

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'D', NEW DELHI)**

BEFORE SHRI J.S. REDDY, ACCOUNTANT MEMBER
AND SHRI KULDIP SINGH, JUDICIAL MEMBER

I.T.A. No. 5249/Del/2013

Assessment year : 2007-08

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| Dr. Kaushal Goel, Prop. M/s. Kaushal Surgical Hospital & Maternity Home, Model Town, Rewari | Vs. | ACIT. CC-II, Faridabad |
|--|-----|---------------------------|

GIR / PAN:AHNPG3149A

(Appellant)

(Respondent)

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| Appellant by : | Shri Somil Agarwal, Adv. Ms. Poonam Ahuja, Adv. |
| Respondent by : | Ms. Rishpal Bedi, Sr. DR |

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| Date of hearing | : | 18.11.2015 |
| Date of pronouncement | : | 27.11.2015 |

ORDER

PER KULDIP SINGH, JM:

The appellant, Dr. Kaushal Goel (assessee), by filing the present appeal, sought to set aside the impugned order dated 31.07.2013 passed by Ld. CIT(A) (Central), Gurgaon qua the assessment year 2007-08 confirming the penalty imposed by A.O. u/s 271(1)(c) of the Income Tax Act, 1961 (hereinafter referred as 'the Act), on the grounds inter alia that:-

"1. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of Ld. AO in levying penalty u/s 271(1)(c) and that too @300% in respect of the income of Rs.4,95,000/-, more so when appellant was entitled to immunity under Explanation 5 to section 271 (1)(c) or Income Tax Act, 1961.

2. *That in any case and in any view of the matter, action of Ld. CIT(A) in confirming the action of Ld. AO in levying the penalty u/s 271(l)(c) and that too @ 300% is bad in law and against the facts and circumstances of the case.*
 3. *That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of Ld. AO in levying penalty u/s 271(l)(c) in respect of the income of Rs.4,95,000/- and framing the impugned assessment order u/s 143(3)1153B(l)(b) dated 19-12-2008 is also contrary to law and facts.*
 4. *That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of Ld. AO in levying penalty u/s 271 (l)(c) which is bad in law being beyond jurisdiction and barred by limitation and contrary to the principles of natural justice and has been passed by recording incorrect facts and findings and without giving adequate opportunity to the assessee and the same is not sustainable on various legal and factual grounds.*
 5. *That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of Ld. AO in imposing a penalty of Rs.20,79,453/- that too without recording mandatory "satisfaction" as per law."*
2. Briefly stated, the facts of this case are that during the search and seizure operation conducted at the residence of the assessee, Dr. Kaushal Goel, and Kaushal and Surgical Hospital and Maternity Home, documents / loose papers detailed as Annexure-12, were seized from the premises. During the assessment proceedings u/s 153B read with Section 143(3) of the Act, addition to the tune of Rs.4,95,000/- on account of demand draft purchased and Rs.15,50,000/- as unaccounted cash found in locker, were made. The assessee carried the matter before Ld. CIT(A) who has dismissed the appeal, confirming the addition and proceeded to levy of penalty u/s

271(1)(c) of the Act on account of issue of addition of Rs.4,95,000/- made on account of purchase of demand drafts and Rs.15,50,000/- on account of unaccounted cash. During the course of assessment proceedings, the assessee preferred to offer the amount of RS.4,95,000/- for taxation in his hand subject to no penal inferences which were not accepted by the A.O.

3. During the course of search of locker No.152 maintained with State Bank of India, Rewari in the joint names of assessee and his wife, cash amount of rs.15,50,000/- was found and seized. However, the assessee failed to explain the source of cash in question found in the locker despite availing several opportunities, consequently, A.O. treated the cash found from the locker as unaccounted money and made addition of Rs.15,50,000/-. Finding concealment of income of Rs.20,54,000/- (4,95,000/- + 15,50,000/-) , penalty @ 300% i.e. Rs.20,79,453/- has been imposed.

4. The assessee carried the matter before Ld. CIT(A) who has partly allowed the appeal by deleting the penalty amount on addition of Rs.15,50,000/-. Feeling aggrieved, the assessee has come up before the Tribunal by filing the present appeal.

5. We have heard Ld. Authorized Representatives of the parties and have gone through the material on record in the light of facts and circumstances of the case and orders of tax authorities below.

6. Ld. A.R. Challenging the impugned order, contended inter alia that Ld. CIT(A) has erred in confirming the penalty order that the penalty imposed in Assessment Year 2007-08 on the basis of documents seized on 14.06.2004 is not sustainable in the eyes of law being without jurisdiction; that in the penalty proceedings assessee has also challenged the assessment

proceedings and relied upon the orders passed by ITAT, Lucknow 'A' Bench in case entitled ACIT Vs Smt. Surinder Kaur 120 TTJ 618.

