

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'G', NEW DELHI**

**BEFORE SH. R. K. PANDA, ACCOUNTANT MEMBER
AND
MS. SUCHITRA KAMBLE, JUDICIAL MEMBER**

ITA No.4441/Del/2015
Assessment Year: 2010-11

Archit Aggarwal 21/17, East Punjabi, Bagh New Delhi . 110026 PAN No. AHNPA3720B (APPELLANT)	Vs	DCIT Circle 26 (1) Room No. 192 C. R. Building, I. P. Estate New Delhi . 110002 (RESPONDENT)
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Appellant by	Sh. S. L. Deepak, CA
Respondent by	Sh. K. Tiwari, Sr. DR

Date of hearing:	20/06/2018
Date of Pronouncement:	28/06/2018

ORDER

PER R.K. PANDA, AM:

This appeal filed by the assessee is directed against the order dated 07.07.2014 of the CIT (A)- XIX, New Delhi relating to A. Y. 2010-11.

2. Levy of penalty of Rs.6,99,608/- by the Assessing Officer u/s.271 (1)(c) of the IT Act which has been confirmed by the CIT (A) is the only issue raised by the assessee in the grounds of appeal.

3. Facts of the case, in brief, are that the assessee is an individual and filed his return of income on 31.07.2010 declaring total income of Rs.9,32,510/-. During the course of assessment proceedings the Assessing Officer noted that there are cash deposits in ICICI Bank, Punjabi Bagh, New Delhi maintained by the assessee. On being questioned by the Assessing Officer to furnish the source of cash deposits the assessee filed a letter dated 22.02.2013 stating that the cash deposits pertain to sale/ purchase of agricultural produce. He filed some bills of sales and purchase. The Assessing Officer sent letters to the seller of agriculture produce namely M/s. Pradeep Fruits and Mushrooms, Ashok Vegetables and Mushrooms, Abdul Rauf and Nand Kishor calling for their details of transactions with the assessee. Since no response was received the Assessing Officer asked the assessee to submit the reasons and why the peak cash credit of Rs.22,64,105/- be not added to the income. The assessee in response to the same submitted as under :-

“ The above the description of trading in agriculture produce by the assessee is correct. We have submitted the invoices both for the purchase and sale. Given time we are also agreeable to produce the persons concerned. However, given the time constraint we are agreeable to the addition of Rs.22,64,105/- subject to non levy of penalty and / or prosecution. We are agreeabel only to buy peace of mind”

4. The Assessing Officer accordingly made addition of Rs.22,64,105/-. The Assessing Officer thereafter initiated penalty proceedings u/s 271 (1) (c) of the IT Act, 1961. Rejecting the explanation given by the assessee and observing that assessee failed to give any satisfactory answer to prove the genuineness and allowability of its claim made in good faith with due diligence, the Assessing Officer levied penalty of Rs.6,99,608/- being 100% of tax sought to be evaded.

5. Before CIT (A) it was submitted that the assessee was under the impression that income from trading of agriculture produce is exempt from tax being agriculture income and hence did not show such income in the return of income filed. It was argued that during the assessment proceedings the assessee fully cooperated with the Assessing Officer and agreed to surrender of Rs.22,64,105/- as his income. It was submitted that the surrender of income was conditional on the fact that no penalty and or prosecution shall be levied on the assessee.

6. However, the Ld. CIT (A) was not satisfied with the explanation given by the assessee and confirmed the penalty so levied. While doing so he observed that only after the Assessing Officer noticed the cash deposits in the bank account and asked the assessee to explain their source that the assessee found himself unable to substantiate the transactions claimed and explain the source of cash deposits. He observed that the assessee was also unable to explain why income from the transactions claimed was not shown in his return. The assessee only made a virtue of a necessity by admitting that relevant amount represented his own undisclosed income. According to the Ld. CIT (A) this is clearly not a case of voluntary or suo-moto declaration of income. Since explanation given by the assessee was not a bonafide one and there was no full disclosure of facts, therefore, the provisions of Explanation 1 to section 271 (1) (c) of the IT Act are applicable because the assessee has offered an explanation which he is not able to substantiate and also failed to prove that such explanation is bonafide and that all the facts relating to the same and material to the computation of his total income have been disclosed by him. Relying on the decision of Hon'ble Supreme Court in the case of Mak Data Pvt. Ltd. Vs. CIT reported 358 ITR 593 and the decision of Hon'ble Delhi High Court in the case of CIT Vs. Zoom Communications Pvt. Ltd. reported 327 ITR 510 he sustained the penalty levied by the Assessing Officer u/s. 271 (1) (c) of the IT Act, 1961.

7. Aggrieved with such order of the CIT (A), the assessee is in appeal before the Tribunal.

8. The Ld. Counsel for the assessee strongly challenged the order of the CIT (A) in sustaining the penalty levied by the Assessing Officer. He submitted that the Ld. CIT (A) was not justified in sustaining the same despite the fact that the addition pertains to amount surrendered by the assessee with the condition that no penalty should be levied. Further the Assessing Officer in the instant case has not recorded proper satisfaction before levying penalty u/s. 271 (1) (c) of the IT Act, 1961. Therefore, the Ld. CIT (A) should not have confirmed the penalty so levied. He submitted that ignorance of law is an excuse. Since the assessee in the instant case was under the bonafide belief that income from trading in fruits is agriculture income and therefore exempt from tax, he had not disclosed the same in the return of income. Referring to the decision by Hon'ble Madras High Court in case CIT Vs. M/s. Gem Granites (Karnataka) vide ITA No.504/09 order dated 12.11.2013, he submitted that the Hon'ble High Court after considering the decision of Hon'ble Supreme Court in the case of Mak Data Pvt. Ltd (Supra) had held that when the assessee discharges the onus cast on it by giving cogent and reliable explanation then the onus shifts to the department to prove that the assessee has concealed the particulars of income or furnished inaccurate particulars of income. He submitted that in the instant case the assessee has given an explanation which has not been proved to be false or untrue.

9. Referring to the order of the Assessing Officer he submitted that the assessee had sought time from the Assessing Officer to produce the persons concerned. However, the Assessing Officer had not given any such time to the assessee. Therefore, under the facts and circumstances of the case levy of penalty u/s 271 (1) (c) is not justified.

10. The Ld. DR on the other hand heavily relied on the order of the CIT(A). Relying on various decisions, he submitted that when the assessee failed to substantiate with cogent evidence to the satisfaction of the Assessing Officer regarding the bonafidness of its trading activity in agriculture produce, therefore, the Ld. CIT(A) was fully justified in sustaining the penalty levied by the Assessing Officer.

11. We have considered the rival arguments made by both the sides and perused the material available on record. We have also considered the various decisions cited before us by both the sides. We find during the course of assessment proceedings the Assessing Officer made addition of Rs.22,64,105/- being cash deposits made by the assessee in the bank account maintained with ICICI Bank, Punjabi Bagh, New Delhi on the ground that assessee could not substantiate the source of the same and agreed to the addition of the same. Further the various parties to whom letters were sent did not respond. We find the Assessing Officer levied penalty u/s. 271 (1) (c) of the IT Act, 1961 on the ground that addition was agreed only after the same was detected by the department and was not an act of free volition on the part of the assessee. We find the Ld. CIT (A) confirmed the penalty on the ground that the provisions of Explanation 1 to section 271 (1) (c) of the IT Act, 1961 are applicable since the assessee in the instant case has offered an explanation which he was not able to substantiate and has failed to prove such explanation as bonafide. It is the submission of the Ld. counsel for the assessee that the assessee had asked for some time to produce the persons from whom he had purchased the agriculture produce and the bills produced were not proved to be false or untrue. It is also his argument that the amount was surrendered to buy peace of mind with condition that no penalty shall be levied/ or initiated and therefore penalty should not have been levied.

