

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES : SMC-2 : NEW DELHI

BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER

ITA No. 4333/Del/2015
Assessment Year : 2008-09

Mrs. Kamlesh Madan,
C-7/148, Sector-8,
Rohini, Delhi – 85
(PAN: ADGPM3970N)

Vs. ITO-Ward-45(4),
New Delhi

(Appellant)

(Respondent)

Assessee By : Shri Rakesh Kumar, Adv.
Department By : Ms. Garima Jain, Sr. DR

Date of Hearing : 03.11.2015
Date of Pronouncement : 17.11.2015

ORDER

This appeal by the assessee is directed against the order passed by the CIT(A)-XXX, New Delhi on 9.9.2014 upholding the penalty of Rs.1,58,050/- imposed by the AO u/s 271(1)(c) of the Income-tax Act, 1961 in relation to the assessment year 2008-09.

2. The brief facts of the case are that the case of the assessee was selected for scrutiny under CASS on the information that assessee has deposited cash amount in savings bank account. During the assessment

proceedings it was found out that total cash deposit in two savings bank account was Rs.26,62,750/- which was claimed to be out of sale proceeds of the clothes. She has further disclosed that the total purchases of clothes were RS.20,67,845/-. Since the turn over of the cloth business was not more than Rs.40 lakhs, therefore, books of accounts was not maintained and appellant has not disclosed any income on account of this business in the return of income. However, she offered RS.1,38,836/- income u/s 44AF of the I.T. Act. However, during the assessment proceedings RS.5,00,000/- was offered under this head. Further, Ld. Assessing Officer added Rs.33,128/- on account of savings bank interest which was not declared by the assessee. AO initiated penalty proceedings u/s 271(1)(c) of the I.T. Act for these additions. During the penalty proceedings it was argued before the Id.AO that to avoid litigation, the assessee has surrendered the amount. AO rejected the explanation of the assessee on the ground that when AO detected the deposit of cash in savings bank account, assessee has declared the income under that head. There was no evidence regarding the sale and purchase of clothes. No receipt book was furnished before the AO. Thereafter, the AO initiated penalty proceedings and imposed the penalty of RS.1,58,050/- u/s. 271(1)(c) of the I.T. Act vide order dated 21.6.2011.

3. Against the above Penalty Order dated 21.6.2011 passed by the Assessing Officer, assessee appealed before the Ld. First Appellate Authority, who vide impugned order dated 9.9.2014 dismissed the appeal of the assessee.

4. Against the above order of the Ld. CIT(A) dated 9.9.2014, assessee is in appeal before the Tribunal.

5. Ld. Counsel of the assessee contended that the assessee, aged about 59 years old was a school teacher. Being on the verge of retirement, she started doing part time retail business of cloth from the year under consideration only from her residence. Beside salary she earned profits from this cloth business. As being a teacher she was filling her Income tax returned herself without any professional help and thus she was under the bona fide belief that business income carried out under sole proprietorship was not to be part of individual income as the same was below the taxable income. After coming to know her mistake she approached a professional and filled her Revised Statement of Income including all the income i.e. Salary+Business Income+ Interest Income of Rs. 33128/- etc. and paid the due tax with interest amounting Rs. 60,000/-. Thus there is no concealment with regards to Business and other income as the assessee has filled her Revised Statement of Income and paid due tax before the Assessment proceedings started. It is

also to be pointed out that the intention of the assessee to disclose the full facts was apparent from the fact that the assessee was asked to give details of Rs. 11,01,000/- deposited in IDBI Bank as per AIR whereas she has disclosed the other bank account with Axis bank in which the cash relating to business was deposited. Thus it is very clear that the Axis bank account or cash deposited in this bank was voluntarily declared by the assessee and not pointed out/detected by the department as alleged in the penalty order confirmed by the CIT.

5.1 He further contended that during the period under consideration assessee has made sales and purchase of Rs. 26,62,750/- and Rs. 20,67,845/- respectively and thus has earned profit of Rs. 1,38,836/-. The assessee has shown Net Profit more than 5% of the Total turnover as prescribed in Section 44AF and hence was not required to maintain Books of accounts which was also produced before the assessing authority. However the assessee has maintained the Sales, Purchase bills and Cash memos, bank statements. Being small business most of the sales and purchase was made in cash. The assessee has submitted details of Month wise sales, Purchase, cash flow statement, affidavit etc. during the assessment proceeding itself. The Statement of the Assessee was also recorded on oath wherein she admitted that she was carrying on the business of cloth with her friend/employee. Hence the assessee

