

आयकर अपीलीय अधिकरण, इन्दौर न्यायपीठ, इन्दौर
IN THE INCOME TAX APPELLATE TRIBUNAL,
INDORE BENCH, INDORE
श्री डी.टी.गरासिया, न्यायिक सदस्य तथा
श्री ओ.पी.मीना, लेखा सदस्य के समक्ष
BEFORE SHRI D.T. GARASIA, JUDICIAL MEMBER
AND SHRI O.P. MEENA, ACCOUNTANT MEMBER

आ.अ.सं./ I.T.A. No. 422/Ind/2015

निर्धारण वर्ष /A.Ys.: 2006-07

Smt. Padma Kalani, 11, Tukoganj Main Road, Indore. स्था.ले.सं./PAN: AFXPK1177L	Vs.	DCIT, 1(1), Indore.
अपीलार्थी /Appellant		प्रत्यर्थी /Respondent

अपीलार्थी की ओर से/Appellant by	Shri Manjeet Sachdeva and Shri Avinash Gour, Advocates
प्रत्यर्थी की ओर से/Respondent by	Shri Rajeev Jain, Sr. DR

सुनवाई की तारीख Date of hearing	02.01.2017
उद्घोषणा की तारीख Date of pronouncement	13.01.2017

आदेश /O R D E R

PER O.P. MEENA, ACCOUTANT MEMEBR.

This appeal is filed by the assessee against the order of
ld. Commissioner of Income-tax (Appeals)-I, Indore [hereinafter

referred to as the CIT(A)] dated 21.01.2015, for imposition of penalty amounting to Rs. 67,480/- and pertains to assessment year 2006-07.

2. The assessee has taken the following grounds of appeal :-

1. *That the ld. CIT(A) erred in levying the penalty of Rs. 67,480/- u/s 271(1)(c) of the Income-tax Act, 1961, during the appeal proceedings on the addition made u/s 14A of the Income-tax Act, 1961. During the assessment proceedings.*
2. *That the ld. CIT(A) erred in levying the penalty without providing any opportunity to the assessee and as such penalty levied is against the natural law of justice.*
3. *That the ld. CIT(A) levied the penalty suo motu and without appreciating that no penalty proceedings were initiated by the ld. AO on the addition made during the assessment proceedings.*
4. *That the addition was made during the assessment proceedings due to difference of opinion on disallowance u/s 14A of the Income-tax Act and as such does not attract penalty which the ld. CIT(A) failed to appreciate.*
5. *That the penalty levied is unlawful and not based on the facts of the case.*

3. Briefly stated the facts as culled out from the lower authorities are that the assessee is an individual and belongs to Kalani Group. A search action u/s 132 of the Act was carried out at the residential premises of the assessee on 16.04.2009. Accordingly, the proceedings u/s 153A were initiated by issue of notice u/s 153A dated 22.10.2010, in response to which return of income was filed on 06.12.2010 declaring total income at Rs. 3,87,839/- for the assessment year 2006-07, which was assessed u/s 143(3) read with Section 153A on 27.12.2011 by determining total income at Rs. 11,020/- for the assessment year 2006-07 by making disallowances at Rs. 3,98,857/- u/s 14A of the Act for the assessment year 2006-07. Penalty proceedings u/s 271(1)(c) of the Act were also initiated vide notices u/s 274 read with Section 271(1)(c) dated 27.12.2011. It was explained by the assessee that the assessee has declared an amount of Rs. 5,20,000/- for assessment year 2006-07 as admitted during the course of search u/s 132(4) of the Act and the same has been disclosed in the returns of income filed u/s 153A of the

Act. However, the assessee has not considered this income in her return of income filed u/s 139(1) on 24.07.2006. Accordingly, the penalty u/s 271(1)(c) of the Act is leviable. The AO was of the view that as per Explanation (5A) to Section 271(1)(c) of the Act, the assessee shall be deemed to be concealed income where due date for filing of the return is expired u/s 139(1), but the same is included in the return filed after search u/s 139(4) of the Income-tax Act, 1961. Accordingly, the AO invoked the provisions of Explanation (5A) to Section 271(1)(c) of the Act and levied a minimum penalty of Rs. 1,60,000/- for assessment year 2006-07 as against the minimum penalty worked out at Rs. 67,480/- u/s 271(1)(c) of the Act.

