

IN THE INCOME TAX APPELLATE TRIBUNAL
AMRITSAR BENCH, AMRITSAR
BEFORE SH. SANJAY ARORA, ACCOUNTANT MEMBER AND
SH. N.K.CHOUDHRY, JUDICIAL MEMBER

ITA No.73(Asr)/2017
Assessment Year:2007-08

Dinesh Sharma
House No.256/6
Improvement Trust Colony
Jail Road, Gurdaspur

Vs. Income Tax Officer
Gurdaspur

PAN:ADQPS2692P

(Appellant)

(Respondent)

Appellant by: Sh. J.P.Bhatia (Ld. Adv.)

Respondent by: Sh. Rahul Dhawan (Ld. DR)

Date of hearing: 07.02.2018

Date of pronouncement: 26.02.2018

ORDER

PER N.K.CHOUDHRY, JM:

The instant appeal has been preferred by the Assessee/Appellant, on feeling aggrieved against the order dated 29th December, 2016 passed by the Ld. CIT(A)-2, Amritsar, in appeal No.252/2013-14, by which the Ld. CIT(A) confirmed the penalty order passed u/s 271A of the I.T. Act, 1961.

2. The assessee has raised the following grounds of appeal.

- 1. That the Ld. Commissioner of Income Tax (Appeals)-II, Amritsar has grossly erred in upholding Penalty of Rs.25,000/- imposed by the AO U/s.271A on the basis of alleged default U/s.44AA.*

The penalty imposed and upheld is unjust, unlawful, illegal and highly excessive.

- 2. That all the facts and circumstances of the case have not been properly considered and the penalty U/S.271A was wrongly imposed and the same has been wrongly upheld.*
- 3. That the observations made are against facts and are based on surmises & conjectures and do not afford legal justification to the imposition of penalty. In any case, the alleged violation of Section 44AA is based on surmises & conjectures and the penalty has been wrongly imposed.*
- 4. That the appellant was not carrying on any business or profession and, therefore, the provisions of Section 44AA were not applicable to him. In any case, the income declared was less than Rs.1,20,000/- and the gross receipts were not from any business and the appellant was not legally required to maintain the books of account.*
- 5. That in any case, the total income declared was more than 5% of the gross receipts and, therefore, the Appellant was not under any legal obligation to maintain the books of account. That in any case, the appellant was under the bonafide impression that the declared income being more than 5% of the gross receipts, the provisions of Section 44AA were not applicable in his case.”*

3. The brief facts of the case are that the assessee had carried on business of shawls embroidered belonging to M/s Agrawal Textiles, Gurdaspur and received payment of Rs.11,46,805/- from the said firm, therefore, gross receipts of the assessee during the Financial Year (F.Y.) 2006-07 relevant to the Ast.Year:2007-08 exceeded Rs.10 lacs, as per Sec.44AA of the I.T. Act, the assessee was required to keep and maintain such books of account and other documents as may enable the Assessing Officer to compute his total income in accordance with the provision of the I.T. Act. But during the course of

assessment proceedings, it was found that the assessee has not kept and maintained any books of account and other documents in respect of his aforesaid business, therefore, the assessed income of the assessee was framed at Rs.4,27,080/-, however, the same was restricted to Rs.3 lacs by the Ld. CIT(A), Amritsar on appeal, and subsequently the penalty proceedings have also been initiated. In the penalty proceedings, it was submitted by the assessee that addition has been confirmed on the estimate basis and the assessee was not carrying on any business and it was merely doing job work of embroidery of shawls, by collecting shawls from Ludhiana and gave the same to poor ladies of various villages near Gurdaspur and earned income through embroidery charges from such job work and his income was very small, therefore, it was not possible for him to keep books of account. The Assessing Officer after considering the submissions of the assessee imposed a penalty of Rs.25,000/- u/s 271A of the I.T. Act which was challenged by the assessee by filing appeal before the Ld. CIT(A). The Ld. CIT(A) confirmed the imposition of penalty of Rs.25,000/- u/s.271A of the Act.

4. Feeling aggrieved against the order passed by the Ld. CIT(A), the assessee preferred the instant appeal and in support of its case submitted that the assessee has not done any business but in fact his work was to collect shawls from Ludhiana and to give the same to the poor ladies of villages near Gurdaspur and earned income through embroidery charges from

such job work, therefore, the assessee cannot be held as doing profession or business, but he was simply a carrier/middle man between the owner of the shawls and the ladies of villages involved in the embroidery. It was further submitted that no sale or purchase was involved, therefore, also the assessee was not carrying any business thereto. The assessee has also relied on judgment passed by the jurisdictional High Court in the case of CIT vs. Saini Medical Store, reported at 267 ITR 79 (P&H).

