

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

**BEFORE SHRI P. K. BANSAL, VICE PRESIDENT AND  
SHRI GEORGE GEORGE K., JUDICIAL MEMBER**

ITA No.364/COCH/2016  
Assessment Year:2008-09

Income Tax Officer-2(3), Kozhikode.	Vs	Shri M. Faizal, Mullambalath House, Koduvally, Kozhikode. PAN:AATPF 9520 H
(Appellant)		(Respondent)

Appellant by	Shri A. Dhanraj, Sr. D. R.
Respondent by	Shri A. V. Muraleedharan, Advocate
Date of hearing	04/10/2017
Date of pronouncement	05/10/2017

**ORDER**

**PER P. K. BANSAL, V.P.**

This appeal has been filed by the Revenue against the order of the CIT(A) dated 04/05/2016 relating to assessment year 2008-09. The only issue involved in this appeal relates to the deletion of penalty levied by the Assessing Officer under section 271(1)(c) of the Act amounting to Rs.13,90,975/-.

2. The facts of the case, in brief, are that the Assessing Officer during the course of assessment noted that an amount of Rs.33,00,000/- seized by the police authorities of Sultan Batheri, which was claimed as belonging to the assessee who was engaged in the business of trading in gold. The assessee explained the source of the same as the sales of the gold to Dulhan Jewellery, Bangalore. Regarding the source of investment the assessee explained that the gold was purchased by the assessee by

availing loan totaling to Rs.31,00,000/- from various persons. During the assessment proceedings, except one person, no other person turned up to support the assessee's claim therefore, a sum of Rs.29,00,000/- was added in the income of the assessee. Penalty proceedings under section 271(1)(c) was initiated. The addition so made was confirmed by the Tribunal vide its order dated 05/09/2013 as per the finding given by the Tribunal in its order under para 5. The Assessing Officer therefore, ultimately considering the reply of the assessee levied the penalty on the assessee for the tax sought to be evaded on the addition of Rs.29,00,000/- added as the source of investment in gold purchased could not be proved by the assessee by observing as under:

*"2. The scrutiny assessment was on the basis of the information that an amount of Rs.33,00,000/- seized by the Police authorities of Sulthan Bathery was claimed as belonging to Shri. M. Faisal. During the course of assessment proceedings the assessee was asked to explain the source of the amount seized. The assessee claimed it to be as the sale proceeds of gold sold to M/s Dulhan Jewellery, Bangalore. The assessee was asked to explain the source for investment in the gold sold. The assessee claimed that the gold was purchased by availing loans totaling to Rs.31,00,000/- from various persons . During the assessment proceedings these persons were summoned for verification. However, other than one person, none of the said persons could produce any evidence or source to support the assessee's claim of loans received from them. The assessee was unable to prove the source of investment in the purchase of gold to the tune of Rs.2900000/-. The assessee also claimed to have engaged only in this sale transaction with M/s Dulhan Gold, Bangalore during the financial year 2007-08 relevant to the assessment year 2008-09 for which no proper accounts have been maintained. The cash seizure had led to the detection of the investment of Rs.29,00,000/- which remained unproved.*

*3. Penalty proceedings under section 271(1)(c) was initiated and a notice under section 274 r.w.s 271(1)(c) was issued to the assessee on 29/12/2010. In response to the notice issued the assessee filed a reply on 27.01.2011 claiming that the addition to the returned income has been*

*made not on the basis of any concealment of income or on the basis of any suppression of income but on the basis of difference regarding the explanation of the source of investment made by the assessee. The assessee during the hearing on 20.09.2013 filed a reply representing that certain documents were misplaced and untraceable and the persons who lent the money could not produce the vital documents which resulted in the addition to the returned income.*

*4. The explanation filed by the assessee has been considered. The addition of Rs.2900000/- was made as the assessee could not prove the source of investment in gold purchase. No proper accounts have been maintained by the assessee. No evidence in support of the claims adduced by the assessee was produced. Therefore, in the absence of any proper explanation for the source of the said amount of Rs.29,00,000/-, it is to be construed that it represents the concealed income of the assessee."*

3. The assessee went in appeal before the CIT(A) who deleted the said penalty.

4. We have heard the rival submissions, carefully considered the same along with the orders of the tax authorities below. We find force in the submissions of Learned D. R. that in this case the addition of Rs.29,00,000/- in respect of which the penalty has been imposed for the concealment of the income was made by the Assessing Officer as the assessee could not prove the source of investment in gold purchase but when the matter went before the CIT(A), the CIT(A) deleted the penalty on the basis that the amount of Rs.33,00,000/- seized by the police authorities is the sale proceeds of the gold to Dulhan Jewellers, Bangalore and therefore, the source for the money is more or less explained by the lenders in their sworn statement by observing as under:

*"It is difficult to believe that the appellant was able to manipulate the account of Shri Nanjundeswara Credit Co-operative Society Ltd, Bangalore as well as that of IndusInd Bank, Bangalore. From these evidences, in my view, the amount of Rs.33,00,000/- seized by the police is the sale*

*proceeds of gold received by the appellant from M/s Dulhan Fine Jewels, Bangalore, Further, even the source for the money is more or less explained by the lenders in their sworn statements. The statement of the appellant given before the police after the seizure of the money as well as his stand before the Department is identical.*

*9. In view of the above, I am of the opinion that this is not a fit case for imposition of penalty under section 271(1)(c) of the Act as the sources for the amount seized stand explained. Therefore, I hereby delete the same."*

4.1 From the order of the CIT(A), we noted that the CIT(A) deleted the penalty as in his opinion the source for the amount seized stood explained while in fact the Assessing Officer has not levied the penalty in respect of the amount seized. The penalty in fact has been levied as the assessee failed to explain the source of the purchases. We, therefore, in the interest of justice and fair play to both the parties, set aside the order of CIT(A) and direct him to redecide the issue afresh after giving proper and sufficient opportunity of being heard to the assessee.

5. In the result, the appeal of the Revenue stands allowed for statistical purposes.

(Order pronounced in the open court on 05/10/2017)

Sd/  
(GEORGE GEORGE K.)  
Judicial Member

Sd/  
(P. K. BANSAL)  
Vice President

**Dated:05/10/2017**

**\*Singh**

**Copy of the order forwarded to :**

- 1.The Appellant
- 2.The Respondent.
- 3.Concerned CIT
- 4.The CIT(A)
5. D.R., I.T.A.T., Cochin

Asstt. Registrar