12. We find some force in the above arguments of the Ld. Counsel for the assessee. It is an admitted fact that the assessee had produced certain bills/ vouchers regarding purchase of the fruits. These bills/ vouchers were not proved to be false or untrue. It is also an admitted fact that the assessee during the course of assessment proceedings had stated before the Assessing Officer that given time assessee is agreeable to produce the persons concerned. However, it is seen from the assessment order that no such time was given by the Assessing Officer to the assessee despite the same being asked for. There was no urgency on the part of the Assessing Officer to pass the order on 08.03.2013 when the assessee vide order sheet entry dated 06.03.2013 had requested the Assessing Officer to give some time to produce the concerned persons. We therefore, find bonafideness in the statement made by the assessee. Further the Assessing Officer has not followed the principle of natural justice.

13. We find the Hon'ble Madras High Court in the case of M/s. Gem Granites (Kartanaka) (supra) after considering various decisions including the decision of Hon'ble Supreme Court in the case of Union of India Vs. Rajasthan Spinning and Weaving Mills, M/s. Dharmendra Textile Processors and Ors. and Mak Data Pvt. Ltd. (Supra) has held as under :-

"In a recent decision of the Hon'ble Supreme Court in Civil Appeal No.9772 of 2013, dated 30.10.2013 (Mak Data P. Ltd., vs. Commissioner of Income Tax-II), the Hon'ble Supreme Court while considering the Explanation to Section 271(1), held that the question would be whether the assessee had offered an explanation for concealment of particulars of income or furnishing inaccurate particulars of income and the Explanation to Section 271(1) raises a presumption of concealment, when a difference is noticed by the Assessing Officer between the reported and assessed income. The burden is then on the

assessee to show otherwise, by cogent and reliable evidence and when the initial onus placed by the explanation, has been discharged by the assessee, the onus shifts on the Revenue to show that the amount in question constituted their income and not otherwise. Factually, we find that the onus cast upon the assessee has been discharged by giving a cogent and reliable explanation. Therefore, if the department did not agree with the explanation, then the onus was on the department to prove that there was concealment of particulars of income or furnishing inaccurate particulars of income. In the instant case, such onus which shifted on the department has not been discharged. In the circumstances, we do not find that there is any ground for this Court to substitute our interfere with the finding of the Tribunal on the aspect of the bonafides of the conduct of the assessee.

12. *In the circumstances, following the decision of the Hon'ble Supreme Court, we uphold the order of the Tribunal and the Tax Case Appeal stands dismissed. No costs. "*

14. Since the bills and vouchers produced in the instant case are not proved to be false or untrue, and the assessee was agreeable to produce the parties concerned before the Assessing Officer but at the same time agreed for the addition, therefore, following the above decision cited (supra) and considering the facts and circumstances of the case we are of the opinion that it is not a fit case for levy of penalty u/s 271 (1) (c) of the I. T. Act, 1961. We therefore, set aside the order of the CIT (A) and direct the Assessing Officer to cancel the penalty. The grounds raised by the assessee are accordingly allowed.

15. In the result, the appeal filed by the assessee is allowed.

Pronounced in the open court on 28.06.2018.

Sd/-
(SUCHITRA KAMBLE)
JUDICIAL MEMBER

NEHA

Date:- 28.06.2018

Copy forwarded to:

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

Sd/-
(R.K. PANDA)
ACCOUNTANT MEMBER

ASSISTANT REGISTRAR
ITAT NEW DELHI

Date of dictation	26.06.2018
Date on which the typed draft is placed before the dictating Member	27.06.2018
Date on which the typed draft is placed before the Other member	27.06.2018
Date on which the approved draft comes to the Sr.PS/PS	27.06.2018
Date on which the fair order is placed before the Dictating Member for Pronouncement	28.06.2018
Date on which the fair order comes back to the Sr. PS/ PS	28.06.2018
Date on which the final order is uploaded on the website of ITAT	29.06.2018
Date on which the file goes to the Bench Clerk	29.06.2018
Date on which file goes to the Head Clerk.	
The date on which file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	