

आयकर अपीलिय अधिकरण, अहमदाबाद न्यायपीठ 'बी', अहमदाबाद ।
IN THE INCOME TAX APPELLATE TRIBUNAL
“ B ” BENCH, AHMEDABAD

श्री अनिल चतुर्वेदी, लेखा सदस्य एवं श्री कुल भारत, न्यायिक सदस्य के समक्ष ।
BEFORE SHRI ANIL CHATURVEDI, ACCOUNTANT MEMBER And
SHRI KUL BHARAT, JUDICIAL MEMBER

आयकर अपील सं./I.T.A. No.221/Ahd/2015
(निर्धारण वर्ष / Assessment Year : 2010-11)

R.Umedbhai Jewellers Pvt.Ltd. Gold Coin House 234 Carat Market, Ramnagar Sabarmati, Ahmedabad	बनाम/ Vs.	The Dy.CIT (OSD) Circle-5 Ahmedabad
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAECR 3830 J		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी ओर से/ Appellant by :	Shri A.L. Thakkar, AR
प्रत्यर्थी की ओर से/Respondent by :	Shri Narendra Singh, Sr.DR

सुनवाई की तारीख / Date of Hearing	28/08/2015
घोषणा की तारीख/Date of Pronouncement	09/10/2015

आदेश / O R D E R

PER SHRI KUL BHARAT, JUDICIAL MEMBER :

This appeal by the Assessee is directed against the order of the Ld.Commissioner of Income Tax(Appeals)-9, Ahmedabad ['CIT(A)' in short] dated 09/12/2014 pertaining to Assessment Year (AY) 2010-11. The Assessee has raised the following grounds of appeal:-

- 1. The learned Commissioner of Income Tax (Appeals) has erred in confirming the penalty of Rs.1,99,35,135/- levied by the Assessing Officer u/s.271(1)(c) of the 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.*

2. Briefly stated facts of the case are that the assessee filed its return of income declaring total income of Rs.6,29,21,560/- on 31/08/2010. The case of the assessee was picked up for scrutiny assessment and the assessment u/s.143(3) of the Income Tax Act,1961 (hereinafter referred to as “the Act”) was framed vide order dated 26/02/2013. While framing the assessment, the Assessing Officer (AO in short) accepted the income declared as per return dated 31/08/2010. However, the AO initiated the penalty proceedings u/s.271(1)(c) of the Act in respect of the amount of share capital of Rs.5,86,50,000/- admitted being unaccounted income for AY 2010-11 during the course of survey proceedings carried out u/s.133A of the Act at the premises of the assessee on 01.07.2010. Subsequently, the AO levied the impugned penalty amounting to Rs.1,99,35,135/-. The assessee being aggrieved by this order, preferred an appeal before the Id.CIT(A), who after considering the submissions of the assessee dismissed the appeal and confirmed the penalty. Aggrieved by the order of the Id.CIT(A), the assessee is further in appeal before us.

3. The only effective ground in this appeal is against confirmation of penalty of Rs.1,99,35,135/- levied u/s.271(1)(c) of the Act. The Id.counsel for the assessee submitted that the action of the authorities below is *ex-facie* without authority of law and highly arbitrary and

unjustified. He submitted that there is no dispute with regard to the fact that the assessee had filed return of income before the due date of filing of such return. The assessee had declared and disclosed the amount on which penalty has been levied. He submitted that the case-laws as relied upon by the Id.CIT(A) are not applicable on the facts of the present case. He submitted that a bare-reading of section 271(1)(c) would make it clear that the action of the authorities below is unjustified, illegal and without authority of law. The Id.counsel for the assessee vehemently argued that under the facts, no proceedings u/s.271(1)(c) can be initiated. He submitted that as per section 271(1)(c) of the Act, the AO is empowered to initiate proceedings if he is satisfied that any person has concealed the particulars of income or furnished inaccurate particulars of such income. The Id.counsel for the assessee submitted that at the time of filing of the return, the assessee has declared all particulars of income, the income so declared is duly accepted by the AO, therefore, under these facts, the penalty proceedings initiated is illegal and bad in law.

3.1. On the contrary, Id.Sr.DR supported the orders of the authorities below and submitted that the assessee has not voluntarily disclosed the amount of share capital and it was only when detected during survey proceedings on 01/07/2010. The assessee has included the amount in the return of income. The Id.Sr.DR, in support of this contention, has placed reliance on the judgement of Hon'ble Apex Court rendered in the case of

MAK Data (P.) Ltd. vs. CIT reported at [2013] 38 taxmann.com 448 (SC).

4. We have heard the rival submissions, perused the material available on record and gone through the orders of the authorities below as well as the judgement relied upon by the Id.counsel for the assessee. The undisputed facts emerge from the material placed before us are that the assessee filed its return of income pertaining to the assessment year under appeal on 31/08/2010, i.e. before due date of filing of such return, declaring total income of Rs.6,29,21,560/-. A survey action was conducted on 01/07/2010 at the premises of the assessee and during the course of survey proceedings, the assessee admitted to the introduction of share capital of Rs.5,86,50,000/-. The Revenue's contention is that, in case, the survey would have not been carried out at the premises of the assessee, it might have not included this amount into its return of income. Before adverting to the rival contentions, it would appropriate to reproduce the relevant provision of law, for the sake of clarity.

Section 271:- Failure to furnish returns, comply with notices, concealment of income, etc.

(1) If the [Assessing Officer] or the [* * * *] [Principal Commissioner or Commissioner] (Appeals)] or the [Principal Commissioner or Commissioner] in the course of any proceedings under this Act, is satisfied that any person—

(a)....

- 5 -

(b)....

(c) has concealed the particulars of his income or [* * *] furnished inaccurate particulars of such income.

4.1. From the above, it is evident that the proceedings can be initiated when the assessee is guilty of concealing the particulars of his income or furnishing inaccurate particulars of such income. In the instant case, the income declared in the return has been accepted. The AO has observed that from the audited financial statements of the assessee and the return of income filed by the assessee, the assessee had disclosed the amount as “income from other sources”. The assessee duly paid the tax on the disclosed income. However, since the assessee’s disclosure pertains to Financial Year (FY) 2009-10 and the survey was conducted during FY 2010-11, the assessee’s disclosure clearly pertains to an earlier year. The AO observed, this means that had the survey not been conducted in the case of the assessee, this entire amount of Rs.5,86,50,000/- would have been brought into the books of the assessee without paying a single Rupee tax on the entire amount. The AO further observed that the disclosure by the assessee and then subsequent inclusion of the entire amount as “income from other sources” and payment of taxes on the same were clearly the results of the survey. Therefore, the AO has proceeded on the basis of assumption in our view, the penalty proceedings cannot be based on conjectures and surmises. Further, as per AO, there was an obvious and deliberate concealment of income under

the meaning of “concealment of income” as per section 271(1)(c) of the Act. In our opinion, this observation of the AO is contrary to the provisions of law, since it is purely based upon conjectures and surmises. The initiation of penalty proceedings is different from the assessment proceedings u/s.143(3) of the Act. It is not in dispute that the return so filed by the assessee including the amount was a valid return and same was duly filed within the time prescribed under the law. In our considered view, unless the return is filed before the Revenue, the provisions of section 271(1)(c) of the Act would not come into play for the simple reason that section 271(1)(c) envisages two conditions; i.e., concealment of particulars of his income or furnishing inaccurate particulars of such income. The AO has initiated the penalty proceedings for “concealment of income”. However, the AO has accepted the fact that this amount was duly disclosed in the return of income. The return so filed is not declared as illegal or invalid by the AO. Under these facts, we are unable to accept the reasoning given by the AO. The Id.CIT(A) confirmed this reasoning of the AO by relying on the judgement of Hon’ble Apex Court rendered in the case of MAK Data (P.)Ltd. vs. CIT[supra]. We find that the Id.CIT(A) has wrongly applied and misconstrued the judgement of the Hon’ble Apex Court rendered in the case of MAK Data (P.)Ltd. vs. CIT[supra] as the facts in that case recorded by the Hon’ble Apex Court are as under:-

“9. We are of the view that the surrender of income in this case is not voluntary in the sense that the offer of surrender was made in view of detection made by the

AO in the search conducted in the sister concern of the assessee. In that situation, it cannot be said that the surrender of income was voluntary. AO during the course of assessment proceedings has noticed that certain documents comprising of share application forms, bank statements, memorandum of association of companies, affidavits, copies of Income Tax Returns and assessment orders and blank share transfer deeds duly signed, have been impounded in the course of survey proceedings under Section 133A conducted on 16.12.2003, in the case of a sister concern of the assessee. The survey was conducted more than 10 months before the assessee filed its return of income. Had it been the intention of the assessee to make full and true disclosure of its income, it would have filed the return declaring an income inclusive of the amount which was surrendered later during the course of the assessment proceedings. Consequently, it is clear that the assessee had no intention to declare its true income. It is the statutory duty of the assessee to record all its transactions in the books of account, to explain the source of payments made by it and to declare its true income in the return of income filed by it from year to year. The AO, in our view, has recorded a categorical finding that he was satisfied that the assessee had concealed true particulars of income and is liable for penalty proceedings under Section 271 read with Section 274 of the Income Tax Act, 1961.”

4.2. In the present case, it is not the case where the assessee has surrendered the amount during the course of the assessment proceedings. In the case of MAK Data (P.)Ltd.[supra] before the Hon’ble Apex Court, the assessee had already filed its return of income for AY 2004-05 on 27/10/2004, wherein assessee declared a total income of Rs.16,17,040/-, however, before the AO, assessee surrendered another amount of Rs.40.74 lacs to avoid litigation, buy peace and amicable settlement of the dispute. In the present case, the assessee had filed its return of income before the due date of filing and including the amount on which penalty has been levied, admittedly, prior to initiation of assessment proceedings. Further, the Id.CIT(A) failed to take note of the observation of the Hon’ble Apex Court that the survey was conducted more than 10

months before the assessee filed its return of income. Had it been the intention of the assessee to make full and true disclosure of its income, it would have filed the return declaring an income inclusive of the amount which was surrendered later during the course of the assessment proceedings. Consequently, it is clear that the assessee had no intention to declare its true income. In the present case, the assessee has included the amount into the return of income, therefore, in our considered view, the assessee cannot be held guilty of concealing the particulars of income. The Coordinate Bench of the Tribunal (ITAT “A” Bench Ahmedabad) in ITA No.1960/Ahd/2011 for AY 2006-07 in the case of ITO vs. Shri Valibhai Khanbhai Mankad, vide its order dated 27/02/2015 has confirmed the view of the Id.CIT(A) by observing as under:-

“6. The Id. CIT(A) has followed the decision of this Bench of the Tribunal rendered in the case of DCIT Vs. Dr. Satish B Gupta (42 SOT 48)(Ahd). Ld. CIT-DR has contended that the CIT(A) failed to appreciate the fact that the additional income amounting to Rs.41,73,000/- was declared in consequence to the survey action by the Revenue. However, it is not disputed by the Id. CIT-DR that the assessee has declared this income in his original Return of Income, although it was belated return. As per provisions of Section 271(l)(c) of the Income-tax Act, penalty can be imposed if the assessee has concealed the particulars of income or furnishing the inaccurate particulars of such income. There is no dispute with regard to the fact that the particulars of income are reflected in the Return of Income. It is not the case of the Revenue that the returns of income filed were invalid. In fact, the Assessing Officer has proceeded on the basis of the returns filed by the assessee and particulars furnished therein. Therefore, we do not see any good reason to interfere with the order of the Id. CIT(A)

ITA No.221/Ahd/2015
R.Umedbhai Jewellers Pvt.Ltd. vs. Dy.CIT(OSD)
Asst.Year – 2010-11

- 9 -

which is hereby confirmed. Thus, this ground of appeal of the Revenue is rejected.”

4.3. In the light of the above, we are of the considered view that the Id.CIT(A) has wrongly applied and misconstrued the judgement of Hon'ble Apex Court rendered in the case of MAK Data (P.)Ltd. vs. CIT[supra] as the facts of the present case are entirely different from the facts of the case of MAK Data (P.)Ltd. vs. CIT[supra], therefore we direct the AO to delete the penalty. Under the facts of the present case, the assessee cannot be held to be guilty of concealment of income. Thus, ground raised in the Assessee's appeal is allowed.

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

Order pronounced in the Court on Friday, the 9th day of October, 2015 at Ahmedabad.

Sd/-
(अनिल चतुर्वेदी)
लेखा सदस्य
(ANIL CHATURVEDI)
ACCOUNTANT MEMBER

Sd/-
(कुल भारत)
न्यायिक सदस्य
(KUL BHARAT)
JUDICIAL MEMBER

Ahmedabad; Dated 09/ 10 /2015

टी.सी.नायर, व.नि.स./T.C. NAIR, Sr. PS

*ITA No.221/Ahd/2015
R.Umedbhai Jewellers Pvt.Ltd. vs. Dy.CIT(OSD)
Asst.Year – 2010-11*

- 10 -

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)-9, Ahmedabad
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER.

सत्यापित प्रति //True Copy//

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