

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

**BEFORE SHRI A.D. JAIN, JUDICIAL MEMBER AND
DR. MITHA LAL MEENA, ACCOUNTANT MEMBER**

ITA No. 02 /AGR/2016
Assessment Year: 2010-11

Girraj Kishore Agarwal HUF, 5 Sita Ram Colony, Balkeshwar Road, Agra	Vs.	DCIT, Circle-1, Agra
PAN: AAAHG 7052 E		

APPELLANT	RESPONDENT
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Assessee by:	Shri K.K. Jain, Advocate
Revenue by:	Shri Waseem Arshad, Sr. D.R

Date of hearing:	12/10/2017
Date of Pronouncement:	26/10/2017

ORDER

PER, DR. MITHA LAL MEENA, AM:

The appeal, by assessee is directed against the order of the Commissioner of Income Tax, (Appeals)-1, Agra, [herein after referred to as "the CIT(A)"], dated 03.08.2015 confirming the penalty levied u/s 271(1)(c) of the Income Tax Act, 1961(in short "the Act") in respect of assessment year 2010-11.

2. The assessee is a builder. He has revised its return of income three times during the course of scrutiny assessment and the assessment was completed at NIL return income as per last revised returned income filed. The assessee has filed revised return, showing net profit at Rs.16,39,366/- as against Rs.2,10,070/- shown in the original return. Therefore, the Assessing Officer has made an addition of Rs.14,29,296/- to the extent of the difference between revised return income and the original return income. The Assessing Officer has mentioned in the assessment order that the penalty proceedings u/s 271(1)(c) of the Act was initiated separately for furnishing inaccurate particulars of income. Accordingly, levied penalty of Rs.4,50,000/- u/s 271(1)(c) of the Act for furnishing inaccurate particulars of income.

3. Agreeing with the view of the Assessing Officer, the Ld. CIT(A) confirmed the penalty order, inter alia observing as under:

“5.1 I have gone through the penalty order submissions of the assessee and legal position in this regard

Karnataka High Court recently in the case of CIT & Anr Vs Manjunath Cotton & Ginning Factory, 92 DTK 111(2013) has laid down detailed legal principles for levying of penalty u/s 271(1)(c). It is Said down that imposition of penalty under section 271(1)(c) is a civil liability and the burden of proof that there is no guilty mind is on the assessee. It is specifically stated that when the explanation offered is found to be false or when the assessee fails to provs. that the explanation offered is not bonafide, an order imposing penalty could be passed.

Scope of section 271(1)(c) has also been elaborately discussed by the Hon'ble SC in the case of Union of India Vs Dharmendra Textile Processors (2008) 13 SCC 369, 295 ITR 244, and CIT Vs Atul Mohan Bindai (2009) 9 SCC 589. Hon'ble Supreme Court in the case of CIT Vs Mak Data Ltd (2013-ITRV-SC-140) has held that under explanation 1 to section 271(1)(c), voluntary disclosure of concealed income does not absolve assessee of 271(1)(c) penalty, if the assessee fails to offer an explanation which is bonafide and proves that all the material facts have been disclosed. It is observed in this order that :-

"The AO, in our view, shall not be earned away by the plea of the assessee like 'voluntary disclosure', 'buy peace', 'and avoid litigation amicable settlement' etc to explain away its conduct. The question is whether the assessee has offered explanation for concealment of particulars of income or furnishing inaccurate particulars of income. Explanation to section 271(1) raises a presumption of concealment, when a difference is noticed by the AO, between reported and assessed income. The burden is then on the assessee to show otherwise, by cogent and reliable evidence. When the initial onus placed by the explanation, has been discharged by him, the onus shifts on the Revenue to show that the amount in question constituted the income and not otherwise. 'Voluntary disclosure', 'buy peace', 'avoid litigation', 'amicable settlement' etc to explain away its conduct..... Statute does not recognize these types of defences under the explanation 1 to section 271(1)(c). It is trite law that the voluntary disclosure does not release the Appellant-assessee from the mischief of penal proceedings.

In the present case, the revised return of income that is filed by the assessee, is not voluntary in the sense that the order of revision of income and consequent payment of tax was made in view of the show cause given by the AO to explain the method of valuation of closing stock of land and the work in progress. Since assessee has himself accepted the discrepancy in valuation of stock and has filed revised return to that effect. AO is

correct in treating such difference as amounting to furnishing inaccurate particulars of income.

Accordingly, penalty of Rs.4,50,000/- imposed by the Assessing Officer under section 271(1)(c) of the Income Tax Act is hererby confirmed.”

4. Ld. Counsel for the assessee submitted that the assessee has filed revised return of income, during the course of assessment proceedings that the assessment was also completed on Nil income as per the last revised return of income filed by the assessee; that in response to AO's query, the assessee had furnished replies dated 12/10/2012 and 22/10/2012, explaining the facts stated in reply dated 6/9/2012; and that on examination of the matter in detail it was found that the accountant has committed errors, mistakes and omissions while preparing the details for the earlier return revised as on 9/2/2012 (Synopsis page 2).

