

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'SMC' अहमदाबाद ।  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**"SMC" BENCH, AHMEDABAD**  
*(Conducted through Virtual Court)*  
**BEFORE SHRI RAJPAL YADAV, VICE-PRESIDENT**

**ITA No.2188/Ahd/2018**  
निर्धारण वर्ष/ Asstt.Year : 2009-10

Late Shri Krishnamurthy Vishvanathan Thiruvaidaimaruthur Through Legal Heir Kala Krishnamurthy Plot No.146, Sector-8 Gandhinagar. PAN : ABTPT 7611 E	Vs.	ACIT, Cir.13 Ahmedabad.
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<b>(Applicant)</b>		<b>(Responent)</b>
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Assessee by :	Shri P.F. Jain, AR
Revenue by :	Shri R.R.Makwana, Sr.DR

सुनवाई की तारीख/Date of Hearing : 24/05/2021  
घोषणा की तारीख /Date of Pronouncement: 04/06/2021

**आदेश/ORDER**

Present appeal is directed at the instance of the assessee against confirmation of levy of penalty under section 271(1)(c) of the Income Tax Act, 1961 by the Id.CIT(A) vide order dated 4.9.2018 for the Asstt.year 2009-10.

2. Brief facts of the case are that the assessee has filed his return of income on 7.7.2009 declaring total income at Rs.6,12,050/-. 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 has deposited a cash of Rs.7 lakhs on 2.9.2008 and Rs.7 lakhs on 3.10.2008. He directed the assessee to explain the source of cash deposits in the Corporation Bank, Satellite Road, Ahmedabad. In response to the

query of the AO, it was contended by the assessee that he was a retired IAS having pension and interest income. He has given cheque of Rs.14,25,000/- to T. Ramkrishna and S. Bhaskara Rao for purchase of some immovable property at Chennai. They have returned this amount in cash and redeposited. The ld.AO was not satisfied with the explanation. He termed it as loan taken by the assessee, whose sources have not been explained, therefore, he made an addition of Rs.14.00 lakhs to the total income of the assessee. Appeal to the CIT(A) did not bring any relief to the assessee. It was informed to me that even addition was confirmed at the level of the Tribunal also. The ld.AO thereafter initiated penalty proceeding against the assessee under section 271(1)(c) of the Act. After hearing the assessee he imposed penalty of Rs.6,74,150/-. Dissatisfied with the penalty order, the assessee filed appeal before the ld.CIT(A). The appeal has been dismissed *ex parte*.

3. It has been brought to my notice that during the pendency of the appeal, the assessee has died. Therefore, no one made appearance before the ld.CIT(A). The ld.counsel for the assessee thereafter took me through page no.21 to 23 wherein the bank statement of Corporation Bank has been placed on record. He drew my attention towards three entries dated 2<sup>nd</sup> April, 2<sup>nd</sup> April and 26<sup>th</sup> April, 2008. In these entries, it has been reflected that vide cheque no.63241, 63239, 63240 amount of Rs.4,75,068/-, 4,75,066/- and Rs.4,76,066/- were given as advance to Shri T. Ramakrishna and S. Bhaskara Rao etc. These amounts have been re-deposited in his account. According to the assessee, he has received this amount in cash and same deposited on 2<sup>nd</sup> September, and 3<sup>rd</sup> October, 2008 during this very

year itself. Thus, according to the assessee, the sources of the deposits are the receipt of money, which were returned from these persons. This explanation of the assessee was not accepted by the AO for want of confirmation from these persons. Therefore, addition was made; but it is not sufficient to visit the assessee with penalty also. Apart from the above, the ld.counsel for the assessee invited my attention towards two-three more defects. He pointed out that notice dated 21.01.2013 issued upon the assessee under section 274 read with section 271(1)(c) of the Act was for the Asstt.Year 2010-11. In other words, the assessment year was wrongly mentioned by the AO. Thus, there is a defect even in the notice issued by the AO. He also pointed out that the AO has not specified the charge against the assessee, where he intended to visit the assessee with concealment of income or furnishing of inaccurate particulars of income. In this way, the ld.counsel for the assessee contended that the assessee does not deserve to be visited with penalty. On the other hand, the ld.DR relied upon orders of the Revenue authorities.

4. I have duly considered rival contentions 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)\*\**

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*(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,)\*\* \*\**

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*(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.”*

5. 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.

6. In the light of the above, let me examine the facts of the present case. A perusal of the record would indicate that the Id.AO has visited the assessee with penalty under section 271(1)(c) of the Act for additions viz. (a) Rs.14 lakhs as unexplained cash deposited in his bank account and non-disclosure of bank interest amounting to Rs.16,014/-. As far as unexplained cash deposit of Rs.14 lakhs is concerned, the Id.counsel for the assessee submitted that source of this money was the advance given by the assessee himself during the year which has been returned back. As far as non-inclusion of interest income is concerned, it was contended to be a *bona fide* mistake, and the assessee being a retired employee might have missed the minor amount from the bank statement while filing the return. It was also contended that the assessee is retired long back and died during the pendency of the appeal before the Id.CIT(A). I have gone through the bank statement. It is duly reflected that in the month of April, he has given advance of roughly Rs.14 lakhs. Thereafter, in the month of September and October, Rs.14 lakhs has been deposited in his account. To some extent, the explanation of the assessee is plausible that he has given advance for purchase of the property which was not materialized and received back the amount during the year itself. The only deficiency in his explanation was that he could not buttress this explanation with supporting evidence i.e. confirmation from two persons viz. T. Ramkrishna & S. Bhaskara Rao. To my mind, he failed to explain the source with support of evidence, but his explanation was not found to be false. The lapse committed at his end may authorise the AO to make addition, but that will not authorise the AO to visit the assessee with penalty. The explanation of the assessee

ought to have been found as false by the AO. Nothing that sort of exercise has been made or any material discernible from the record. As far as interest part is concerned, it is a very small amount. There might have some minor discrepancy while calculating the interest at the time of filing of the return. Considering all these aspects, I am of the view that the assessee does not deserve to be visited with penalty. I allow this appeal, and delete the impugned penalty.

7. In the result, appeal of the assessee is allowed.

**Order pronounced in the Court on 4<sup>th</sup> June, 2021 at Ahmedabad.**

**Sd/-  
(RAJPAL YADAV)  
VICE-PRESIDENT**

Ahmedabad; Dated 04/06/2021