

THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD "B" BENCH

**Before: Ms. Annapurna Gupta, Accountant Member
And Shri Siddhartha Nautiyal, Judicial Member**

**ITA Nos. 517 & 518/Ahd/2019
Assessment Years 2006-07 & 2007-08**

Shri Amitkumar Hasmukhbhai Shah, 101, Gautam Apartment, B-21/22 Rang Yogi Society, Nr. Shrenik Park Cross Road, Akota, Vadodara-390020 PAN: AGIPS3476L (Appellant)	Vs	Dy. CIT, Circle-1(2), Vadodara-390007 (Respondent)
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**Assessee by: Shri Aseem L. Thakkar, A.R.
Revenue by: Shri Rakesh Jha, Sr. D.R.**

Date of hearing : 28-12-2022
Date of pronouncement : 18-01-2023

आदेश/ORDER

PER : SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER:-

These appeals are arising out of orders passed by Ld. CIT(Appeals) for assessment years 2006-07 and 2007-08 vide orders dated 17-01-2019 and 17-01-2019 respectively. Since common issues are involved in both the years under consideration, both the appeals are being disposed of by way of a common order.

2. We shall first take up assessment year 2006-07.

Grounds of Appeal (A.Y. 2006-07)

“1. The learned Commissioner of Income Tax (Appeals) has erred in confirming the Penalty of Rs.36,320/- levied by the Assessing Officer u/s.271(1)(c) of the I.T. Act, 1961 I.T. Act, 1961.

2. The Appellant craves leave to add, alter, amend or modify any of the grounds of appeal on or before the date of hearing of appeal.”

3. The brief facts of the case are that the assessee filed return of income on 22-03-2007 declaring total income at ₹ 16,20,430/-. During the course of survey proceedings under section 133A of the Act, it was noticed that the assessee is also carrying out transport business in the name of M/s Chandan Carrier. On enquiry, it was observed that M/s Chandan Carrier, though was owned by Shri Nilesh Shah, however, the AO observed that M/s Chandan Carrier did not own any trucks for transportation business. Moreover, the business premises of M/s Chandan Carrier were owned by the father of the assessee and for taking the premises on rent, M/s Chandan Carrier did not pay any rent. Enquiry from HDFC bank further revealed that the assessee is the authorised signatory, power of attorney holder and mandate holder in the case of M/s Chandan Carrier. The business activities of M/s Chandan Carrier was limited to movement of truck/tankers owned by the assessee. Accordingly, the AO passed the order adding a sum of ₹ 1,07,890/- on the ground that the assessee is the benami owner of M/s Chandan Carrier and has full control over its business and such income earned by M/s Chandan Carrier should have been taxed as income in the hands of the assessee. Since, during the year Shri Nilesh Shah had declared income of ₹ 1,07,890/- as income from proprietary business of M/s Chandan Carrier, but in reality

the assessee was the effective owner of such business, the aforesaid income of ₹ 1,07,890/- was added by the AO as the income of the assessee in his hands. The matter travelled to Ld. CIT(Appeals) and finally to ITAT, Ahmedabad, who set aside the matter on the issue of addition of ₹ 1,07,890/- for fresh adjudication after carrying out necessary verification. During the fresh assessment proceedings addition of ₹ 1,07,890/- was again made by the AO in the hands of the assessee and he further proceeded to impose penalty u/s 271(1)(c) of the Act for concealing the particulars of income of ₹ 1,07,890/- received by the assessee from M/s Chandan Carrier (a business which was effectively owned by the assessee).

4. In appeal, Ld. CIT(Appeals) confirmed the penalty imposed by the AO u/s 271(1)(c) of the Act, with the following observations:

“4.1. The sole ground of appeal is related to the imposition of penalty u/s 271(1)(c) of the Act amounting to Rs.36,320/-. A survey u/s 133A of the Act was carried out in this case. During the assessment proceedings, the AO noticed that the assessee was not only authorized signatory but also mandate holder of the business “M/s. Chandan Carrierl.” He, therefore, that M/s. Chandan Carriers was appellant’s benami concern. In the first appeal the CIT(A) concurred with AO’s action holding that Nilesh Shah, his realtive was mask in Chandan Carrier business and behind the mask was the appellant Shri Amit Kumar H Shah.

4.1.1 In second appeal, the Hon'ble ITAT did not give any relief to the appellant with a direction that the ITR of the appellant be verified and if income from Chandan Carrier is shown then, no addition is to be made. However, in consequential order u/s 143(3) rws 254 dated 24.10.2016, the appellant's claim was not found to be sustainable. At present, the addition on this count is confirmed with final finding that the appellant was actually behind the business of Chandan Carriers and Nilesh Shah was only a mask. The appellant has relied upon the previous orders of CIT(A)-II, Baroda passed in assessee's favour. However, he has not produced a copy of order before me. Therefore, the appellant do not deserve any relief. Imposition of penalty is therefore, upheld, Thus, the only ground of appeal fails.”

