

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'A' अहमदाबाद ।
IN THE INCOME TAX APPELLATE TRIBUNAL
"A" BENCH, AHMEDABAD

(Convened through Virtual Court)

BEFORE SHRI RAJPAL YADAV, VICE PRESIDENT AND
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER

आयकर अपील सं./I.T.A. No. 2082/Ahd/2018
(निर्धारण वर्ष / Assessment Year : 2007-08)

M/s. Aagam Shares & Commodities Pvt. Ltd. 607, Pipardi Ni Pole, Hajapatels Pole, Relief Road, Kalupur, Ahmedabad - 380001	बनाम/ Vs.	DCIT Central Circle -1(1)(1), Ahmedabad - 380015
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AABCK4493P		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी ओर से /Appellant by :	Shri P. D. Shah, A.R.
प्रत्यर्थी की ओर से / Respondent by :	Shri S. S. Shukla, Sr.DR

सुनवाई की तारीख / Date of Hearing	04/03/2021
घोषणा की तारीख /Date of Pronouncement	26/03/2021

आदेश/ORDER

PER PRADIP KUMAR KEDIA - AM:

The captioned appeal has been filed at the instance of the Assessee against the order of the Commissioner of Income Tax(Appeals)-1, Ahmedabad ('CIT(A)' in short), dated 07.08.2018

arising in the penalty order dated 30.06.2017 passed by the Assessing Officer (AO) under s. 271(1)(c) of the Income Tax Act, 1961 (the Act) concerning AY 2007-08.

2. The ground of appeal raised by assessee read hereunder:

“1. That the learned CIT(A) has erred in laws and facts by confirming the penalty of Rs.13,50,000/- u/s. 271(1)(c) of the Act and therefore the ld.AO should be directed to delete the said penalty of Rs.13,50,000/-.”

3. Briefly stated, the assessee company earlier named KGMS Financial Services Pvt. Ltd. is engaged in the business of dealing stock market and purchase and sale of shares. The assessee filed return of income for AY 2007-08 declaring total income of Rs.24,60,420/-. The return filed by the assessee was subjected to scrutiny assessment under s.143(3) of the Act wherein total income was determined at Rs.69,69,045/-. The AO *inter alia* made an addition of Rs.45 Lakhs under s.68 of the Act on account of introduction of share capital at premium in the books of account and consequently imposed a penalty of Rs.13,50,000/- thereon. The quantum addition was sustained by the CIT(A) as well as the ITAT. The imposition of penalty of Rs.13,50,000/- was challenged before the CIT(A) without any success.

4. The assessee has filed appeal before the Tribunal against the imposition of penalty by the AO and sustained by the CIT(A).

5. We have carefully heard the rival submissions on the imposition of penalty and perused the material available on record. The imposition of penalty of Rs.13,50,000/- is in controversy in the given set of facts of the case. It is the case of the assessee that the

addition towards share capital at premium was agreed by the assessee vide letter dated 17th September, 2009 placed before the AO whereby, without prejudice to the bonafides claimed in the share capital, the addition was conditionally agreed to buy mental peace and to avoid long and protracted litigation on a clear understanding that no penalty shall be initiated or be imposed as a consequence of such addition. It is contended that the cross examination of Director of the subscribing companies Shri Rupang Shah was not pressed for cross examination having regard to such offer. It was further contended that in rebuttal, the Director Shri Chetan Shah has stated that transactions are totally genuine without any element of accommodation in the statement pursuant to Section 131 of the Act. The unverified statement of Rupang Shah has been given undue primacy which was given only to absolve him at the cost of assessee. In this background, it is contended that the penalty imposed on share capital money received through banking channel is not justified at all.

6. It was secondly contended that the AO has initiated penalty proceedings under s.274 r.w.s. 271(1)(c) of the Act using the expression '*furnishing inaccurate particulars/concealment of income*'. It was thus contended that apparently, the AO himself has not made any definite satisfaction towards the nature of charge leveled against the assessee required under s.271(1)(c) r.w.s. 271(1B) of the Act. It is contended that so called satisfaction of the AO for initiation of penalty proceedings under s.271(1)(c) of the Act at the threshold clearly constitutes a vague and nondescript satisfaction which does not authorize the AO to initiate penalty proceedings. To support the case of the vague satisfaction formed in the course of assessment proceedings, a reference was made to

the assessment order whereby so called satisfaction was shown to form by the AO.

7. We have perused the assessment order, the appellate orders in the quantum proceedings as well as the penalty order passed. We straightway find that the AO while passing the assessment order dated 29.10.2009 under s.143(3) of the Act initiated penalty on the additions made, alleging 'furnishing inaccurate particulars/ concealment of income'. Section 271(1)(c) of the Act envisages a rule about the AO 'being satisfied in the course of any proceedings under this Act' about the nature of default. We notice that the action of the AO for formation of satisfaction in the course of assessment is quite vague without expressing exact nature of charge proposed against the assessee. The satisfaction in the course of assessment proceedings was neither here nor there. It is not known whether the charge is formed for alleged 'furnishing of inaccurate particulars of income' or for 'concealment of particulars of income'. The assessment order does not clearly specify the nature of default for which the penalty is sought to be initiated and thus suffers from vice of ambiguity. The show cause notice dated 10.01.2017 issued by the AO to the assessee is also completely silent about the nature of charge against the assessee. It is a mandate of law that satisfaction for the initiation of penalty proceedings should be arrived at during the course of any proceedings which could possibly be assessment, re-assessment or rectification proceedings but not during the penalty proceedings. The nature of charge proposed against the assessee is neither discernable from the assessment order nor from the penalty notice. The condition precedent for exercise of jurisdiction under s. 271(1)(c) r.w.s. 271(1B) of the Act is thus not satisfied in the instant case. Having regard to the complex facts involved in the case in hand, the nature

of charge against the assessee cannot be left to imagination. Consequently, the penalty proceedings initiated towards additions made on the basis of vague satisfaction in the course of assessment is a complete non-starter. The consequent penalty imposed under s.271(1)(c) of the Act as a sequel to such invalid satisfaction requires to be quashed.

8. It is also well settled that penalty under s. 271(1)(c) of the Act will not be imposed in every case merely because it is lawful to do so. The penalty will not ordinarily to be imposed unless the party obliged, either acted deliberately in defiance of law or was guilty of contumacious conduct or dishonest act. The explanation offered towards bonafide issue of share capital thus cannot be outrightly rejected when tested on the touchstone of penalty proceedings of strict nature. The fact in the present case does not conclusively establish the malafide on the part of the assessee company. The assessee has filed detailed submissions in the course of assessment. The contentions raised do create some doubt in favour of the assessee. The impugned transactions of issue of share capital have been carried out through banking channel. The statement of third party has not been cross examined to fasten the onerous penalty. Hence, the assessee has shown existence of mitigating circumstances for exoneration from imposition of penalty. Thus, when tested on distinct parameters of penalty proceedings, the issue involved cannot said to be entirely free of any debate whatsoever. Hence, additions towards share capital in question would not *ipso facto* tantamount to alleged concealment of income. It is trite that finding in quantum proceedings for such additions/disallowance cannot be automatically adopted for the purposes of Section 271(1)(c) of the Act.

9. We thus find merit in the plea of the assessee for deletion of penalty on both counts.

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

This Order pronounced on 26/03/2021

Sd/-
(RAJPAL YADAV)
VICE PRESIDENT
Ahmedabad: Dated 26/03/2021

Sd/-
(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER

True Copy

S. K. SINHA

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. राजस्व / Revenue
2. आवेदक / Assessee
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद /
DR, ITAT, Ahmedabad
6. गार्ड फाइल / Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण, अहमदाबाद ।