

IN THE INCOME TAX APPELLATE TRIBUNAL, BENCH 'A' KOLKATA

[Before Hon'ble Shri N.V.Vasudevan, JM & Shri M.Balaganesh, AM]

ITA No.2278/Kol/2014
Assessment Year : **2006-07**Swadesh Ranjan Shee
Purba Medinipur
(PAN: AJCPS 8135 P)
(Appellant)

-versus-

I.T.O., Ward-4,
Haldia.

(Respondent)

For the Appellant: None (Written submission)

For the Respondent: Shri A.K.Sinha, Addl. CIT

Date of Hearing : 02.08.2017.

Date of Pronouncement : 18.08.2017.

ORDER**PER N.V.VASUDEVAN, JM:**

This is an appeal by the Assessee against the order dated 04.09.2014 of CIT(A)-XXXIII, Kolkata, relating to AY 2006-07.

2. In this appeal the Assessee has challenged the order of the CIT(A) whereby the CIT(A) confirmed the order of the 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 imposed on the Assessee by the AO are as follows:

The Assessee is an individual. In the course of assessment proceedings the AO noticed that the assessee had shown to have received a loan of Rs.3,80,000/- in cash from his mother Smt. Binapani Shee. The assessee was called upon to explain the nature and source of credit i.e. transaction of the receipt of loan from his mother in the light of the provision of section 68 of the Act. The Assessee in proof of identity, creditworthiness and genuineness of the transactions filed confirmation from his mother and also a return of income filed by his mother for A.Y.2006-07 wherein the loan transaction was duly reflected in the assessee's mother's balance sheet. The

explanation of the assessee with regard to the aforesaid cash credit was not accepted by the revenue authorities. The CIT(A) on the above aspect in the quantum proceedings gave this conclusion on this issue as follows :-

“However the loan of Rs.3,80,000/- shown to be received from Smt. Binapani Shee stands on a different footing, although even in this case, return has been filed for A.Y.2006-07 wherein the loan transaction is appearing in the balance sheet. The crucial distinguishing fact is that this was the first return filed by her. Prior to this she had not filed any return of income. For earlier years, merely self prepared capital account showing cash balance has been produced. Also as per her return of income for A.Y. 06-07 her date of birth is 12-08-1932. This shows she was aged about 74 years during the financial year. Possibility of a lady being engaged in business at such an age is highly unlikely. It appears that her return was filed only to give credence to her creditworthiness for making the loan. It is also highly unlikely that anybody would keep a sum of Rs. 3,80,000/- in cash in order to give advance. Considering this as well as the facts mentioned in the assessment order, I am of the view that the loan received from Smt Binapani Shee is not genuine. “

Thus a sum of Rs.3,80,000/- was added to the total income of the assessee as unexplained cash credit.

4. Thus in respect of addition of cash credit made as above in the assessment proceedings the AO initiated penalty proceedings u/s 271(1)(c) of the Act and came to the conclusion that the assessee concealed particulars of income and imposed penalty u/s 271(1)(c) of the Act.

5. On appeal by the assessee CIT(A) confirmed the order of AO. CIT(A) was of the view that explanation given by the assessee was false. CIT(A) referred to the stand that Smt. Binapani Shee filed her return of income for the first time in A.Y.2006-07 and reflected the loan given by her to the assessee in her balance sheet. In the circumstances that the source of her money showing cash balance over a period of time clearly proves that the transaction in question was not genuine and Rs.3,80,000/- was assessee's own money from undisclosed sources.

6. Aggrieved by the order of CIT(A) the assessee has preferred the present appeal before the Tribunal.

7. None appeared on behalf of the assessee but written submission was filed. The Id. DR relied on the order of CIT(A).

8. We have considered the written submissions filed by the assessee and the order of CIT(A). We are of the view that it is not a fit case for imposition of penalty u/s 271(1)(c) of the Act. The admitted position is that Smt. Binapani Shee did not have a bank account as she was very old at the relevant point of time and living in a remote village and cannot go to a place where banking facilities were not available. This explanation was brushed aside by the revenue authorities. The second stand is that Binapani Shee filed her return of income for A.Y.2006-07 and in her balance sheet she has shown the loan given by her to the assessee. Her return has been accepted by the revenue. These two stands, in our view, are sufficient to come to a conclusion that the assessee cannot be held guilty of having concealed particulars of income. In our view, the explanation offered by the assessee was a bona fide explanation and has not been found to be false. The assessee has furnished all the particulars relating to the addition in question and material to the computation of his total income. The burden of the assessee under Explanation 1 to section 271(1)(c) of the Act, in our view is also duly discharged. In this circumstances, we are of the view that the AO ought to have exercised his discretion in not imposition penalty on the assessee. We therefore cancel the order imposing penalty u/s 271(1)(c) of the Act and allow the appeal of the assessee.

9. In the result the appeal of the assessee is allowed.

Order pronounced in the Court on 18.08.2017.

Sd/-
[M.Balaganesh]
Accountant Member

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

Dated : 18.08.2017.

[RG PS]

Copy of the order forwarded to:

1. Swadesh Ranjan Shee, Vill & P.O. Nonakuri Bazar, Dist. Purba Medinipur,
2. I.T.O., Ward-4, Haldia
3. C.I.T.(A)- XXXIII, Kolkata
4. C.I.T.-XVIII, Kolkata
5. CIT(DR), Kolkata Benches, Kolkata.

True Copy

By order,

Senior Private Secretary
Head of Office/D.D.O, ITAT Kolkata Benches