

IN THE INCOME TAX APPELLATE TRIBUNAL "C" BENCH : KOLKATA

[Before Hon'ble Sri N.V.Vasudevan, JM & Shri Waseem Ahmed, AM]

I.T.A No. 123/Kol/2014

Assessment Year : 2008-09

Adwaita Das
Kolkata

-vs.-

A.C.I.T., Circle-34,
Kolkata

[PAN : ADGPD 0636 C]

(Appellant)

(Respondent)

For the Appellant : Shri T.K.Chakraborty, Advocate
For the Respondent : Shri Rajat Kumar Kureel, JCIT. Sr.DR

Date of Hearing : 18.04.2017.

Date of Pronouncement : 03.05.2017.

ORDER

Per N.V.Vasudevan, JM

This is an appeal by the Assessee against the order dated 04.09.2013 of C.I.T (A)-XX, Kolkata relating to A.Y.2008-09.

2. In this appeal the assessee has challenged the order of CIT(A) whereby the CIT(A) confirmed the order of AO imposing penalty on the assessee u/s 271(1)(c) of the Income Tax Act, 1961 (Act).
3. The facts and circumstances under which penalty u/s 271(1)(c) of the Act was levied on the assessee by the AO are as follows :-

The Assessee is an individual. He is engaged in the business of supplying of paper and still and is also the director of Das Processing & Trading Pvt. Ltd. The Assessee filed return of income for A.Y. 2008-09 declaring total income of Rs.15,54,250/-. In the course of assessment proceedings u/s 271(1)(c) of the Act, the AO noticed that the assessee had not declared interest on fixed deposit receivable in respect of FDs in the name of the assessee with Karnataka Bank Limited and Corporation Bank. These details of interest accrued on FDs in the name of the assessee was gathered by the AO from ITS details and has not been declared by the assessee in his return of income. The sum of Rs.6,18,011/- was added to the total income of the assessee by the AO as

interest income not disclosed.. In respect of the aforesaid addition made in the course of assessment proceedings the AO initiated penalty proceedings u/s 271(1)(c) of the Act. The AO imposed penalty holding that the assessee has violated the provision of law enumerated in Section 271(1)(c) of the Act by furnishing inaccurate particulars of income and imposed penalty u/s 271(1)(c) of the Act. The CIT(A) confirmed the order of AO. Hence this appeal by the assessee before the Tribunal.

4. The Id. Counsel for the assessee submitted before us that the show cause notice issued u/s 274 of the Act before imposing penalty does not contain the specific charge against the assessee namely as to whether the assessee was guilty of having concealed particulars of income or having furnished inaccurate particulars of income. A copy of the show cause notice u/s 274 of the Act is placed at page-4 of the assessee's paper book and perusal of the same reveals that AO has not struck out the irrelevant portion in the show cause notice and therefore the show cause notice does not specify the charge against the assessee as to whether the charge is of concealment of particulars of income or furnishing of inaccurate particulars of income.

5. The Id. Counsel for the assessee drew our attention to the decision of the Hon'ble Karnataka High Court in the case of CIT vs. SSA's Emerald Meadows in ITA No.380 of 2015 dated 23.11.2015 wherein the Hon'ble Karnataka High Court following its own decision in the case of CIT vs Manjunatha Cotton and Ginning factory (2013) 359 ITR 565 took a view that imposing of penalty u/s 271(1)(c) of the Act is bad in law and invalid for the reason that the show cause notice u/s 274 of the Act does not specify the charge against the assessee as to whether it is for concealment of particulars of income or furnishing of inaccurate particulars of income. The Id. Counsel further brought to our notice that as against the decision of the Hon'ble Karnataka High Court the revenue preferred an appeal in SLP in CC No.11485 of 2016 and the Hon'ble Supreme Court by its order dated 05.08.2016 dismissed the SLP preferred by the department. The Id. Counsel also brought to our notice the decision of the Hon'ble Bombay High Court in the case of CIT vs Shri Samson Perinchery in ITA No.1154 of 2014 dated 05.01.2017

wherein the Hon'ble Bombay High Court following the decision of the Hon'ble Karnataka High Court in the case of CIT vs Manjunatha Cotton and Ginning factory (supra) came to the conclusion that imposition of penalty on defective show cause notice without specifying the charge against the assessee cannot be sustained. Our attention was also drawn to the decision of ITAT in the case of Suvaprasanna Bhattacharya vs ACIT in ITA No.1303/Kol/2010 dated 06.11.2015 wherein identical proposition has been followed by the Tribunal. The Id. DR relied on the order of CIT(A).

6. We have already observed that the show cause notice issued in the present case u/s 274 of the Act does not specify the charge against the assessee as to whether it is for concealing particulars of income or furnishing inaccurate particulars of income. The show cause notice u/s 274 of the Act does not strike out the inappropriate words. In these circumstances, we are of the view that imposition of penalty cannot be sustained. The plea of the Id. Counsel for the assessee which is based on the decisions referred to in the earlier part of this order has to be accepted. We therefore hold that imposition of penalty in the present case cannot be sustained and the same is directed to be cancelled.

7. In the result the appeal of the assessee is accordingly allowed.

Order pronounced in the Court on 03.05.2017.

Sd/-
 [Waseem Ahmed]
 Accountant Member

Sd/-
 [N.V.Vasudevan]
 Judicial Member

Dated : 03.05.2017.

[RG PS]

Copy of the order forwarded to:

1. Adwaita Das, 12A, N.S.Road, 2nd Floor, Room No.8, Kolkata-700001.
2. A.C.I.T., Circle-34, Kolkata.
3. CIT(A)- XX, Kolkata. 4. C.I.T.-XII, Kolkata.
3. CIT(DR), Kolkata Benches, Kolkata.

True copy

By Order

Asstt.Registrar, ITAT, Kolkata Benches

