

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ - अहमदाबाद /

**IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD – BENCH 'D'**

**BEFORE SHRI RAJPAL YADAV, JUDICIAL MEMBER
AND
SHRI AMARJIT SINGH, ACCOUNTANT MEMBER**

आयकर अपील सं./ ITA No.2469/Ahd/2013

निर्धारण वर्ष/Asstt. Year: 2002-03

Deepak Petrochem Ltd. 303, BN Chambers R.C. Dutt Road Baroda 390 005. PAN : AAACD 7462 L	Vs.	DCIT, Cir.1(1) Baroda.
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अपीलार्थी (Appellant)		प्रत्यर्थी (Respondent)
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Assessee by :	Ms.Urvashi Shodhan, AR
Revenue by :	Shri Vinod Tanwani, Sr.DR

सुनवाई की तारीख/Date of Hearing : 12/09/2019

घोषणा की तारीख/Date of Pronouncement: 21/11/2019

आदेश/ORDER

PER RAJPAL YADAV, JUDICIAL MEMBER:

Assessee is in appeal before the Tribunal against order of the Id.CIT(A)-I, Baroda dated 9.7.2013 passed for the Asstt.Year 2002-03.

2. The assessee has taken six grounds of appeal, but its grievance revolves around a single issue viz. the Id.CIT(A) has erred in confirmation the penalty amounting to Rs.52,48,000/- imposed by the AO under section 271(1)(c) of the Act.

3. Brief facts of the case are that the assessee has filed its return of income on 30.10.2002 declaring total loss at

Rs.29,31,379/-. The case of the assessee was selected for scrutiny assessment and notice under section 143(2) was issued and served upon the assessee. On scrutiny of the accounts, it revealed to the AO that the assessee's authorized share capital has been increased to Rs.3.00 crores as against Rs.1.00 crore. On further scrutiny, it revealed that the assessee has taken share application money from 273 applicants, out of that from 272 parties share application money was taken in cash. The AO has directed the assessee to furnish identity of the creditors, their credit-worthiness and genuineness of the transaction. The assessee has given half details. The AO has issued notice under section 133(6) of the Act, but they were returned un-served. He made addition of Rs.1,46,98,600/-. He determined taxable income of the assessee at Rs.8,44,667/- vide assessment order dated 28.1.2005. This figure was determined after setting off of business loss/unabsorbed depreciation of earlier years at Rs.1,13,22,553/-. Dispute travelled to the Tribunal, and the Tribunal has confirmed the addition vide ITA No.739/Ahd/2011 decided on 2.3.2017. The Id.AO has initiated penalty proceedings and issued notice under section 274 r.w. section 271(1)(c) of the Act. In response to the notice, the assessee has filed reply on 15.2.2012. After considering the reply of the assessee, the Id.AO has imposed penalty of Rs.52,48,000/- for furnishing inaccurate particulars of income. Appeal to the CIT(A) did not bring any relief to the assessee.

4. The Id.counsel for the assessee while impugning orders of the Revenue authorities contended that the assessee has given address and details of share applicants. It was for the AO to verify those details. He failed to prove that explanation put-forth

by the assessee that it has received share application, was false. In support of her contentions, he relied upon the following decisions:

1.	<i>Judgment of Hon'ble Gujarat High Court in case of National Textiles</i>
2	<i>Judgment of Hon'ble Gujarat High Court in case of Jalaram Oil Mills</i>
3	<i>Judgment of Hon'ble Gujarat High Court in case of Amrut Tubewell Co.</i>
4	<i>Order of Hon'ble IT AT, Ahmedabad in case of Manish Organics India Ltd.</i>
5	<i>'Order of Hon'ble IT AT, Ahmedabad in case of Bhagyodaya Group Co-op Cotton Sale, Ginning & Pressing Society Ltd.</i>
6	<i>Judgment of Hon'ble Supreme Court in case of Reliance Petroproducts (P.) Ltd.</i>

Copies of these decisions have been placed on record.

5. The Id.DR, on other hand relied upon orders of Revenue authorities. He contended that the assessee failed to give any explanation what to talk of plausible explanation. Hence, it is a fit case, where with the help of *Explanation-1* of section 271(1)(c) of the Act, penalty deserves to be imposed upon the assessee.

6. We have duly considered rival submissions and gone through the record carefully. 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."

7. 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.

8. In the light of the above, let us take note of the finding recorded by the Tribunal in the quantum proceeding, which reads as under:

"13. We have given a thoughtful consideration to the orders of the authorities below. The undisputed fact is that the assessee had during the year accepted share application money from 273 parties. It is also true that the assessee has furnished the names and addresses of the parties in the list filed before the lower authorities. It is equally true that the notices issued u/s. 133(6) of the Act and the summons issued by the A.O. were returned unserved. A perusal of the list of the share applicants show that only the names and the name of the village are given. It is also true that the assessee has received cheques from the same cheque-book bearing no. 00490, 200503. It is impossible for different share applicants residing at different villages using the same cheque book for the application of shares.

14. It appears that the share application money introduced by the assessee company in his books of accounts is nothing but the unaccounted income of the assessee brought in the books of accounts in the form of share application money.

15. Our view is fortified by the fact that the alleged share applicants who are agriculturists have applied for the shares of an unlisted company from which they are not going to derive any benefit whatsoever in future by the appreciation in the market value of the shares.

16. In our considered opinion, in the context of the preponderance of probabilities, the impugned share application money is not genuine and the assessee has grossly failed in discharging the initial burden cast upon it by the provisions of Section 68 of the Act. We, therefore, decline to interfere with the findings of the First Appellate Authority.

17. Before parting, the Id. counsel for the assessee placed reliance on the decision of the Id. CIT(A) given for A.Y. 1990-91. It is the say of the Id. counsel that in earlier assessment year also, additions were made u/s. 68 of the Act in respect of moneys received from shareholders and the same has been deleted by the Id. CIT(A) in Appeal No. CAB/XVI/3/93-94 vide order dated 10.11.1993. The Id. counsel stated that the revenue has not preferred any appeal before the Tribunal and the order of the First Appellate Authority has attained finality, therefore, the same view should be taken. We do not find any force in this contention of the Id. counsel. Firstly, a perusal of the order of the First Appellate Authority relied upon by the Id. counsel show that in that year, on investigation it was found that the persons who are purported to have made the investment are not fictitious but are existing and have given the statements which though cast doubt but also establish that they had knowledge about some transactions with the appellant company. Whereas, the facts of the case in hand show that the assessee has grossly failed to establish the identities of the share applicants. None of the share applicants were produced before the A.O. nor any notice could be served upon them as all the notices/summons returned unserved. Secondly, it is not the case of the Id. counsel that the share applicants for the year under consideration are the same shareholders which applied in the immediately preceding assessment year. The appeal stands dismissed.

9. The assessee has not given any explanation. It has just submitted that it has received share application money from 272 parties. It has given their names. But the addresses given by the assessee were found to be incorrect because notices were returned. Apart from that the assessee has not given any details. Monies have been taken in cash and not through banking channel. Therefore, neither it has proved the genuineness of the transaction nor credit-worthiness of the alleged applicants; rather to say their identities also doubtful. In such circumstances, it has to be construed that the explanation offered by the assessee has been proved as false by the AO. The Id.counsel for the assessee

has relied upon above six judgments. Out of that in the first two, in the case of National Textiles (supra) and Jalaram Oil Mills, assessment year involved is 1971-72 and 1974-75. *Explanation-1* to section 271(1)(c) of the Act has been appended in the present form w.e.f. 1-4-1976. Therefore, these judgments are of no help to the assessee. As far as the last judgment of Hon'ble Supreme Court in the case of Reliance Petroproducts P.Ltd. is concerned, in that case, the assessee has made some claim which was found to be not admissible as per the position of law. The assessee has not withheld information. Hon'ble Supreme Court was of the view that unless some claim is made, how the assessee would explain his case before tax authorities. In the present case no such facts are there. The assessee has not made any claim admissible in law, which has been disallowed on account of difference of opinion between him and the tax authorities. Similarly, as far as the facts of other three decisions are concerned, they are quite distinguishable with the facts in the present case. Therefore, we do not find any error in the order of the Id.CIT(A) and the appeal of the assessee is dismissed.

10. In the result, appeal of the assessee is dismissed.

Order pronounced in the Court on 21st November, 2019.

Sd/-
(AMARJIT SINGH)
ACCOUNTANT MEMBER

Sd/-
(RAJPAL YADAV)
JUDICIAL MEMBER

Ahmedabad; Dated 21/11/2019