4. Being aggrieved, the assessee has filed the appeal before the ld. CIT(A).

5. Before him, the same arguments were advanced by the assessee, which are reproduced by the ld. CIT(A) in his appellate order. The ld. CIT(A) noted that there is no dispute on the facts that after search, the assessee admitted certain

un-accounted income, which was duly incorporated in the returns filed u/s 153A and tax and interest paid on it. The AO has raised a technical point that disclosure of income made in the statement u/s 132(4) of the Income-tax Act, 1961, was a combined disclosure of entire group against which letter of name-wise bifurcation was submitted. This was done by the assessee in consonance with the statement recorded during search u/s 132(4) of the Act, where in reply to question reproduced in the assessment order, the main person of the group stated that he disclosing Rs. 30 crores on behalf of individual of Kalani Family and their Company to cover undisclosed income, receipts and valuable articles found and seized. Therefore, subsequent bifurcation of such disclosure in the names of various individuals and companies was an extension of such statement only. The statement also give basis of disclosure which was “undisclosed income receipts”. The AO accepted that disclosed as such without any objection and even basis of earning such income was also not disputed by the AO. In fact, the AO has himself written in assessment

order that income returned in the return filed u/s 153A was as such accepted and no further addition was made. Therefore, the ld. CIT(A) held that no penalty can be levied on the amount disclosed by the assessee at Rs. 5,20,000/- and duly reflected the same in the return. However, there is an addition of Rs. 3,98,857/- u/s 14A of the Income-tax Act, 1961. For making various investment out of borrowed fund and since this addition is not challenged in appeal that itself is a proof of concealment of such income as held in the case of Chirag Metal Rolling Mills Private Limited, 305 ITR 29 (MP). Such amount was not disclosed during search but was detected by the AO during assessment. Therefore, such disallowances had twin elements – there was a clear case of diversion of borrowed funds in various statement and on such diversion disallowance of interest expenses u/s 14A of the Act was not made suo motu by the assessee. According to the CIT(A), there was a clear case of concealment of such income and non levy of penalty of such amount was a mistake apparent from record, which is being rectified here by the

undersigned by using co-terminus powers of CIT(A), as a result penalty of Rs. 67,480/- is levied on the addition of Rs. 3,98,857/-.

6. Being aggrieved by the order of the CIT(A), the assessee has filed this appeal before the Tribunal.

7. The Ld. Counsel for the assessee submitted that penalty proceedings u/s 271(1)(c) of the Act were initiated on the amount of Rs. 5,20,000/- surrendered during the course of search proceedings by the assessee on which penalty of Rs. 1,60,000/- was levied. The assessee filed an appeal before the ld. CIT(A), who has deleted the penalty levied of Rs.1,60,000/- u/s 271(1)(c) of the Act, but erred in levying the penalty of Rs. 67,480/- u/s 271(1)(c) of the Act on the disallowance of Rs. 3,98,857/- made u/s 14A of the Act. The Ld. Counsel for the assessee contended that the provisions of Section 251(1) of the Act talks of the powers of CIT(A) to vary the quantum of penalty levied which has already been levied. Therefore, the ld. CIT(A) has no power to initiate and impose the penalty u/s 271(1)(c), where the AO did not initiate or did not levy any

penalty for concealment of income, even the powers of the CIT(A) are co-terminus with the powers of the AO, but he has no power to levy penalty. As such penalty levied on the disallowance u/s 14A by the ld. CIT(A) is unlawful and needs to be deleted. The Ld. Counsel for the assessee also placed reliance in support of his proposition in the case of Ajit Ramchandra Jadhav vs. Asstt. Commissioner of Income Tax, I.T.A.No. 2104/PN/2013, wherein the CIT(A) imposed the penalty on additional income offered by the assessee in the return of income in pursuance of certain action on which the AO has not levied the penalty, was deleted by the Tribunal. Without prejudice to above, the Ld. Counsel for the assessee further submitted that case law relied by the ld. CIT(A) are not applicable because it is for surrender and not for disallowance u/s 14A. Further, the ld. CIT(A) levied the penalty suo motu and without appreciating that no penalty proceedings will be initiated on the disallowance u/s 14A of the Income-tax Act, 1961. The Ld. Counsel for the assessee further submitted that the expenses claimed by the assessee were genuine expenses

