

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ अहमदाबाद ।

IN THE INCOME TAX APPELLATE TRIBUNAL

**"A" BENCH, AHMEDABAD
[Conducted Through Virtual Court]**

**BEFORE SHRI RAJPAL YADAV, VICE PRESIDENT And
SHRI WASEEM AHMED, ACCOUNTANT MEMBER**

आयकर अपील सं./ ITA.No.59/Ahd/2019

निर्धारण वर्ष/ Asstt. Year: 2013-14

Salim Valimohamand Meman 4, Sahajanand Society Danilimda Ahmedabad. PAN : ACBPM 7325 B	Vs	ITO, Ward-6(1)(5) Ahmedabad.
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अपीलार्थी (Appellant)		प्रत्यर्थी (Respondent)
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Assessee by :	Shri Varis V. Isani, AR
Revenue by :	Shri S.S. Shukla, Sr.DR

सुनवाई की तारीख/Date of Hearing : 10/09/2021

घोषणा की तारीख/Date of Pronouncement: 15/09/2021

आदेश/O R D E R

PER RAJPAL YADAV, VICE-PRESIDENT:

Present appeal is directed at the instance of the assessee against order of Id.CIT(A)-6, Ahmedabad dated 12.11.2018 passed for the Asstt.Year 2013-14.

2. Only grievance of the assessee is that the Id.CIT(A) has erred in confirming penalty of Rs.19,19,029/- imposed by the AO under section 271(1)(c) of the Income Tax Act, 1961.

3. With the assistance of the Id.representatives, we have gone through the record carefully. It emerges out from the record that in an

assessment framed under section 143(3) r.w.s. 147 of the Act, the income of the assessee was finalized by making addition of Rs.64,54,080/-. This quantum addition was confirmed by the Id.CIT(A) on account of non-appearance before the Id.first appellate authority. Thereafter, the Id.AO initiated penalty proceedings under section 271(1)(c) by issuance of notice under section 274 of the Act. For want of satisfactory explanation from the assessee in the penalty proceedings, the Id.AO imposed penalty of Rs.19,19,029/- being 100% of the amount of tax sought to be evaded. Action of the Id.AO also confirmed by the Id.CIT(A). Aggrieved by action of the Id.Revenue authorities in imposing penalty under section 271(1)(c) of the Act, the assessee is now before the Tribunal.

4. The Id.counsel for the assessee at the very outset submitted that addition made by the Id.AO and confirmed by the Id.CIT(A) was challenged before the ITAT vide ITA No.2326/Ahd/2018 and the ITAT vide order dated 26.7.2019 has set aside *exparte* order of the Id.CIT(A) on quantum appeal, and remitted the issue back to his file for re-adjudication. Thus, the determination of income for the purpose of taxation is yet to be finalized. In other words, whether the additions on account of unexplained cash deposits in bank, unexplained expenditure and disallowance of deductions claimed under Chapter VIA require to be made in the hands of the assessee or not, is subjudiced before the Id.first appellate authority, and therefore, levy penalty under section 271(1)(c) is not justifiable, and the orders of the Revenue authorities in this behalf are to be set aside back to the file of the Id.CIT(A) for a relook based on the outcome of the additions pending before him. On the other hand, the Id.DR has not disputed factual position of the case stated by the Id.counsel for the assessee.

5. On due consideration of the facts and circumstances, and the submissions of both the parties, we find that sub-clause (iii) of section 271(1)(c) provides mechanism for quantification of penalty. It contemplates that the assessee would be directed to pay a sum in addition to taxes, if any, payable by him, which shall not be less than , but which shall not exceed three times the amount of tax sought to be evaded by reason of concealment of income and furnishing of inaccurate particulars of income. In other words, the quantification of the penalty is depended upon the addition made to the income of the assessee. In the present case, the assessee has filed appeal before the Tribunal against quantum addition in the year under consideration. The Tribunal vide order dated 26.7.2019 (supra) has remitted the issue back to the file of the Id.CIT(A), therefore, imposition of penalty at this stage is premature and not justifiable. Therefore, since the addition on quantum has been remitted to the file of the Id.CIT(A), we also remit the issue regarding levy of penalty to his file for reconsideration based on the outcome of addition pending before him. In other words, the Id.CIT(A) shall decide the issue regarding levy of penalty after assessing the income in pursuance of Tribunal's order cited (supra) in the assessee's quantum appeal.

6. In the result, appeal of the assessee is allowed for statistical purpose.

Order pronounced in the Court on 15th September, 2021 at Ahmedabad.

Sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER

Sd/-
(RAJPAL YADAV)
VICE-PRESIDENT

Ahmedabad;
Dated 15/09/2021