5. The assessee is in appeal before us against the order confirming the penalty by Ld. CIT(Appeals). The primary contention of the counsel for the assessee before us is that the income which has been sought to be taxed by the AO in the hands of the assessee belongs to Shri Nilesh Shah as proprietor of M/s Chandan Carrier. The counsel for the assessee produced before us the assessment order in the case of Shri Nilesh Shah (proprietor M/s Chandan Carrier) for assessment year 2006-07 and submitted that the said income which is sought to be taxed in the hands of the assessee has already being assessed in the name of Shri Nilesh Shah as proprietor of M/s Chandan Carrier. He further produced copy of return of income of Shri Nilesh Shah for assessment year 2007-08 as well and the intimation passed under section 143(1) of the Act accepting the return of income filed by Shri Nilesh Shah. Accordingly, the counsel for the assessee submitted that the aforesaid income has already been accounted for in the return of income for Shri Nilesh Shah (as proprietor of M/s Chandan Carrier) and hence there is no cause for imposing penalty u/s 271(1)(c) of the Act in the hands of the assessee in respect of the aforesaid income. The counsel for the assessee further argued that in the instant facts penalty has been levied only on the basis that proprietorship firm M/s Chandan Carrier is effectively held by the assessee. However, the counsel for the assessee submitted that the Revenue has erred in ignoring the fact that the aforesaid income has already been subject to tax in the hands of Shri Nilesh Shah as proprietor of M/s Chandan Carrier. The counsel for the assessee placed reliance on the case of **Patel Chemical Works v. Assessing Officer 180 Taxman 99 (Gujarat)** in support of his contention. In response, DR placed reliance on the

observations made by Ld. CIT(Appeals) in his order confirming the levy of penalty u/s 271(1)(c) of the Act.

6. We have heard the rival contentions and perused the material on record. We observe that in the case of **Patel Chemical Works v. Assessing Officer 180 Taxman 99 (Gujarat)**, the High Court held that in penalty proceedings, factum of very same income having been offered to tax by different entity and having been taxed substantially in hands of other entity becomes a relevant factor for determining whether assessee has concealed said income or furnished inaccurate particulars regarding said income which has already been taxed after being shown in hands of different entity, namely, other than assessee. In this case, the High Court made the following note-worthy observations:

However, when the issue is raised in penalty proceedings, the factum of the very same income having been offered to tax by different entity and having been taxed substantially in the hands of other entity becomes a relevant factor for determining whether the assessee has concealed the said income or furnished inaccurate particulars regarding the said income which has already been taxed after being shown in the hands of different entity, namely, other than the assessee. The Court does not intend to convey that in each and every case, in such circumstances, no penalty is leviable at all, but such fact has to be treated as a relevant factor for arriving at a decision

6.1 Now coming to the instant facts, we observe that the income which was sought to be taxed in the hands of the assessee has already been offered to tax as income in the hands of Shri Nilesh Shah for the impugned assessment year and the assessment proceedings have also been completed by the AO in respect of such income. Further, the primary reason for levy of penalty is that the firm M/s Chandan Carrier is effectively held by the assessee, however, it is also a fact that the said income which is sought to be taxed by the AO in the hands of the assessee has already been offered to income by Shri Nilesh Shah (proprietor M/s Chandan Carrier). Therefore, respectfully following the decision of Gujarat High Court in the case of Patel Chemical Works supra, we hold that this is not a fit case for levy of penalty u/s 271(1)(c) of the Act and we hereby direct that the penalty may be deleted.

7. In the result, the appeal of the assessee is allowed for assessment year 2006-07.

Assessment Year 2006-07:

8. The assessee has taken the following Grounds of Appeal:

“1. The learned Commissioner of Income Tax (Appeals) has erred in confirming the Penalty of Rs.67,610/- levied by the Assessing Officer u/s.271(1)(c) of the I.T. Act, 1961 I.T. Act, 1961.

2. The Appellant craves leave to add, alter, amend or modify any of the grounds of appeal on or before the date of hearing of appeal.”

8.1 Since the facts of the case and the issues for consideration are common for both the years under consideration, we hereby direct and the penalty imposed u/s 271(1)(c) of the Act be deleted.

9. In the result, the appeal of the assessee is allowed for assessment year 2007-08 as well.

10. In the combined result, the appeals of the assessee are allowed for both assessment years 2006-07 2007-08.

Order pronounced in the open court on 18-01-2023

Sd/-
(ANNAPURNA GUPTA)
ACCOUNTANT MEMBER
Ahmedabad : Dated 18/01/2023

Sd/-
(SIDDHARTHA NAUTIYAL)
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