7. On the other hand, Ld. D.R. repelled the arguments advanced by the Ld. A.R. for the Assessee and contended that once the assessee has reflected the surrendered amount in his return of income, Revenue is justified in imposing the penalty which is chargeable in the given circumstances.

8. It is settled principle of law that penalty proceedings as well as assessment proceedings are to be decided independently and the penalty proceedings are not to be influenced by the assessment proceedings in any manner whatsoever. Undisputedly, on the basis of search and seizure operation on 24.08.2006 at the hospital cum residence of the assessee, documents/ bank slips dated 14.06.2004 showing purchase of demand drafts to the tune of Rs.4,95,000/- and unaccounted cash of Rs.15,50,000/- were seized from the locker maintained with SBI, Rewari in the joint name of the assessee and his wife, the seized and unaccounted income of Rs.20,45,000/- (Rs.4,95,000+15,50,000) has been assessed during the assessment year 2007-08 vide assessment order dated 19.12.2008 on the basis of which penalty proceedings have been initiated.

9. Now, the sole question arises for determination in this case is, "*as to whether penalty order passed by ACIT is without any jurisdiction, having been passed on the basis of bank slips dated 14.06.2004 showing unaccounted income of Rs.4,95,000/-, the said income having been assessed during the year 2007-08.*"

10. Undisputedly, the assessee has reflected the surrendered amount of Rs.4,95,000/- in his income tax return on the basis of which assessment order dated 19.12.2008 qua the assessment year 2007-08 has been passed.

Undisputedly, when the unaccounted income of Rs.4,95,000/- was pertaining to the Assessment Year 2005-06 as per bank slips dated 14.06.2004, the A.O. has no jurisdiction to initiate the penalty proceedings on the basis of assessment order dated 19.12.2008 qua the Assessment Year 2007-08. Even otherwise the revenue was empowered to reopen the assessment of the assessee qua the Assessment year 2005-06 to make an addition of Rs.4,95,000/- pertaining to relevant year, but the revenue has not preferred to do so.

11. The contention of Ld. D.R. that once the assessee has himself reflected and surrendered the unaccounted income of Rs.4,95,000/- in his Income tax return the defense of lack of jurisdiction is not available to the assessee, is not tenable for the two reasons: one that there is no estoppels against the statute because when defense is available by virtue of statute to the assessee, the penalty proceedings being independent one, he cannot be estopped merely by virtue of the fact that he himself has surrendered the unaccounted income in his income tax return, because the assessee claimed to have surrendered the amount of Rs.4,95,000/- to buy peace of mind and to avoid the protracted litigation; Second, when the revenue has statutory power to proceed against the assessee by reopening the assessment of a particular assessment year and then initiating the penalty proceedings, it cannot be allowed to proceed mechanically to invoke the penal provisions. So initiating the penalty proceedings on the basis of void assessment order are not sustainable in the eyes of law. Assessee is well within his right to take this defence of challenging the assessment order even though assessment order has not been challenged, at the time of challenging the penalty order.

12. Coordinate Bench in the case entitled ACIT Vs Smt. Surinder Kaur 120 TTJ 618 decided the identical issue in the identical circumstances in favour of the assessee, which is applicable to the facts and circumstances of the case. So, when the foundation of addition on unaccounted income of Rs.4,95,000/-, though not challenged by the assessee, is not sustainable in the eyes of law, the question of imposing penalty qua the said amount, does not arise.

13. In view of what has been discussed, we are of the considered view that the impugned order passed by Ld. CIT(A) confirming the penalty @ 300%, the amount of Rs.4,95,000/- is not sustainable in the eyes of law, hence, hereby set aside and the appeal of the assessee is allowed.

16. Order pronounced in the open court on 27th Nov., 2015.

Sd./-

(J. S. REDDY)
ACCOUNTANT MEMBER
Date: 27th Nov., 2015
Sp

Sd./-

(KULDIP SINGH)
JUDICIAL MEMBER

Copy forwarded to:-

1. The appellant
2. The respondent
3. The CIT
4. The CIT (A)-, New Delhi.
5. The DR, ITAT, Loknayak Bhawan, Khan Market, New Delhi.

True copy.

By Order

(ITAT, New Delhi).

| S.No. | Details | Date | Initials | Designation |
|-------|--|----------|----------|-------------|
| 1 | Draft dictated on | 23/11 | | Sr. PS/PS |
| 2 | Draft placed before author | 23,26,26 | | Sr. PS/PS |
| 3 | Draft proposed & placed before the Second Member | | | JM/AM |
| 4 | Draft discussed/approved by Second Member | | | AM/AM |
| 5 | Approved Draft comes to the Sr. PS/PS | 27/11/15 | | Sr. PS/PS |
| 6 | Kept for pronouncement | 27/11 | | Sr. PS/PS |
| 7 | File sent to Bench Clerk | 27/11 | | Sr. PS/PS |
| 8 | Date on which the file goes to Head Clerk | | | |
| 9 | Date on which file goes to A.R. | | | |
| 10 | Date of Dispatch of order | | | |