

THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD "A" BENCH

**Before: Ms. Annapurna Gupta, Accountant Member
And Shri T.R. Senthil Kumar, Judicial Member**

**ITA No. 218/Ahd/2023
Assessment Year 2013-14**

Pradip S. Birewar, Ghatlodia, Ahmedabad PAN: AGJPB2106P (Appellant)	Vs	The ACIT, Central Circle- 1(2), Ahmedabad (Respondent)
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Assessee by: Shri Sunil Talati, A.R.

Revenue by: Ms. Saumya Pandey Jain, Sr. D.R.

Date of hearing : 04-10-2023

Date of pronouncement : 24-11-2023

आदेश/ORDER

PER : T.R. SENTHIL KUMAR, JUDICIAL MEMBER:-

This appeal is filed by the assessee against the appellate order dated 07-02-2023 passed by the Commissioner of Income Tax (Appeals)-11, Ahmedabad, confirming levy of penalty u/s. 271(1)(c) of the Income Tax Act, 1961 (hereinafter referred as the Act) relating to the assessment year 2013-14.

2. The brief facts of the case, the assessee is an individual engaged in share trading and commission business. There was a search action u/s. 132 of the Act in the case of the assessee and

accordingly notice u/s. 153A of the Act was issued on 21-07-2015. However, the assessee did not file return of income in response to the above notice. After repeated notices, the assessee filed its return of income on 07-11-2016 declaring nil income. Assessment was completed after pursuing various seized materials and brokerage/commission income amounting to Rs. 54,38, 284/- as the unaccounted income of the assessee and demanded tax thereon.

3. Aggrieved against the addition, the assessee filed an appeal before Commissioner of Income Tax (Appeals). After verification of the details of seized material, the ld. CIT(A) determined the income of the assessee as 29,38,384/-. It is therefore the Assessing Officer proceeded with the penalty proceedings and issued show cause notice, why not to levy penalty for concealment of commission income of Rs. 29,38,384/-. The assessee failed to reply to the show cause notice, thereby the Assessing Officer levied minimum penalty of Rs. 9,23,914/- u/s. 271(1)(c) of the Act. Aggrieved against the same, the assessee filed appeal before ld. CIT(A) who has confirmed the levy of penalty by relying upon the Supreme Court and Jurisdictional High Court judgments.

4. Aggrieved against the same, the assessee is in appeal before us raising the following grounds of appeal:-

“1. The Ld. CIT(A) has erred in upholding the penalty levied under Section 271(1)(c) of the Income Tax Act. It is submitted that on the facts and circumstances of the case no penalty is

leviable as the penalty order passed levying the penalty of Rs. 9,24,000/- is incorrect and invalid and the same is prayed to be deleted.

2. The Ld. CIT(A) has erred upholding the penalty levied on the ground that assessee has concealed the particulars of commission income. It is submitted that notice of penalty did not mention at all whether assessee has concealed any income or has submitted inaccurate particulars of income. It is submitted that in view of such notice levying both the charges and finally levying the penalty for alleged concealment of income is incorrect and illegal and the same be held so now.

3. The Order passed by the learned CIT(A) upholding the penalty levied is bad in law and contrary to the provisions of law and facts. It is submitted that the same be held so now.

4. Your appellant craves leave to add, alter and/or to amend all or any of the grounds before the final hearing.”

5. The ld. counsel for the assessee, Shri Sunil Talati, appearing for the assessee submitted before us penalty u/s. 271(1)(c) cannot be levied against estimation of income and relying upon the following case laws:-

- (i) CIT vs. Valimkbhai H. Patel (2006) 280 ITR 0487
- (ii) CIT vs. Subhash Trading Co. (1996) 86 taxman 0030
- (iii) CIT vs. S.P. Bhatt (1974) 97 ITR 0440
- (iv) CIT vs. Vijay Kumar Jain (2010) 325 ITR 0378
- (v) Harigopal Singh vs. CIT (2002) 258 ITR 0085
- (vi) CIT vs. Sangrur Vanaspati Mills Ltd. (2008) 303 ITR 0053
- (vii) CIT vs. Sankarsons & Company (1972) 85 ITR 0627

(viii) ITA No. 5895/Mum/2010 Shri Narayansingh J. Deora vs. ACIT order dated 09-12-2011

(ix) DCIT vs. Madad Ali Ansari & Co. (2000) 69 TTJ 0279

Thus ld. counsel for the assessee pleaded that the levy of penalty u/s. 271(1)(c) is liable to be deleted.

6. Per contra the ld. Sr. D.R., Ms. Saumya Pandey Jain, appearing for the Revenue supported the order passed by lower authorities. The ld. D.R. submitted that the assessee never filed return of income and also not disclosed commission income from his trading activities. Even pursuant to the 153A notices issued to the assessee, the assessee failed to file return of income. When the assessment was about getting time bar, the assessee filed the return on 07-11-2016 admitting nil income. However assessment was completed based on seized material elaborately discussed in the assessment order and determined the unexplained income as Rs. 54,38,284/-. However in quantum appeal, the ld. CIT(A) has determined the commission income as Rs. 29,38,284/- and after considering Rs. 25 lakhs which is also covered in the above commission income. Thus the CIT(A) has not made any estimation of the commission income of the assessee. The above addition are based on seized materials and not disclosed by the assessee in his return of income, therefore the levy of penalty u/s. 271(1)(c) for concealment of income is legally valid in law. The concurrent findings arrived by the lower authorities does not require any interference and the case laws relied upon by the counsel for the

assessee are clearly distinguishable, therefore the assessee's appeal is liable to be dismissed.

7. We have given our thoughtful consideration and perused the material available on record including the case laws cited by Id. counsel for the assessee. It is undisputed fact that the assessee filed its original return declaring income of Rs. 7,32,561/- which was set off against brought forward business loss, thus claiming nil income. The Assessing Officer completed assessment u/s. 143 r.w.s. 153A determining the total income as Rs. 54,38,284/- on account of unexplained money u/s. 69 based on seized materials. On further appeal, the CIT(A) determined the income of the assessee as Rs. 29,38,284/- and there is no estimation of income made by the Id. CIT(A). The relevant portion of the CIT(A)'s order reads as follows:-

“ The facts of the case have been considered with reference to the served document. It is fact that the AO has considered total transaction value as income of the appellant in some case, where, in some cases, commission income only was considered. Similarly, the appellant in the calculation submitted considered commission income on some transactions, whereas, in some cases, considered commission on commission income. Thus, both are partly correct & partly incorrect. It is clearly written in the chart prepared & reproduced by the AO clearly showing about the nature of transaction. Wherever bill amount is written, it is correct to consider that amount as transaction value and only commission income should be added. In the cases, where commission with rate of commission is written, it is correct to consider the same as commission income of the appellant for the year in which the income pertain. As this document has been found from the premises of the appellant himself,

presumption of section 292C is applicable against the appellant. Moreover, the appellant disclosed unaccounted income earned as commission on these transactions to the extent of Rs. 35 lakh during recording statement u/s 131 of the Act in post search enquiries. The appellant could not prove the contents of these papers otherwise with better evidences. With this finding, commission income of the appellant for the year under consideration is determined as under:-

<i>Sr. No.</i>	<i>Details of seized paper</i>	<i>Bill/Commission amount</i>	<i>Income of the appellant</i>
1	Page No. 2, 3 & 5 of A/1	29,38,284/- (commission)	29,38,384/- (commission)
2	Page No. 6 of A/1	25,00,000	Covered by above addition, it is receipt out of above.
	<i>Total Income</i>		29,38,384/-

7.1 Thus, in our considered opinion, the addition of Rs. 29,38,384/- is sustained by the ld. CIT(A) is based on seized materials, during the course of search. There is no estimation of income by the ld. CIT(A). Thus, case laws relied upon by the ld. counsel for the assessee are not applicable to the facts of the present case. Further, the ld. CIT(A) has considered the Supreme Court judgment in the case of Mak Data Pvt. Ltd. vs. CIT reported in 358 ITR 593 as follows:

“It was observed that the AO has to satisfy whether the penalty proceedings be initiated or not during the course of the assessment proceedings and the AO is not required to record his satisfaction in a particular manner or reduce it into writing. The scope of section 271(1)(c) has also been elaborately discussed by this Court in Union of India Vs. Dharmendra Textile Processors [2008] 13 SCC 369 and CIT vs. Atul Mohan

Bindal [2009] 9 SCC 589. Thus, this contention of the appellant is not accepted."

7.2 The Id. CIT(A) further relied upon the Jurisdictional High Court judgment in the case of Sunita Transport Pvt. Ltd. vs. ACIT (2014) 42 taxman.com 54 wherein, it is held as follows:-

"Assessee filed its revised return declaring certain income - Subsequently, a survey was carried out at assessee's premises - In pursuance of survey, assessee filed its revised return declaring higher income - Revenue authorities took a view that since at time of filing original return, assessee was aware of concealment, there was no compliance with provisions of section 139(5) and, consequently, revised return was to be treated as non-est - Authorities below thus passed a penalty order under section 271(1)(c)- Whether since there was nothing on record showing that in original return assessee was unaware about gross concealment of income, impugned penalty order passed by authorities below was to be upheld - Held, yes [In favour of revenue]."

7.3 Similarly Jurisdictional High Court judgement in the case of Bharatkumar G. Rajani Vs. DCIT (2013) 40 taxman.com 344 wherein it is held as follows:

"After assessment of assessee had been completed, Investigation Wing detected money laundering racket, in which assessee was also found involved - In response to notice under section 148 assessee filed return of income declaring bogus loan of Rs.10 lakh and interest thereon as additional income - Assessing Officer completed reassessment and also levied penalty under section 271(1)(c) on assessee - Whether on facts, concealment of income came to be established and penalty under section 271(1)(c) was rightly levied upon assessee - Held, yes [Para 3] [In favour of revenue]"

8. Thus the finding arrived by the CIT(A) following Jurisdictional High Court judgements does not require any interference. Therefore, the levy of penalty is hereby upheld and the grounds of appeal raised by the assessee are devoid of merits.

9. In the result, the appeal filed by the assessee is hereby dismissed.

Order pronounced in the open court on 24-11-2023

Sd/-
(ANNAPURNA GUPTA)
ACCOUNTANT MEMBER
Ahmedabad : Dated 24/11/2023

Sd/-
(T.R. SENTHIL KUMAR)
JUDICIAL MEMBER

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण,
अहमदाबाद