

IN THE INCOME TAX APPELLATE TRIBUNAL

DELHI BENCH "G", NEW DELHI

BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER

I.T.A. No. 1396/Del/2015

A.Y. : 2010-11

SAKET AGARWAL,
PROP. M/S SAKET FURNITURE &
DECORATORS,
C/O SH. SAUBHAGYA AGARWAL,
PARTNER, A.S. LEGAL,
LAW OFFICES,
FIRST FLOOR, NEW FRIENDS
COLONY,
NEW DELHI – 110 025
(PAN: AAPPA0183M)
(Appellant)

vs. INCOME TAX OFFICER-3
HALDWANI

(Respondent)

Assessee by
Department by

: Sh. SATYAJIT, CA
: Sh. K. TEWARI, SR. DR.

ORDER

PER H.S. SIDHU, JM

This appeal by the Assessee is directed against the order of the
Ld. Commissioner of Income Tax (Appeals)-II, New Delhi dated

06.1.2015 pertaining to assessment year 2010-11 on the following grounds:-

- I) That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of AO in levying penalty of Rs. 90,000/- and that too without assuming jurisdiction as per law and without considering the facts and circumstances of the case and without considering the submission of assessee and latest position of law in this regard and the impugned penalty order being illegal and void ab-initio.
- II) That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of AO in passing the impugned penalty order being contrary to law as the assessment order framed under section 143(3) dated 6.3.2013 was also illegal, beyond jurisdiction and void ab-initio.
- III) That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of AO in levying penalty u/s. 271(1)(c) on the additions made in the assessment order u/s. 143(3) dated

6.3.2013 as these additions / disallowances are also contrary to law and facts.

- IV) That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of AO in levying penalty u/s. 271(1)(c) is bad in law being beyond jurisdiction and barred by limitation and contrary to the principles of natural justice and has been passed by recording incorrect facts and findings and without giving adequate opportunity to the assessee and the same is not sustainable on various legal and factual grounds.
- V) That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of AO in framing the impugned penalty order and that too without recording mandatory "satisfaction" as per law which is a pre-requisite condition as per law.
- VI) That the assessee craves the leave to add, alter or amend the grounds of appeal at any stage and all the grounds are without prejudice to each other.

2. The brief facts of the case are that the return of income was filed by the assessee declaring total income of Rs. 3,91,770/- on 15.10.2010.

The assessment was completed on total income at Rs. 5,66,770/- under section 143(3) of the Income Tax Act, 1961 on 06.3.2013. In his return of income the assessee has declared income from furniture shop, income from property dealing and income from printing of newspaper business in the name and style of 'Uttaranchal Deep Publications'. In addition to that the assessee has also shown his income from agricultural activities of Rs. 1,20,000/-. On examination of book of accounts of M/s Saket Furniture & Decorator it was discovered that the assessee made cash transactions with 08 parties mentioned in the penalty order. During the course of assessment proceedings, the assessee was required to explain the nature as well as to establish the genuineness of these transactions claimed to be entered with different persons. Further, the assessee was specifically asked to ascertain the creditworthiness and genuineness of the transactions; also required to discharge his burden of proof with regard to cash transactions appearing in his books of account by producing the documents and in response thereto assessee contended that the eight persons have genuinely advanced the money for purchase of goods but due to any reasons they have taken their money back which they had advanced earlier. But due to lack of their addresses it is very difficult to either present them or get their

confirmation. Thereafter, the AO observed that assessee has been found to be in the habit of introduction of unaccounted cash in his books of accounts (as the assessment order u/s. 143(3) and the penalty order u/s. 271(1)© for AY 2009-10 suggests). Therefore, under the circumstances the AO observed that there is sufficient element to establish the fact of concealment on the part of the assessee, hence, he levied the penalty of Rs. 90,000/- equivalent to 200% of the tax evaded u/s. 271(1)© of the Act vide order dated 30.9.2013.

3. Against the above Penalty Order dated 30.9.2013 passed by the Assessing Officer, assessee appealed before the Ld. First Appellate Authority, who vide impugned order dated 06.1.2015 dismissed the appeal of the assessee.

4. Against the above order of the Ld. CIT(A) dated 06.1.2015, assessee is in appeal before the Tribunal.

5. Ld. Counsel of the assessee reiterated the grounds of appeal as well as the submissions made before the Ld. CIT(A). He filed a Paper Book containing pages 1 to 12 having the copy of assessment order dated 6.3.2013 passed in assessee's own case u/s. 143(3) during quantum proceedings; copy of notice u/s. 271(1)© dated 6.3.2013

issued alongwith the said order; copy of assessee's reply dated 7.9.2013 filed to AO during the course of penalty proceedings; copy of written submissions dated 26.8.2014 filed before Ld. CIT(A) and copy of further submissions dated 6.1.2015 filed before Ld. CIT(A). He further stated that Ld. CIT(A) has wrongly confirmed the action of AO in levying penalty of Rs. 90,000/- and that too without assuming jurisdiction as per law and without considering the facts and circumstances of the case and without considering the submission of assessee and latest position of law. He further submitted that Ld.CIT(A) has erred in confirming the action of AO in passing the impugned penalty order being contrary to law as the assessment order framed under section 143(3) dated 6.3.2013 was also illegal, beyond jurisdiction and void ab-initio. In support of his contention, he relied upon the decision of the Apex Court in the case of CIT vs. Reliance Petroproducts Pvt. Ltd. (2010) 322 ITR-158 (SC) and submitted that the penalty in dispute is unwarranted and may be deleted.

