

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

BEFORE SHRI RAJPAL YADAV, VICE-PRESIDENT

आयकर अपील सं./ ITA.No.758/Ahd/2018

निर्धारण वर्ष/ Asstt. Year: 2014-15

Rashid K. Nurani 36,n3 Shiv Shakti Estate Opp: Kashiram Textile Mill Narol, Ahmedabad 382 405	Vs	ITO, Ward-6(1)(5) Ahmedabad.
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अपीलार्थी/ (Appellant)	प्रत्यर्थी/ (Respondent)
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Assessee by :	Shri S.K. Sadhwani, AR
Revenue by :	Shri Dilip Kumar, Sr.DR

सुनवाई की तारीख/Date of Hearing : 05/02/2020

घोषणा की तारीख /Date of Pronouncement: 07/02/2020

आदेश/ORDER

Assessee is in appeal before the Tribunal against order of the Id.CIT(A)-6, Vadodara dated 19.2.2018 passed for the Asstt.Year 2014-15.

2. Sole grievance of the assessee is that the Id.CIT(A) has erred in confirming penalty of Rs.1,34,987/- which was imposed by the AO under section 271(1)(c) of the Income Tax Act, 1961.

3. Brief facts of the case are that the assessee has filed his return of income electronically on 8.11.2014 declaring total income at Rs.3,78,875/-. A notice under section 143(2) of the Act was issued on 29.9.2015 which was duly served upon the assessee. After the service of notice under section 143(2), the assessee has filed a revised statement of income disclosing additional income and paid taxes thereon. This computation reads as under:

<i>Particular</i>	<i>Amt(in Rs)</i>	<i>Amt(in Rs)</i>
<i>Income as per return of income</i>		<i>3,78,875/-</i>
<i>Add:Profits/gains from business u/s 44AD</i>	<i>6,42,981/-</i>	
<i>Saving Bank & F.D. Interest income</i>	<i>15,638/-</i>	
<i>Dividend Income</i>	<i>4,819/-</i>	
<i>Interest income of minor</i>	<i>20,637/-</i>	<i>6,84,075/-</i>
<i>Income offered & assessed</i>		<i>10,62,950/-</i>

4. The Id.AO initiated penalty proceedings for visiting the assessee with regard to the additional disclosure of income amounting to Rs.6,84,075/-. After hearing the assessee, the Id.AO has imposed penalty of Rs.1,34,075/-. Appeal to the CIT(A) did not bring any relief to the assessee.

5. We have heard rival submissions and gone through the record. Section 271(1)(c) of the Income Tax Act, 1961 has direct bearing on the controversy. Therefore, it is pertinent to take note of the section.

"271. Failure to furnish returns, comply with notices, concealment of income, etc.

(1) The Assessing Officer or the Commissioner (Appeals) or the CIT in the course of any proceedings under this Act, is satisfied that any person

*(a) and (b)***

(c) has concealed the particulars of his income or furnished inaccurate particulars of such income.

He may direct that such person shall pay by way of penalty.

*(i)and (Income-tax Officer,** ***

(iii) in the cases referred to in Clause (c) or Clause (d), in addition to tax, if any, payable by him, a sum which shall not be less than, but which shall not exceed three times, the amount of tax sought to be evaded by reason of the concealment of particulars of his income or fringe benefit the furnishing of inaccurate particulars of such income or fringe benefits:

Explanation 1- Where in respect of any facts material to the computation of the total income of any person under this Act,

(A) Such person fails to offer an explanation or offers an explanation which is found by the Assessing Officer or the Commissioner (Appeals) or the CIT to be false, or

(B) such person offers an explanation which he is not able to substantiate and fails to prove that such explanation is bona fide and that all the facts relating to the same and material to the computation of his total income have been disclosed by him, then, the amount added or disallowed in computing the total income or such person as a result thereof shall, for the purposes of Clause (c) of this sub-section, be deemed to represent the income in respect of which particulars have been concealed.”

6. A bare perusal of this section would reveal that for visiting any assessee with the penalty, the Assessing Officer or the Learned CIT(Appeals) during the course of any proceedings before them should be satisfied, that the assessee has; (i) concealed his income or furnished inaccurate particulars of income. As far as the quantification of the penalty is concerned, the penalty imposed under this section can range in between 100% to 300% of the tax sought to be evaded by the assessee, as a result of such concealment of income or furnishing inaccurate particulars. The other most important features of this section is deeming provisions regarding concealment of income. The section not only covered the situation in which the assessee has concealed the income or furnished inaccurate particulars, in certain situation, even without there being anything to indicate so, statutory deeming fiction for concealment of income comes into play. This deeming fiction, by way of *Explanation I* to section 271(1)(c) postulates two situations; (a) first whether in respect of any facts material to the computation of the total income under the provisions of the Act, the assessee fails to offer an explanation or the explanation offered by the assessee is found to be false by the Assessing Officer or Learned CIT(Appeal); and, (b) where in respect of any fact, material to the computation of total income under the provisions of the Act, the assessee is not able to substantiate the explanation and the assessee fails, to prove that such explanation is bona fide and that the assessee had disclosed all the facts

relating to the same and material to the computation of the total income. Under first situation, the deeming fiction would come to play if the assessee failed to give any explanation with respect to any fact material to the computation of total income or by action of the Assessing Officer or the Learned CIT(Appeals) by giving a categorical finding to the effect that explanation given by the assessee is false. In the second situation, the deeming fiction would come to play by the failure of the assessee to substantiate his explanation in respect of any fact material to the computation of total income and in addition to this the assessee is not able to prove that such explanation was given bona fide and all the facts relating to the same and material to the computation of the total income have been disclosed by the assessee. These two situations provided in *Explanation 1* appended to section 271(1)(c) makes it clear that that when this deeming fiction comes into play in the above two situations then the related addition or disallowance in computing the total income of the assessee for the purpose of section 271(1)(c) would be deemed to be representing the income in respect of which inaccurate particulars have been furnished.

7. In the light of the above, let us examine the facts of the present case. The case of the assessee is that notice under section 143(2) was required to be given to an assessee by the AO for scrutinizing its return. This is an opportunity to an assessee to submit what the assessee wants to submit in support of the return he has submitted. On receipt of such notice, the assessee realised the mistake that his tax consultant has not included the income with respect two bank accounts. In other words, the assessee was in the retail business of chemicals. The sale proceeds were being deposited in different banks. The assessee has submitted details of these bank accounts to the tax consultants, and its income was to be computed under section 44AD.

Somehow the details from two banks accounts were not considered by the tax consultant while filing return. Therefore, the moment it came to know to the notice of the assessee, he immediately filed a revised statement and paid taxes. He did not dispute inclusion of the income embedded in those accounts. Similarly, he has included certain minor income in shape of dividend income of Rs.4,819/- and interest income. No doubt assessee should have been more vigilant while filing return, but his conduct is to be seen from the angle that he was running a proprietary concern and he has given all the details to his tax consultant. Under some human error, the proceeds from retail sale of chemicals deposited in two accounts remained to be accounted for the purpose of computation of turnover for estimating profit under section 44AD. To my mind, it is a fit case where judgment of Hon'ble supreme Court in the case of Hindustan Steel Ltd Vs. State of Orissa, 83 ITR 026 is applicable on the give facts. Omission at the end of the assessee was neither deliberate nor contumacious in conscious disregard to his obligation. The assessee has immediately filed a revised statement and paid taxes. He did not linger on the dispute with the Department, and hence a *bona fide* mistake. Therefore, I allow this appeal, and delete penalty imposed upon the assessee.

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

Order pronounced in the Court on 7th February, 2020 at Ahmedabad.

Sd/-
(RAJPAL YADAV)
VICE-PRESIDENT

Ahmedabad; Dated 07/02/2020