5. The counsel for the assessee further submitted that the errors/omissions were accordingly rectified in the balance sheet and P&L a/c dated 15/9/2012; and that the revised return of income was filed on 22/10/2012 much before the completion of assessment. The Assessing Officer has been requested to consider the revised return of income for the purpose of completion of assessment. The AO

completed the assessment at NIL income by accepting last revised return of income.

6. He further submitted that the explanation furnished by the assessee was *bona fide* and plausible which has not been found to be false and there is no whisper either in assessment order or in the penalty order about the falsity in its explanation furnished. The bonafides are evidence from the fact on record that the AO accepted the income as declared in the revised return and computation. The assessee has never stated that he has shown less profit by mistake. The omissions whatever committed by the accountant have not been disputed by the AO. The AO did not bring any material on record that the declaration of income made by the assessee is his revised return or his explanation was not bona fide.

7. In support, the Id. Counsel for the assessee has placed reliance upon the following judgments:

1. JCIT Vs. Classic Industries Ltd. reported in 393 ITR 20 (SC)
2. Cheap Cycle Store vs. CIT reported in 196 CTR 173 (All)
3. CIT vs. Deewan Tourism Ltd. reported in 218 Taxmann 123 (All)

8. The Id. DR, on the other hand supported the orders of the authorities below, relying upon the plethora of judgment.

9. We have heard both the sides and perused the material on record. It is undisputed fact that the AO has accepted return income at NIL as per last revised return of income dated 22.10.2012.

10. The judicial pronouncement relied upon by the Id. CIT(A) as Para 5.1 are not applicable to the facts of assessee's case, as much as it is a case where omission/wrong statement in the return was detected by the assessee before any detection by the Assessing Officer and were corrected by furnishing revised return much before the completion of assessment which was accepted by AO as such. Although the revised return was invalid, the AO proceeded to complete the assessment on the income as declared in the revised return and computation. The allegation that payment of tax was made in view of the show cause given by AO is not borne out from the record as no tax was paid because the returned income as well as the assessed income is NIL. The Id. CIT(A) has laid emphasis on the fact that the return was revised after "show cause notice". A mere query raised by the Assessing Officer vide the order sheet entry dated 6/9/2012 could not be termed as show cause notice in respect of furnishing information of Valuation of closing stock of land and WIP.

11. The Hon'ble Apex Court in the case of JCIT vs. Classic Industries Ltd. (Supra) while dismissing the appeal of Revenue held that where

income returned and assessed is NIL, no penalty is leviable. The Hon'ble Apex Court has followed its own decision rendered in the case of 'Virtual Soft system Ltd. vs. CIT' reported in 289 ITR 83 (SC) wherein it was held that penalty for concealment or furnishing inaccurate particulars where loss is retruned and assessment made at reduced loss after adding amount sought to be evaded, penalty not leviable.

11.1 The Judgment of Hon'ble Jurisdictional of Allahabad High Court in the case of 'Cheap Cycle Stores vs. CIT' reported in 196 CTR 173, wherein it was held that no concealment having been found in the revised return, the penalty in respect of the income declared in the return originally filed could not have been taken as the concealment as had not been detected by the Assessing Officer, till the time the revised return was filed. The another judgment of this High Court in the case of 'CIT vs. M/s Deewan Tourism Ltd.' in ITA No. 207 of 2009 held that the penalty was not leviable inasmuch as the assessee himself had disclosed the additional income before passing of the assessment order.

12. It is noted that although the revised return was found to be invalid, the Assessing Officer accepted the return income as declared in the revised return and computation. We find that the Assessing Officer did not bring any material on record that the declaration of income made by the assessee in his last revised return or his explanation was not bonafide. In

these circumstances, there appears to be no basis for imposition of penalty on the grounds of furnishing inaccurate particulars of income. The Revenue has neither placed any material to contrary to facts on the record nor brought any contrary decision. The case law relied upon by the Ld. DR are distinguished on their own peculiar facts.

13. In view of the aforesaid observation and the decision of Hon'ble Supreme Court in the case of JCIT vs. Classic Industries Ltd. (Supra) and the Judgment of Hon'ble Jurisdictional High Court of Allahabad High Court in the case of CIT Vs. Deewan Tourism Ltd. (Supra), we accept the grievance of the assessee as justified.

14. For the forgoing reasons, the order of the lower authorities is reversed and penalty is deleted, accordingly.

15. In the result, appeal of the assessee is allowed.

Order pronounced, in the open Court on 26/10/2017.

**Sd/-
(A. D. JAIN)
JUDICIAL MEMBER**

**Sd/-
(DR. MITHA LAL MEENA)
ACCOUNTANT MEMBER**

Dated:26/10/2017

Aks

Copy forwarded to:

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

ASSISTANT REGISTRAR

		Date	
1.	Draft dictated	23.10.2017	PS
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4.	Draft discussed/approved by Second Member.		JM/AM
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6.	Kept for pronouncement on		PS
7.	File sent to the Bench Clerk		PS
8.	Date on which file goes to the AR		
9.	Date on which file goes to the Head Clerk.		
10.	Date of dispatch of Order.		