5. On the other hand, the Ld. DR relied upon the order passed by the authorities below.

6. We have gone through with the facts and circumstances of the case as well as rival submissions of the parties. From the simple reading of Sec.44AA (2) the relevant provision is applicable to the person carrying on business or profession and mandates to maintain such books of account and other documents as may enable to Assessing Officer in order to compute his total income in accordance with the provisions of this Act.

In the instant case, the Ld. AR submitted that the assessee was under bonafide belief that he has not carrying any business, therefore, not maintained any books of account or other documents as he is simplicitor an agent and/or carrier between the shawls' owner and workers involved in the embroidery, therefore, was not carrying on any business, and hence, not covered by Sec.44AA because the appellant was doing only job

work, as he used to bring plain shawls from shawl merchants for job work of embroidery and returned the shawls to them while receiving his labour charges. There was neither any purchase nor any sale, therefore, the same cannot be termed as business. Alternatively, it was also claimed by the appellant that he was under bonafide impression that he was not doing any business, therefore, Sec.44AA was not applicable. It was also earnestly submitted that there was no intention to avoid or evade the tax.

We must remind ourselves while dealing with the issue of bonafide belief, the Hon'ble Supreme Court of *India in the case of Hindustan Steel Ltd. vs. State of Orissa, reported at 1970 AIR 253(SC)* observed that, it is clear that an order imposing penalty for failure to carry out a statutory obligation is the result of quasi criminal proceeding, and penalty will not ordinarily be imposed unless the party obliged either acted deliberately in defiance of law or was guilty of conduct contumacious or dishonest, or acted in conscious disregard of its obligation and the penalty will not be imposed merely because it is lawful to do so. Further the Apex Court observed that even if penalty is prescribed, the authority competent to impose the penalty will be justified in refusing to impose penalty, when there is a technical or venial breach of the provisions of the Act or where the breach flows from a bonafide belief that the offender is not liable to Act in the manner prescribed by the statute. Even otherwise the judgment of Hon'ble High Court in the case of *CIT Vs. Saini Medical Store*

(supra) while dealing with issue qua bonafide belief held as under”

“A combined reading of the provisions of sections 271D and 273B of the Income-tax Act, 1961, makes it clear that if the assessee shows reasonable cause for the failure to comply with any provision referred to therein, the penalty for its violation shall not be imposable on the assessee.

Held, *that” in present case the Commissioner (Appeals) in his order dated January 18, 1999, whereby the penalty u/s.271D of the Act was deleted, had accepted the version given by the assessee that violation of the provisions of the Act was under a bonafide belief of the assessee and the same was not with any intention to avoid or evade the tax. The findings of the Commissioner (Appeals) had been confirmed in appeal by the Tribunal. The cancellation of the penalty was valid. ”*

While coming to the instant case as the assessee is illiterate person having small work to do seems to be under bonafide belief for not maintaining the books of account as the assessee has encountered the said situation first time, therefore, considering the peculiar facts and circumstances and also considering the judgments (supra) passed by *the Hon’ble Apex Court and the Hon’ble Punjab & Haryana High Court*, we are of the considered view that in the instant case the violation of the provisions of the Act was neither dishonest nor intentional to avoid or to evade the tax but because of the bonafide belief that he is not carrying any business, and hence, we are satisfied that bonafide belief of the assessee was quite reasonable which absolved him from the liability of the penalty. Hence, the appeal of the assessee stands allowed and the penalty imposed u/s

271A of the Act by the Assessing Officer and confirmed by the CIT(A)-2 Amritsar stands deleted.

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

Order pronounced in the open Court on 26.02.2018.

Sd/-
(SANJAY ARORA)
ACCOUNTANT MEMBER

Sd/-
(N.K.CHOUDHRY)
JUDICIAL MEMBER

Dated:26.02.2018

/PK/ Ps.

Copy of the order forwarded to:

- (1) Dinesh Sharma, Gurdaspur
- (2) The Income Tax Officer, Gurdaspur
- (3) The CIT(A)-2, Amritsar
- (4) The CIT concerned.
- (5) The SR DR, I.T.A.T., Amritsar

True copy

By order