

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

सर्वश्री श्री जी.सी.गुप्ता, माननीय उपाध्यक्ष, एवं अनिल चतुर्वेदी, लेखा सदस्य के समक्ष ।
BEFORE S/SHRI G.C. GUPTA, VICE-PRESIDENT AND
ANIL CHATURVEDI, ACCOUNTANT MEMBER)

ITA No.342/Ahd/2011
[Asstt.Year : 2005-2006]

Shri Kirtibhai K. Shroff
Flat No.8-F, Anjan Shalaka
Apartment, Opp: Jain Temple
Lal Bungalow, Athwalines,
Surat.

बनाम/Vs. The ITO, Ward-3(3)
Surat.

PAN : AXIPS 8738 P

(अपीलार्थी / Appellant)

(प्रत्यर्थी / Respondent)

निर्धारिती की ओर से/ Assessee by	:	Shri M.K. Patel
राजस्व की ओर से/ Revenue by	:	Shri Roop Chand, Sr.DR
सुनवाई की तारीख/ Date of Hearing	:	3 rd September, 2014
घोषणा की तारीख/ Date of Pronouncement	:	17/10/2014

आदेश / ORDER

PER G.C. GUPTA, VICE-PRESIDENT: This appeal by the assessee for the Asstt.year 2005-2006 is directed against the order of the CIT(A).

2. The only ground of the appeal of the assessee is as under:

"1. On the facts and in the circumstances of the case as well as law on the subject, the learned CIT(A) has erred in confirming the action of the AO in levying penalty of Rs.97,113/- u/s.271(1)(c) of the IT Act, 1961"

3. The learned counsel of the assessee submitted that the only issue in this appeal of the assessee is regarding validity of penalty under section 271(1)(c) of the Act amounting to ₹ 97,133/-. He submitted that during the course of search certain valuables including jewellery was found and the assessee has filed detailed explanation regarding the source of acquisition of jewellery. The assessee has explained that out of the jewellery found, some part belongs to the wife of the assessee, and some part thereof was gifted by the mother of the assessee to the wife of the assessee. However, the explanation of the assessee was not fully accepted and out of jewellery weighing 4492.5 grams found at the time of search, the jewellery weighing 783.15 grams was treated as income from undisclosed source by the AO. He submitted that the assessee has filed explanation, and merely because it was not accepted during the assessment proceedings, it does not mean that the assessee is guilty for concealment of income or filing of inaccurate particulars of income. He submitted that the explanation of the assessee was *bona fide*.

4. The learned DR has opposed the submissions of the learned counsel for the assessee. He submitted that the disclosure was made by the assessee at ₹1.65 crores at the time of search proceedings. The same was not full and fair and some part of the jewellery weighing 783.15 grams was added in the hands of the assessee. He relied on the orders of the AO and the CIT(A).

5. We have considered rival submissions and perused the orders of the AO and the CIT(A) as well as assessment order and the order of the appellate authority in quantum appeal of the assessee. We find that the assessee has filed a detailed explanation regarding source of acquisition of

jewellery found at the time of survey. The assessee has also made a disclosure of ₹1.65 crores at the time of search proceedings, taking into consideration the on-money received on sale of land and certain other investment, and has disclosed an amount of ₹1.65 crores in its return of income filed in response to the notice under section 153A of the Act in the name of the assessee or his family members. We find that merely because the explanation of the assessee with regard to the acquisition of some part of the jewellery not accepted by the taxing authorities, it does not follow that the assessee was guilty of concealment of income or filing of inaccurate particulars of income. There is no material brought on record on behalf of the Revenue to suggest that the explanation of the assessee regarding source for acquisition of jewellery was not bond fide. In these facts of the case, we are of the view that it is not a fit case for imposition of penalty under section 271(1)(c) of the Act which is accordingly cancelled, and the ground of the appeal of the assessee is allowed.

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

Order pronounced in Open Court on the date mentioned hereinabove.

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

Sd/-
(जी.सी.गुप्ता/G.C. GUPTA)
उपाध्यक्ष /VICE-PRESIDENT

Copy of the order forwarded to:

- 1) : Appellant
- 2) : Respondent
- 3) : CIT(A)
- 4) : CIT concerned
- 5) : DR, ITAT.

BY ORDER
DR/AR, ITAT, AHMEDABAD