

IN THE INCOME TAX APPELLATE TRIBUNAL “A” BENCH: KOLKATA
[Before Shri M. Balaganesh, AM & Shri S. S. Viswanethra Ravi, JM]

I.T.A No. 195/Kol/2015
Assessment Year: 2010-11

Arup Mukherjee (PAN:AGQPM8298Q) Vs. Assistant Commissioner of Income-tax,
Circle-1, Hooghly.
(Appellant) (Respondent)

Date of hearing: 28.11.2016
Date of pronouncement: 02.12.2016

For the Appellant: Shri Somnath Ghosh, Advocate
For the Respondent: Shri Arup Chatterjee, JCIT

ORDER

Per Shri M. Balaganesh, AM:

This appeal by assessee is arising out of order of CIT(A)-6, Kolkata vide Appeal No. 129/CIT(A)-6/ACIT,Cir-1/HG/Kol/2011-12 dated 30.12.2014. Penalty u/s. 221 of the Income tax Act, 1961 (hereinafter referred to as the “Act”) for AY 2010-11 was levied by ACIT, Circle-1, Hooghly vide his order dated 16.05.2011.

2. The only issue to be decided in this appeal is as to whether the Ld. CIT(A) is justified in upholding the levy of penalty of Rs.5000/- u/s. 221 of the Act by AO in the facts and circumstances of the case.

3. Brief facts of this issue are that the assessee is an individual working as Development Officer with Life Insurance Corporation of India. The assessee filed his return of income u/s. 139(1) of the Act for AY 2010-11 on 09.07.2010 disclosing total income at Rs.19,35,900/-. The said return was processed u/s. 143(1) of the Act on 05.05.2011 by the AO wherein it was found that the assessee had failed to pay self assessment tax of Rs.61,689/- on the returned income. The assessee made the payment of self assessment tax together with further interest on 16.05.2011 amounting to Rs.72,612/-. For non-payment of self assessment tax along with the return of income, the AO initiated penalty proceedings u/s. 221 of the Act. The assessee replied stating that the default was first in his nature and

stemming up from the fact that he was unaware of the statutory requirement. The AO, however, not impressed with the explanation of the assessee went on to observe that “since the self assessment tax has been paid by the assessee along with interest and this is the first default in making payment of self assessment tax by the assessee, a token penalty of Rs.5000/- is imposed u/s. 221 of the Act for failure to deposit the due self assessment tax before submission of the return.” This action of the AO was upheld by the Ld. CIT(A) in first appeal. Aggrieved, the assessee is in appeal before us on the following ground:

I. For that the Ld. CIT(A)-6, Kolkata failed to appreciate that none of the conditions precedent existed and/or have been complied with and/or fulfilled by the Ld. ACIT, Circle-1, Hooghly for his alleged assumption of jurisdiction u/s. 221 of the Income Tax Act, 1961 which culminated in the order imposing penalty dated 16.05.2011 and the specious order so passed in pursuance to the impugned notice dated 05.05.2011 without considering “the good and sufficient reasons” prevailing in the facts and circumstances of the instant case is therefore ab initio void, ultra vires and ex facie null in law.”

4. The Ld. AR argued that though the assessee did not pay the requisite self assessment tax along with the filing of the return of income u/s. 139(1) of the Act, later on sought to revise the return u/s. 139(5) of the Act within the prescribed time limit thereon wherein exemption u/s. 10(14) of the Act towards additional conveyance allowance and incentive bonus totaling to Rs.1,99,643/- was claimed which ultimately resulted in reduction of taxable income and resulted in refund of Rs.70,554/-. This revised return was filed on 25.07.2011. He argued that the very basis for levy of penalty u/s. 221(1) of the Act got defeated in view of ultimate claim which resulted in refund of Rs.70,554/-. Accordingly, he argued that the levy of penalty u/s. 221(1) of the Act is not maintainable. In response to this, Ld. DR supported the order of the lower authorities.

5. We have heard rival submissions and gone through facts and circumstances of the case. It is not in dispute that the assessee had filed a revised return on 25.07.2011 wherein he had claimed exemption u/s. 10(14) of the Act to the tune of Rs.1,99,643/- which in turn brought down the taxable income to that effect and clearly resulted in refund of Rs.70,554/-. No assessment was framed u/s. 143(3) of the Act for the said revised return. The Ld. AR also argued that the said claim of exemption u/s. 10(14) of the Act had been regularly claimed by the assessee in all the preceding years and had been granted exemption u/s. 10(14) of the Act by the AO duly appreciating the nature of work involved in the earning of income by the assessee. There is no dispute before us as to whether the assessee is indeed

eligible for such claim of exemption u/s. 10(14) of the Act during the year under appeal or not. It is not in dispute before us that the assessee had filed revised return u/s. 139(5) of the Act within the prescribed time limit in order to rectify a genuine omission that had been made in the original return. We also find that the self assessment tax was belatedly remitted by the assessee on 16.05.2011 and revised return was filed u/s. 139(5) of the Act subsequent to that date, because of which the return resulted in a refund of Rs.70,554/-. Hence, ultimately the very basis for levy of penalty u/s. 221(1) of the Act for non payment of self assessment tax gets defeated as rightly argued by the Ld. AR as the assessment ultimately resulted only in refund due to excess payment of tax including self assessment tax by the assessee. Under these circumstances, we have no hesitation in directing the AO to delete the penalty of Rs.5000/- levied u/s. 221(1) of the Act. Accordingly, the ground raised by the assessee is allowed.

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

Order is pronounced in the open court on 02.12.2016

Sd/-

(S.S. Viswanethra Ravi)
Judicial Member

Sd/-

(M. Balaganesh)
Accountant Member

Dated :2nd December, 2016

Jd.(Sr.P.S.)

Copy of the order forwarded to:

1. Appellant – Shri Arup Mukherjee, 7/1, Harish Mukherjee Road, P.O. Bhadrakali, P.S. Uttarpara, Dist. Hooghly, Pin-712232
- 2 Respondent –ACIT, Circle-1, Hooghly
3. The CIT(A), Kolkata
4. CIT , Kolkata
5. DR, Kolkata Benches, Kolkata

/True Copy,

By order,

Asstt. Registrar.