

आयकर अपीलिय अधिकरण, अहमदाबाद न्यायपीठ 'बी' अहमदाबाद।
IN THE INCOME TAX APPELLATE TRIBUNAL
"B" BENCH, AHMEDABAD
BEFORE SHRI G.D. AGRAWAL, VICE PRESIDENT AND
SHRI KUL BHARAT, JUDICIAL MEMBER

आयकर अपील सं./ ITA No. 685/Ahd/2012

निर्धारण वर्ष/Assessment Year: 2007-08

M/s. Kantilal Siyaram, Station Road, Pavi Jetpur, Dist. Baroda, Guajrat PAN: AABFK 9234 D	Vs	ACIT, Central Circle-1, Baroda
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आयकर अपील सं./ ITA No. 688/Ahd/2012

निर्धारण वर्ष/Assessment Year: 2007-08

Shri Manojkumar Kantilal Shah, Station Road, Pavi Jetpur, Dist. Baroda, Guajrat PAN: AJLPS 6906 M	Vs	ACIT, Central Circle-1, Baroda
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अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)
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Assessee(s) by :	Shri Hemant Suthar, AR
Revenue by :	Shri Nimesh Yadav, Sr. DR.

सुनवाई की तारीख/Date of Hearing : 29/05/2015

घोषणा की तारीख /Date of Pronouncement: 05/06/2015

आदेश/O R D E R

PER SHRI KUL BHARAT, JUDICIAL MEMBER:-

These are the appeals filed by two different assessees against separate orders of the Commissioner of Income Tax (Appeals)-IV, Ahmedabad, both dated 10.02.2011 for Assessment Year 2007-08. Since facts and grounds are identical and also these appeals arise out of same search action, both these appeals were taken up together for hearing and are being disposed of by this consolidated order for the sake of convenience.

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2. First, we take up the appeal in the case of M/s. Kantilal Siyaram vide ITA No.685/Ahd/2012 pertaining to Assessment Year 2008-09. In this appeal, the sole ground raised by the assessee reads as under:-

The Id. CIT(A), Ahmedabad, has erred in facts and in law in confirming the penalty imposed u/s 271(1)(c) of the Act of Rs.1,01,000/- in respect of the income of Rs.3,00,000/- disclosed during the course of search proceedings, which was offered for taxation in the revised return of income. Thus, the penalty of Rs.1,01,000/- is prayed to be cancelled.

3. The briefly stated facts are that a search action u/s 132 of the Income-tax Act, 1961 (hereinafter referred to as "the Act") was carried out in the case of M/s Hariom Group of cases on 31.05.2006 covering the business and residential premises. The original return was filed on 31.10.2007 declaring total income at Rs.1,04,490/-. Assessment proceedings u/s 153A were initiated in the preceding assessment years and the case was selected for scrutiny assessment. During the course of assessment proceedings, the Assessing Officer observed certain discrepancies with regard to stock and income earned from unaccounted sources amounting to Rs.2,59,351/- and Rs.40,649/- respectively. The Assessing Officer observed that in the letter dated 04.12.2008, the assessee admitted those discrepancies. On 23.12.2008, the assessee filed its revised return declaring total income of Rs.4,04,490/-. The Assessing Officer framed assessment u/s 143(3), assessing the income as declared in the revised return at Rs.4,04,490/- and also initiated penalty proceedings u/s 271(1)(c) of the Act. The penalty u/s 271(1)(c) of the Act was levied vide order dated 24.06.2009. The Assessing Officer imposed penalty of Rs.1,01,000/-. Against this, the assessee filed an appeal before the CIT(A) who, after considering the submissions of the assessee, dismissed the appeal.

4. The Id. Counsel for the assessee submitted that the authorities below were not justified in levying the penalty and confirming the same. He submitted that a search action was carried out on 31.05.2006 and the assessee had made payment of advance tax on 15.06.2006 on the basis of

disclosure made. He submitted that inadvertently in the original return this amount was not incorporated; however when it was pointed out by the Assessing Officer, the same was incorporated by way of revised return which was filed on 23.12.2008.

