहायक पंजीकार
आयकर अपीलीय आधिकरण ,सूरत