has maintained all the necessary records from which the sales/purchase figures has been arrived and which becomes the base for declaration. Thus this was the solid base for genuine business and not the sham business or a crooked up story as pointed out by the ITO. Here it is also to noted that without the maintained records it was not possible to submit the cash flow statement and details of sales and Purchase to Id. ITO during the assessment proceedings. The details submitted by the assessee has been accepted by the assessing authority as the ITO did not specify any defects in them. The only facts that the assessee could not produce all sales/purchase bills, does not mean that the detail furnished is inaccurate in any manner. These facts were also told to CIT, Appeal during the penalty proceedings. In spite of not having any shortcomings/discrepancies and to end the proceeding amicably, she had offered to surrender a sum of Rs. 5,00,000/- on agreed basis as additional income to buy peace with the department and the Id., A.O. accepted the said offer and made addition of Rs. 5,00,000/- only. However the penalty proceeding was still initiated which is uncalled for as no specific defect was found while making the addition of Rs. 5,00,000/- This figure was based on the voluntary amount offered to tax to end the prolonged litigation by the assessee and the A.O. has only reproduced the submission of surrender in the penalty order. Hence the

penalty imposed on account of concealment of Income and furnishing inaccurate particular u/s 271(1)© is not justified and needs to be deleted. In support of his contention he relied upon the following case laws:-

- Devsons Private Ltd. vs. CIT 329 ITR 483
- CIT vs. Deeksha Holdings Ltd. 196 Taxman 183
- CIT vs. Punjab Tyres (1986) 162 ITR 517 (MP)
- CIT vs. Moti Lal & Co. (1990) 184 ITR 288
- ACIT vs. Smita Commercial & Investment Private Limited 90 Taxman 275 (Delhi); (2000) 246 ITR 216 (Del.)
- ACIT vs. Smt. Geeta Devi (2001) 79 ITD 347 (Del.)

6. On the other hand, Ld. DR relied upon the orders of the authorities below.

7. I have heard both the counsel and perused the orders passed by the Revenue authorities alongwith the written arguments and the case laws relied upon by the Ld. Counsel of the assessee.

7.1 I find that section 271(1)(c) postulates imposition of penalty for furnishing of inaccurate particulars and concealment of income. On the

facts and circumstances of this case the assessee's conduct cannot be said to be contumacious so as to warrant levy of penalty.

7.2 In this regard, I find that the facts and circumstances of the present case are similar and identical to the case laws cited by the Ld. Counsel of the Assessee.

7.3 In the case of Devsons Private Ltd. vs. CIT 329 ITR 483 it has been held that figure arrived at by the AO pertaining to the income of the assessee was the figure disclosed by the assessee himself. The ratio of the case was that the "mere omission from the return of an item of receipt does neither amount to concealment nor deliberate furnishing of inaccurate particulars.

7.4 In the case of CIT vs. Deeksha Holdings Ltd. 196 Taxman 183, I find that the Hon'ble High Court has followed order of the Hon'ble Supreme Court of India in the case of CIT vs. Suresh Chand Mittal, held that where the Department has simply rested on voluntary surrender of the assessee in good faith, the penalty could not be imposed.

7.5 In the case of CIT vs. Punjab Tyres (1986) 162 ITR 517 (MP) it has been held that when a surrender is made to purchase peace or for some other similar reasons, the surrender cannot amount to an admission, constituting evidence of concealment in penalty proceedings.

7.6 In the case of CIT vs. Moti Lal & Co. (1990) 184 ITR 288. In this case the assessee has surrendered certain credit for inclusion in his total income and had in fact made a disclosure under section 271(4A) of the CIT. The High Court observed that the finding of the fact, that there was no evidence other than the admission of the assessee had not been challenged as perverse. Therefore, they had held that the Revenue has not discharged its onus of proving that there was concealments of income. Cancellation of penalty by Tribunal was held justify.

7.7 In the case of ACIT vs. Smita Commercial & Investment Private Limited 90 Taxman 275 (Delhi); (2000) 246 ITR 216 (Del.), in order to buy peace, the assessee surrendered 25 percent of its prescribed share capital on the condition that no penalty be imposed, on fact it was held that the AO had just started the process of enquiry which by itself could not amount to detection of any concealment in this regard, no penalty was called for.

7.8 In the case of ACIT vs. Smt. Geeta Devi (2001) 79 ITD 347 (Del.) the penalty imposed was cancelled by the Tribunal recording a finding that the earlier understatement of income was due to clerical error.

7.9 In the background of the aforesaid discussions and precedents, I find that the levy of penalty in this case is not justified. Accordingly, I

set aside the orders of the authorities below and delete the levy of penalty in dispute.

8. In the result, the appeal filed by the Assessee stands allowed.

Order pronounced in the open court on 17/11/2015.

Sd/-

**[H.S. SIDHU]
JUDICIAL MEMBER**

“SRBHATNAGAR”

Copy forwarded to: -

1. Appellant
2. Respondent –
3. CIT
4. CIT (A)
5. DR, ITAT

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By Order,

Assistant Registrar,
ITAT, Delhi Benches