6. Ld. Departmental Representative controverted the arguments advanced by the Ld. Counsel of the assessee and he relied upon the orders of the revenue authorities.

7. We have heard both the counsel and perused the orders passed by the Revenue authorities as well as the Paper Book of the assessee containing pages 1 to 12 having the copy of assessment order dated 6.3.2013 passed in assessee's own case u/s. 143(3) of the Act during quantum proceedings; copy of notice u/s. 271(1)© dated 6.3.2013 issued alongwith the said order; copy of assessee's reply dated 7.9.2013 filed to AO during the course of penalty proceedings; copy of written submissions dated 26.8.2014 filed before Ld. CIT(A) and copy of further submissions dated 6.1.2015 filed before Ld. CIT(A). We find that in the assessment proceeding u/s. 143(3) the Act the Addition on account of unsubstantiated cash deposit Rs. 1,20,000/- ; ii) Addition on account of contravention of the provisions of section 40A(3) Rs.35000.00 and iii) Addition of provision of salary payable of Rs.20000/- alleging that fake provision were made. We find that with regard to addition of Rs.1,20,000/- the assessee had fully explained the entries as mentioned in its books because all the persons and transaction are genuine from whom amount was accepted as loan for just financial assistance and on being comfortable all transactions of loans were returned back. Confirmation of all persons were filed before the lower authorities. We note that at the time of assessment the assessee had given a consent to add the loans in their income to

avoid litigation and save valuable time but which does not mean that the amount entered in the books in name of different persons are unverifiable therefore it cannot be treated as unsubstantiated cash deposit. But the AO has wrongly alleged in penalty order that the assessee contended the persons have genuinely advance the money for purchase of goods but due any reasons they have taken their money back which they have advanced earlier lack of their addresses it is very difficult to either present them or get their confirmations. As regard the second addition was made due to cash payment of Rs. 35,000/- it cannot be treated as concealment of income or furnishing of inaccurate particulars because the payment was made to M/s Shakurnbhary Straw Products as accepted in assessment order which is also supported by voucher. In this regard the only default was contravention of the provision of section 40A(3). Since there was no concealment of income nor furnishing of inaccurate particulars therefore penalty cannot be imposed on this point. The third addition was made by disallowing the provision of salary payable which was made for salary expenses incurred genuinely for previous year, at the time of assessment the assessee could not produce the person to whom the salary was given because that person was left job therefore consent of addition had been given, but this does not mean that

assessee had concealed income or furnished inaccurate particulars. However, later, the assessee had received the confirmations from the persons to whom the amount of salary was given and produced the same before the Ld. CIT(A), which was not considered.

7.1 In view of above, there was no concealment of income nor furnishing of inaccurate particulars on the above points because mere non-acceptance of explanation offered cannot form a basis for the satisfaction of assessing authority to the effect that the assessee has concealed particulars of his income. In this regard, we draw support from the decision of the Hon'ble Apex Court in the case of CIT Vs Reliance Petro products Pvt. Ltd. (2010) 3 taxmann.com 47 (SC) wherein the Hon'ble Supreme Court has held that merely because the assessee had claimed the expenditure, which claim was not accepted or was not acceptable to the Revenue that by itself would not attract the penalty under section 271 (1)(c). We further find support from the decision in the case of CIT Vs Upendra Vs Mithani in IT A No. 1860 of 2009 dated 05.8.2009 wherein the Hon'ble High Court of Bombay has held that if the assessee gives the explanation which is unproved but not disproved i.e., it is not accepted but circumstances do not lead to the reasonable and positive inference that the assessee's case is false

then penalty imposable. However, in this case the explanation remains unproved but it cannot be said to disproved. We further find that as regards furnishing of inaccurate particulars, no information given in the return was found to be incorrect or inaccurate. We further find that section 271(1)(c) postulates imposition of penalty for furnishing of inaccurate particulars and concealment of income. Therefore, the assessee has not at all concealed any particulars of such income and has also not furnished inaccurate particulars of income.

7.2 In the background of the aforesaid discussions and respectfully follow the precedents, as aforesaid, we are of the considered view that the assessee has neither concealed the income nor furnished inaccurate particulars of income and there are no findings of the Assessing Officer and the CIT (Appeals) that the details furnished by the assessee in his return are found to be incorrect or erroneous or false. Under these circumstances, in our view the penalty in dispute is totally unwarranted and deserve to be deleted. Accordingly, we delete the penalty of Rs. 90,000/- made u/s. 271(1)(c) of the I.T. Act and quashed the orders of the authorities below on the issue

in dispute.

8. In the result, the appeal filed by the Assessee stands allowed.

Order pronounced on 03/07/2018.

Sd/-

Sd/-

**[PRASHANT MAHARISHI]
ACCOUNTANT MEMBER**

**[H.S. SIDHU]
JUDICIAL MEMBER**

Date: 03-07-2018

"SRBHATNAGAR"

Copy forwarded to: -

1. Appellant 2. Respondent 3. CIT 4. CIT (A) 5. DR,
ITAT

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By Order,

Assistant Registrar