

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'F', NEW DELHI
Before Sh. N. K. Saini, AM and Sh. Kuldip Singh, JM**

ITA No. 6706/Del/2014 : Asstt. Year : 2006-07

Dy. Commissioner of Income Tax, Circle-66(1), New Delhi-110002	Vs	Sh. Pramod Bhasin, C-6/6, Vasant Vihar, New Delhi
(APPELLANT)		(RESPONDENT)
PAN No. AABPB8414E		

**Assessee by : Sh. Rohit Garg, Adv.
Revenue by : Sh. Atiq Ahamad, Sr. DR**

Date of Hearing : 18.09.2017	Date of Pronouncement : 21.09.2017
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ORDER

Per N. K. Saini, AM:

This is an appeal by the department against the order dated 12.09.2014 of Id. CIT(A)-XXX, New Delhi.

2. The only grievance of the department in this appeal relates to the deletion of penalty of Rs.16,45,179/- levied by the AO u/s 271(1)(c) of the Income Tax Act, 1961 (hereinafter referred to as the Act) on account of disallowance of exemption u/s 10(10CC) of the Act.

3. During the course of hearing, the Id. Counsel for the assessee at the very outset stated that the additions on the basis of which the penalty u/s 271(1)(c) of the Act was levied by the AO had been deleted by this

bench of the ITAT in ITA No. 4245/Del/2010 vide order dated 20.07.2012 and that the ld. CIT(A) had also deleted this penalty on the basis that the additions were deleted by the ITAT. The aforesaid contention of the ld. Counsel for the assessee was not controverted by the ld. DR.

4. After considering the submissions of both the parties and the material available on the record, it is noticed that the ld. CIT(A) deleted the penalty u/s 271(1)(c) of the Act levied by the AO by observing in para 4 of the impugned order as under:

“4. I have considered the penalty order, written submission filed by the ld. AR of the appellant, paper book containing the various case laws and also appellate order passed by the Hon’ble ITAT in quantum appeal. I agree with the ld. ARs of the appellant. Since the addition had already been deleted by the ITAT on appeal of the assessee, therefore, the very ground on which the penalty was imposed had been taken away, there was no question of imposition of penalty. In view of these facts and also respectfully following the Hon’ble Supreme Court’s decision in the case of K.C. Builders & Another Vs ACIT 265 ITR 562 (SC), I hold that penalty levied by the ld. AO is not justifiable, hence it is deleted.”

5. In the present case, it is an admitted fact that the additions on the basis of which the penalty was levied by the AO has been deleted by the ITAT vide aforesaid referred to order dated 20.07.2012 in ITA No. 4245/Del/2010 by observing as under:

“We have heard the rival submissions of both the parties and have gone through the material available on record. We have observed that in the original assessment order the Assessing Officer kept on talking about the income tax paid by employer on behalf of assessee though the facts of claim of assessee regarding payment of US taxes and that of life insurance premium were also before him. As per notes attached with the computation of income forming part of income tax return, the assessee had declared that GEII at its discretion had opted to pay whole of the taxes u/s 192(1A) of the Act on some of the perquisites not provided by way of monetary payment and the same has been considered exempt. While examining the claim of assessee with respect to taxes borne by employer, he could have considered the other two items viz payment of US taxes and life insurance premium also since all the information was available at one place only. Therefore, we hold the view that no fresh material had come to the notice of the Assessing Officer. The Assessing Officer initiated and concluded re-assessment proceedings on the basis of old information only. The Assessing Officer could have disallowed the exemption of US taxes and life insurance premium at the time of making original assessment itself when he disallowed the exemption with respect to payment of income tax. Therefore, in our considered opinion, the reassessment proceedings were bad in law and we set aside the same.

On the merits also, we do not see any difference between the income tax borne by the employer and payment of US taxes and life insurance premium paid by the employer on behalf of the assessee, as all are non-monetary benefits and are covered by perquisites defined in Section 17(2)(iv). The issue of taxes borne by employer has been dealt by us in ITA No 4244 and matter has been decided in favour of assessee vide order of even date. Therefore, denial of exemption u/s 10(10CC) on other two items of income viz US taxes & life insurance premium paid by employer on behalf of assessee which are also perquisites of non-monetary nature is not justified.

In view of the appeal the appeal filed by the assessee is allowed.”

6. On a similar issue the Honøble Supreme Court in the case of K. C. Builders & Others Vs ACIT (2004) 265 ITR 562 held as under:

“Where the additions made in the assessment order on the basis of which penalty for concealment is levied, are deleted, there remains no basis at all for levying penalty for concealment and, therefore, in such a case no penalty can survive and the penalty is liable to be cancelled. Ordinarily, penalty cannot stand if the assessment itself is set aside.”

7. In the present case also, the additions on the basis of which penalty was levied by the AO are not in existence, therefore, the Id. CIT(A) was fully justified in deleting the impugned penalty. We do not see any merit in this appeal of the department.

8. In the result, the appeal of the department is dismissed.

(Order Pronounced in the Court on 21/09/2017)

Sd/-
(Kuldip Singh)
JUDICIAL MEMBER

Sd/-
(N. K. Saini)
ACCOUNTANT MEMBER

Dated: 21/09/2017

Subodh

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR