

**IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD BENCH, "SMC", AHMEDABAD**

[Coram: Pramod Kumar AM]

**I.T.A. No.3586/Ahd/2015
Assessment Year: 2009-10**

Kamlesh Natwarlal Parmar
43, Shyamsatya Bunglows,
Near Satyamev Hospital,
Chandkheda
Ahmedabad – 382 424.
[PAN: AJMPP 6994 R]

.....***Appellant***

Vs.

***Income Tax Officer,
Ward 7(1)(4), Ahmedabad.***

.....***Respondent***

Appearances by:

***Pritesh Shah, for the appellant
Antony Pariath, for the respondent***

*Date of concluding the hearing: 05.07.2016
Date of pronouncing the order: 04.10.2016*

O R D E R

1. The appeal is time barred by 22 days but the assessee has moved a condonation petition seeking condonation of delay. Having perused the petition, and having heard rival contention on the same, I am inclined to condone the delay as the delay was due to the impugned order having been served on the neighbour of the assessee and the assessee physically received the said order very late. Delay condoned.

2. The appeal is directed against the order dated 23rd July, 2015 passed by the learned CIT(A), confirming the penalty of Rs.6,30,800/- imposed on the assessee under section 271(1)(c) of the Income Tax Act 1961, for the assessment year 2009-10.

3. The impugned penalty is levied in respect of cash deposits, aggregating to Rs.20,50,700/-, on the bank account of the assessee. These deposits were explained as follows :-

Source No.	Source Particulars		Amount Rs.	Document Submitted to AO
1	Salary Income from Last 18 years	Accumulated Savings of 15 years	402741	Salary Certificate, Income Tax Return & Statement of Income – A.Y. 2009/10
2	Father Mr. Natvarlal Mangaldas Parmer	He was Government Employee – worked with Health & Medical Services and Medical Education at Civil Hospital for many years. He Retired in 1998 and thereafter worked independently. He has kept huge cash to meet any medical emergency. He died in 2006 intestate (without making any will). Assessee received Rs.6,00,000/- by way of inheritance.	600000	Pension Payment Declaration Certificate and Death Certificate.
3	Mother Smt. Paniben Natvarlal Parmar	Government Employee worked with Kamdar Rajya Vima Yojna, ESIC Department for many years. Retired in 2002. She gave gifts of Rs.5,00,000/- to assessee in aggregate. [Rs.1,00,000/- on 06/02/2009, Rs.3,00,000/- on 21/02/2009 and Rs.1,00,000/- on 25/03/2009.]	500000	Pension Payment Declaration Certificate, Election Card, Photocopy of Bank Passbook, photocopy of Gift Deed. Gold Sale Bills.
4	Father in law Mr. Girdharbhai Maganbhai Leuva	He is having agricultural income from land situated at Zulasan, Dist. Kadi. He gave gift of Rs.5,00,000/- to assessee. [Rs.2,50,000/- on 06/01/2009, Rs.2,50,000/- on 12/01/2009.]	500000	Election Card, 7 x 12 Abstract, Gift Deeds, Sales Bills of Agricultural Products Bajra, Wheat, Jowar, Rajagra etc.
		Total	2002741	

05. Since, the Assessing Officer was not satisfied with the submissions of the assessee, he issued show cause notice/letter was issued to the assessee on 21/11/2011 requesting him to explain as to why the cash deposit made in his bank account should not be added to his total income in absence of any clear and concrete documentary evidences to substantiate his claim."

4. However, not satisfied with the above explanation, quantum addition was made in the hands of the assessee, and when matter reached this Tribunal, the additions were confirmed. It is in this backdrop that the penalty under section 271(1)(c) of the Act has been imposed, and the same has been confirmed by the learned CIT(A) as well. The assessee is not satisfied and is in further appeal before me.

5. I have heard the rival contentions, perused the material on record and duly considered facts of the case in the light of applicable legal position.

6. I have noted that while the explanations and evidences given by the assessee may have been rejected, on merits, by the Tribunal, these explanations are reasonable explanations so far as considerations for penalty proceedings are concerned. As long as explanation of the assessee is reasonable, even though not proved to the hilt, imposition of penalty under section 271(1)(c) of the Act cannot be justified. As I say so, I am reminded of the following observation made by the full bench of Hon^{ble} Patna High Court in the case of CIT vs. Nathulal Agarwal & Sons (153 ITR 292), which were later approved by Hon^{ble} Supreme Court in the case of CIT vs. Mussadi Lal Ram Bharose (165 ITR 14), as follows :-

"As to the nature of the explanation to be rendered by the assessee, it seems plain on principle that it is not the law that the moment any fantastic or unacceptable explanation is given, the burden placed upon him would be discharged and the presumption rebutted. It is not the law and perhaps hardly can be that any and every explanation by the assessee must be accepted. In my view, the explanation of the assessee for the purpose of avoidance of penalty must be an acceptable explanation. He may not prove what he asserts to the hilt positively

but as a matter of fact materials must be brought on the record to show that what he says is reasonably valid."

7. When I see the explanation of the assessee, in the above light, I find that explanation of the assessee is a prima facie reasonable explanation. The assessee may not have been able to prove it to the hilt, but that aspect of the matter, as I have noted above, is not really decisive so far penalty under section 271(1)(c) is concerned.

8. In the light of the above discussions, as also bearing in mind entirety of the case, I uphold the grievance of the assessee. The penalty of Rs.6,30,800/-, accordingly, stands deleted.

9. In the result, the appeal is allowed. Pronounced in the open Court on this 4th day of October, 2016.

Sd/-

Pramod Kumar
(Accountant Member)

Dated: the 4th day of October, 2016.

*PBN/**

Copies to: (1) The appellant
(2) The respondent
(3) CIT
(4) CIT(A)
(5) DR
(6) Guard File

By order

*Assistant Registrar
Income Tax Appellate Tribunal
Ahmedabad benches, Ahmedabad*