incurred for the business purpose and there was no contrary observation by the AO. Lastly disallowance made u/s 14A of the Act is on account of legal provision on which facts and figures were correctly disclosed in the return of income. Therefore, this does not amount to furnishing of inaccurate particulars of income. Further, the AO himself has not initiated penalty on the disallowance u/s 14A of the Act nor levied any penalty on this account. In support of his contention, the Ld. Counsel for the assessee relied on the decision in the case of ACIT, Circle 36(1) vs. Global Associates, I.T.A.No. 4819/Del/2012 dated 28th June, 2013, wherein penalty levied on account of disallowance u/s 40(a)(ia) and u/s 14A was deleted by following the decision of Hon'ble Supreme Court in the case of CIT vs. Reliance Petro Products Private Limited, 322 ITR 158 (S.C.) and Price Water Coopers Private Limited vs. CIT, 348 ITR 306 (S.C.). The Ld. Counsel for the assessee further cited decision of Tribunal in the case of ACIT, Circle 30(1) vs. Manish Jain, I.T.A.No. 5999/Del/12 dated 14.6.2013, wherein penalty levied u/s 271(1)(c) on

account of disallowance made u/s 14A read with Rule 8D was deleted. Accordingly, the Ld. Counsel for the assessee argued that the disallowances u/s 14A is mere technical and legal and no penalty is leviable in both the assessment years on account of decision of Hon'ble Supreme Court in the case of Reliance Petro Products (supra).

8. On the other hand, the ld. Departmental Representative relied on the order of the CIT(A).

9. We have considered the facts, rival submissions and perused the material available on record. We find that the AO has initiated penalty proceedings u/s 271(1)(c) on account of income of Rs. 5,20,000/- disclosed in the returns of income filed in response to notice u/s 153A of the Act. The returns of income are so filed were as such accepted except by making disallowance u/s 14A of the Act. However, the AO levied the penalty on the amount disclosed during the course of search, which was came to be deleted by the ld. CIT(A). However, during the appellate proceedings, the ld. CIT(A) has deleted the penalty for the assessment year under appeal on account of

surrendered income, but the ld. CIT(A) has levied a penalty on account of disallowances u/s 14A of the Act. We find that the disallowances u/s 14A have been made on the basis of facts disclosed in the returns of income and the same are being legal in nature nor on which the AO has initiated the penalty proceedings u/s 271(1)(c) of the Act and levied the penalty on such disallowances. Therefore, we are of the considered opinion that disallowances are made on account of legal provision as enumerated in Rule 8D read with Section 14A of the Act, which has been made on the facts disclosed in the return of income. Therefore, the penalty u/s 271(1)(c) of the Act for the assessment year under appeal is not sustainable on such legal disallowances in the light of decision of Hon'ble Supreme Court in the case of CIT vs. Reliance Petro Products P.Limited, (2010) 322 ITR 158 (S.C.), wherein it was held that where there is no finding that any details supplied by the assessee in its returns of income are found to be incorrect or erroneous or false, there is no question of inviting penalty u/s 271(1)(c) of the Act. A mere making of a claim which is not

sustainable in law, by itself, will not amount to furnishing inaccurate particulars regarding income of the assessee. Such a claim made in the return cannot amount to furnishing inaccurate particulars. This view is also supported by the decision of Hon'ble Supreme Court in the case of Price Water Cooper Private Limited vs. CIT, 348 ITR 306 (S.C.). Therefore, we are of the view that the assessee has offered an explanation, which is found to be bona fide and substantiated by the facts relating to the same as disclosed in the returns of income. Therefore, the penalty levied by the CIT(A) for the assessment year under appeal on account of disallowances of expenses u/s 14A read with Rule 8D is not sustainable in law. This view is also supported by the decision in the case of ACIT, Circle 36(1) vs. Global Associates (I.T.A.No. 4819/Del/2012 dated 28.06.2013 (Trib-Delhi) and ACIT, Circle 30(1) vs. Manish Jain (I.T.A.No. 5999/Del/2012 dated 14.06.2013 (Trib-Del). Hence, the penalty levied by the CIT(A) is cancelled. Accordingly, ground nos. 1 to 5 for both the assessment years are allowed.

10. In the result, the grounds of appeal taken by the assessee for the assessment year under appeal are allowed.

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

The order has been pronounced in open court on the
13th January, 2017.

Sd/-
(डी.टी.गरासिया)
न्यायिक सदस्य
(D.T.GARASIA)
JUDICIAL MEMBER

Sd/-
(ओ.पी.मीना)
लेखा सदस्य
(O.P.MEENA)
ACCOUNTANT MEMBER

दिनांक /Dated : 13th January, 2017.

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