

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

BEFORE SHRI ARUN KUMAR GARODIA, ACCOUNTANT MEMBER AND
SHRI LALIET KUMAR, JUDICIAL MEMBER

ITA Nos. 951 to 955/Bang/2014
Assessment Years : 2004 – 05 to 2008 – 09

M/s. Amminabhavi Brothers, New APMC Yard, Dharwad - 580008 PAN: AALFA0764G	Vs.	The ITO , Ward – 2 (1), Hubli
APPELLANT		RESPONDENT

Assessee by	:	Shri Balaram P. Rao, Advocate
Revenue by	:	Shri M. K. Biju JCIT (DR)

Date of hearing	:	16.10.2017
Date of Pronouncement	:	26.10.2017

ORDER

Per Bench:

All these five appeals are filed by the assessee and these are directed against a combined order of CIT (A) Hubli dated 25.03.2014 for Assessment Years 2004 – 05 to 2008 – 09.

2. All these appeals were heard together and are being disposed of by way of this common order for the sake of convenience.
3. In all these appeals, although various grounds are raised by the assessee but the effective grievance is only one in each year and the same is regarding confirming of penalty imposed by the A.O. u/s 271 (1) (c) of the I. T. Act of Rs. 20,000/- in A. Y. 2004 – 05, Rs. 55,000/- in A. Y. 2005 – 06, Rs. 105,000/- in A. Y. 2006 – 07, Rs. 220,000/- in A. Y. 2007 – 08 and Rs. 105,000/- in A. Y. 2008 – 09.

4. Learned AR of the assessee submitted that in all these years, only estimated additions are made by the A. O. and on such estimated additions, no penalty is justified. In support of this contention, he placed reliance on a judgment of Hon'ble Punjab & Haryana High Court rendered in the case of CIT vs. Ravail Singh & Co. as reported in 254 ITR 191.
5. As against this, learned DR of the revenue supported the Penalty order and order of CIT (A). He also submitted that as per Para 11 of the penalty order for A. Y. 2004 – 05, it is noted that the assessee did not file return of income and therefore, there is concealment of turnover and there is Books of Account and therefore, there is no option but to make estimated addition and therefore, in the facts of the present case which are identical in all years, penalty is justified. He placed reliance on the following judgments:-
 - a) CIT vs. S. Krishnaswamy & Sons, 219 ITR 157 (Mad.),
 - b) Sushilkumar Sharadkumar vs. CIT, 232 ITR 588 (All.),
 - c) CIT vs. Smt. Chandrakanta, 205 ITR 607 (MP).
6. We have considered the rival submissions. We find that there is no dispute that the addition on which penalty is imposed is an estimated addition in each year. In the light these facts, first we examine the applicability of judgments cited by both sides. Learned AR of the assessee has placed reliance on a judgment of Hon'ble Punjab & Haryana High Court rendered in the case of CIT vs. Ravail Singh & Co. (Supra). In this case, it was held that Penalty under s. 271(1)(c) was not leviable where the addition to assessee's income was made on the basis of estimate and not on any concrete evidence of concealment of any transaction or furnishing of inaccurate particulars. As per this judgment, penalty in the present case is not valid & justified.
7. Learned DR of the revenue has placed reliance on a judgment of Hon'ble Madras High Court rendered in the case of CIT vs. S. Krishnaswamy & Sons (Supra). In this case, the facts were that assessee's premises were raided and trip sheets were seized which revealed suppression of collection from buses for 33 days for asst. yr. 1979-80 and for 54 days for asst. yr. 1980-81 and the

assessee admitting suppression and filed revised returns. Under these facts it was held that Penalty for concealment was valid. Hence, it is seen that in that case, concealment was established by way of incriminating material found in search and only the quantum of concealment was estimated. In the present case, there was survey but no incriminating material was found in survey and therefore, in the facts of the present case, even the allegation of concealment is based on estimation made by the A.O. and not on the basis of any incriminating material found in search or survey and therefore, this judgment is not applicable.

8. Learned DR of the revenue has also placed reliance on a judgment of Hon'ble Allahabad High Court rendered in the case of Sushilkumar Sharadkumar vs. CIT (Supra). In this case, it was found that the assessee had shown very low household expenses whereas there was evidence of higher expenditure and the assessee led no fresh evidence in penalty proceedings and under these facts, the inference was drawn that the amount added represented concealed income justifying penalty under s. 271(1)(c). Hence, it is seen that in that case, there was evidence of higher expenditure as compared to drawings shown by the assessee and hence, it is seen that in that case, the penalty was on the basis of material on record supporting the allegation of concealment. Facts in the present case are different and therefore, this judgment also is of no help to the revenue.
9. Learned DR of the revenue has also placed reliance on a judgment of Hon'ble M. P. High Court rendered in the case of CIT vs. Smt. Chandrakanta (Supra). In this case, the A. Y. is 1963 – 64 and as per the facts noted in this judgment, the assessee first showed a loss of Rs. 50,000 and later, he revised the return showing profit of Rs. 7,500. There is no finding that the revised return filed is a valid revised return as per law. Hence, it has to be inferred that the revised return was not a valid revised return because, if the revised return is a valid revised return, there cannot be any concealment and the finding of High Court is this that there was concealment. These facts reveal that concealment was not on the basis of estimate by the AS.O. but on the basis of assessee himself showing lower income in the return of income and thereafter showing higher

income without filing a valid revised return. Facts in the present case are different and therefore, this judgment also is of no help to the revenue.

10. As per above discussion, we find that the judgments cited by the DR of the revenue are rendering any help to the revenue and the judgment cited by the learned AR of the assessee supports the case of the assessee. Hence, respectfully following this judgment, we delete the penalty in all these five years.
11. In the result, all five appeals filed by the assessee are allowed.

Order pronounced in the open court on the date mentioned on the caption page.

Sd/-
(LALIET KUMAR)
Judicial Member

Sd/-
(ARUN KUMAR GARODIA)
Accountant Member

Bangalore,
Dated, the 26th October, 2017.
/MS/

- Copy to:
1. Appellant
 2. Respondent
 3. CIT
 4. CIT(A)
 5. DR, ITAT, Bangalore.
 6. Guard file

By order

Senior Private Secretary,
Income Tax Appellate Tribunal,
Bangalore.