5. On the contrary, the Id. Sr.D.R. supported the orders of the authorities below.

6. We have heard the rival contention and perused the material available on record. We find that the CIT(A) has decided the issue in paragraph 2.1 of his order which reads as under:-

2.1 It is evident from record that no explanation was made before the Assessing Officer even after show cause notice issued and served and sufficient time was also allowed to comply with such show cause notice. Apparently, the appellant had not complied with the terms of clause (A) of Explanation 1 to sec. 271(1)(c) of the Act and therefore, the income of Rs.3,00,000/- disclosed during the course of search and added to the total income on account of revised return of the appellant will represent the income in respect of which particulars have been concealed. However, neither any explanation was furnished before the Assessing Officer in compliance to the show cause notice issued nor any reasons were given as to why the show cause notice of the Assessing Officer was not complied with. If the appellant would have been prevented by any reasonable cause for the non-compliance of the show cause notice of the Assessing Officer and such reasonable cause was brought on record during the course of appellate proceedings, the explanation furnished by the Ld. Counsel could have been acceptable after giving the opportunity of being heard to the Assessing Officer. However, the Ld. Counsel of the appellant had failed to furnish any reasonable cause during appellate proceedings for the non-compliance of the show cause notice of the Assessing Officer. Under such circumstances, it is held that the appellant was not prevented by any reasonable cause to comply with the show cause notice issued by Assessing Officer. The appellant on account of negligence had not furnished any explanation in compliance to the show cause notice of the Assessing Officer. Therefore, the Assessing Officer was justified in imposing the penalty u/s 271(1)(c) of the Act for concealing the particulars of income to the extent of Rs.3,00,000/-. The penalty so levied for Rs.1,01,000/- is hereby confirmed. The first ground of appeal is accordingly dismissed.

7. The undisputed facts in this case are that in the original return the assessee had not incorporated the discrepancies found during the course of search proceedings i.e. the amount related to unaccounted stock amounting to Rs.2,59,351/- and income earned from unaccounted sources amounting to Rs.40,649/- which was admitted by the assessee during the course of survey proceedings. The assessee had made payment of advance tax on 15.06.2006 on the basis of disclosure made, as per the note submitted during the appellate proceedings before this Tribunal. As per the original return, the advance tax paid is of Rs.35,000/-; however, the contention of the assessee is that advance tax was paid on 15.06.2006 amounting to Rs.1,01,000/-. In the revised return, the advance tax paid is of Rs.1,36,000/-. As per calculation of tax enclosed with the original return, the assessee has claimed to have paid advance tax on 27.03.2007 of Rs.35,000/-. In the original return, the assessee has not claimed advance tax paid on 15.06.2006 amounting to Rs.1,01,000/-. However, in the revised return, the assessee has claimed that it had paid advance tax of Rs.1,01,000/- on 15.06.2006 and Rs.35,000/- on 27.03.2007. It is the contention of the assessee that inadvertently the amount disclosed was not incorporated into the original return of income. However, tax on such income was paid by way of advance tax on 15.06.2006. The assessee has not even claimed refund in the original return qua the advance tax paid. Therefore, the penalty ought not to have been levied.

8. We have given our thoughtful consideration to the submission of the assessee as well as the material placed on record. It is the settled proposition of law that a *bonafide* mistake of the assessee cannot be fastened with the liability of penalty. The assessee has claimed that advance tax was paid, which was not recorded in the original return, when the assessee realized the mistake which was pointed out by the Assessing Officer during the assessment proceedings. The assessee filed a revised return although such

revised return was not filed within the prescribed time limit. Under the peculiar facts of the present case, we deem it proper to restore the issue to the file of the Assessing Officer for verification whether the assessee had made payment of advance tax on 15.06.2006, amounting to Rs.1,01,000/- on the basis of disclosure made. Thereafter, the Assessing Officer would delete the penalty levied u/s 271(1)(c) of the Act in case he finds that assessee already made the payment of advance tax on 15.06.2006 for Rs.1,01,000/-. Accordingly, the appeal filed by the assessee is allowed for statistical purposes.

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9. In this appeal by the assessee i.e. Shri Manojkumar Kantilal Shah for Assessment Year 2007-08, identical grounds are raised. Therefore, for the detailed discussion in the case M/s. Kantilal Siyaram in ITA No.685/Ahd/2012 for Assessment Year 2007-08, this appeal of the assessee is also allowed for statistical purposes.

10. In the result, both the appeals filed by the assessee are allowed for statistical purposes.

Order pronounced in the Court on 5th June, 2015 at Ahmedabad.

Sd/-

**(G.D. AGRAWAL)
VICE-PRESIDENT**

Ahmedabad; Dated 05/06/2015

Spn T, PS

Sd/-

**(KUL BHARAT)
JUDICIAL MEMBER**

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT,
Ahmedabad
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

TRUE COPY

उप/सहायक पंजीकार (Dy./ Asstt.Registrar)
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad