

**IN THE INCOME TAX APPELLATE TRIBUNAL,
CUTTACK BENCH, CUTTACK**

**BEFORE S/SHRI N.S SAINI, ACCOUNTANT MEMBER
AND PAVAN KUMAR GADALE, JUDICIAL MEMBER**

ITA No.193/CTK/2012
Assessment Year : 2006-07

Biswa Ranjan Patnaik, Or. No.B/571, Nalco Nagar, Angul.	Vs.	ITO, Ward-1, Dhenkanal
PAN/GIR No. ACUPP 0169 M		
(Appellant)	..	(Respondent)

Assessee by : Shri B.R.Panda, AR

Revenue by : Shri D.K.Pradhan, DR

Date of Hearing : 17/05/ 2017

Date of Pronouncement : 17 /05/ 2017

ORDER

Per Pavan Kumar Gadale, JM

This is an appeal filed by the assessee against the order of CIT(A)-1, Bhubaneswar, dated 11.1.2012, for the assessment year 2006-07.

2. The only substantive ground raised by the assessee in this appeal is that the CIT(A) erred in confirming the action of the Assessing Officer in levying penalty of Rs.29,280/- u/s. 271(1)(c) of the Income tax Act, 1961.

3. At the outset, Id A.R. of the assessee has filed additional ground. However, he did not press the additional ground and made an endorsement

to this effect. Therefore, we dismiss the additional ground of appeal of the assessee.

4. Brief facts of the case are that the assessee is a salaried employee and filed his return of income for the assessment year 2006-07 on 30.10.2006 disclosing total income of Rs.2,33,280/-. The return was processed on 21.11.2006 and refund of Rs.29,320/- was issued. On perusal of the assessment record, the Assessing Officer found that the assessee has concealed particulars of income and issued notice u/s.148 of the Act. In compliance to the said notice, the assessee filed return of income disclosing the same as filed in the original return of income. At the request of the assessee, the reasons recorded for reopening the assessment were furnished and the assessee filed written objection to the reopening of assessment and the same was rejected by the Assessing Officer on 8.12.2009. Subsequently, the Assessing Officer issued notice u/s.142(1) calling for the information. The assessee could not file information within the time granted. Therefore, the Assessing Officer rejected the petition and completed the assessment on the basis of materials available on record as the assessment was getting time barred.

5. The Assessing Officer observed that during the year under consideration, in the computation of income, the assessee has disclosed income from house property and also claimed depreciation of building let out and treated the entire income as business income, whereas the Assessing Officer on perusal of facts on record, observed that the assessee

had obtained loan from the employer NALCO for construction of the building and claimed deduction of interest on the borrowings. The Assessing Officer observed that the assessee being a salaried employee cannot disclose the rent from the let out building as business income and rightfully to be taxed as income from house property and, accordingly, disallowed the claim and assessed the total income at Rs.3,34,530/- in an assessment under section 143(3)/147 of the Act.

6. Subsequently, the Assessing Officer initiated the penalty proceedings u/s.271(1)(c). The assessee filed explanation mentioning that the assessee has challenged the reassessment proceedings before the Hon'ble High Court of Orissa and, therefore, prayed for penalty to be kept in abeyance whereas the penalty is barred by limitation before 30.6.2010. The Assessing Officer based on the availability materials found that the assessee has disclosed income under the head "business income" and claimed depreciation, which according to the Assessing Officer, is an act of submission of inaccurate particulars and concealment of income and, accordingly, levied minimum penalty under section 271(1)(c) of Rs.29,280/- by an order dated 28.6.2010.

7. On appeal, the CIT(A) confirmed the order of the Assessing Officer levying penalty. Aggrieved by the order of the CIT(A), the assessee has filed appeal before the Tribunal.

8. Ld A.R. of the assessee argued that the CIT(A) erred in confirming the penalty irrespective of the fact that the addition of depreciation in the

assessment proceedings u/s.143(3)/147 is accepted and the assessment has not been contested by the assessee. Further, the assessee has challenged the reopening of assessment before the Hon'ble High Court and also to buy peace with the Income tax department, the assessee has not taken up the matter in the higher forum and prayed for deletion of penalty. Ld A.R. also relied on the decision Hon'ble Supreme Court in the case of CIT vs. Reliance Petroproducts (P) Ltd.,322 ITR 158 (SC).

9. Contra, Id D.R. relied on the order of the CIT(A) and opposed the grounds of appeal of the assessee.

10. We have heard the rival submissions and perused the orders of lower authorities and materials available on record. The sole contention of Id A.R. of the assessee is that the assessee has not concealed any income or furnished inaccurate particulars of income whereas the assessee in the computation of income, claimed depreciation against house property and rental income and treated the same as business income. In the reassessment proceedings, the assessee accepted the addition and to buy peace with the Income tax Department and to avoid litigation, has not filed any appeal. We also perused the penalty order where the Assessing Officer has relied on the assessment order on the ground that the assessee has claimed depreciation. We also found that prima facie, the Assessing Officer has discretion power and has to consider the reasonable cause before initiating the penalty proceedings. We are of the opinion that every addition in the assessment cannot be a gateway for levy of penalty. There are

various reasons for which the assessee prefer to not to file appeal with the higher forum and to satisfy the income tax department, the assessee had paid tax and interest thereon. We are of the opinion that the assessee has satisfied the Assessing Officer with the explanation of reasonable cause and also accepted the addition. We also support our decision relying on the judicial decision of Hon'ble Karnataka High Court in the case of [CIT vs Manjunatha Cotton and Ginning Factory](#), reported in [2013] 359 ITR 565 (Kar), wherein, Their Lordships have held that penalty cannot be levied on the addition in a general way and held as under:

"Merely because the assessee agreed for addition and the assessment order was passed on the basis of this addition, when the assessee had paid the tax and the interest thereon in the absence of any material on record to show the concealment of income, it could not be inferred that the addition was on account of concealment. Moreover, the assessee had offered an explanation. The explanation was not found to be false. On the contrary, it was held to be bonafide. The cancellation of penalty by the Tribunal was justified."

11. Considering the apparent facts and materials on record and judicial decision, we are inclined to set aside the order of the CIT(A) and direct the Assessing Officer to delete the penalty of Rs.29,280/- levied under section 271(1)(c) of the Act.

12. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open court on /05/2017 in the presence of parties.

(N.S Saini)
ACCOUNTANT MEMBER

(Pavan Kumar Gadale)
JUDICIAL MEMBER

Cuttack; Dated /05/2017
B.K.Parida, SPS

Copy of the Order forwarded to :

1. The Appellant : Biswa Ranjan Patnaik, Qr.
No.B/571, Nalco Nagar, Angul.
2. The Respondent. ITO, Ward-1, Dhenkanal
3. The CIT(A)-1, Bhubaneswar
4. Pr.CIT, Bhubanswar.
5. DR, ITAT, Cuttack
6. Guard file.
//True Copy//

BY ORDER,

SR.PRIVATE SECRETARY
ITAT, Cuttack