

INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "E": NEW DELHI  
BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER  
AND  
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER

ITA No. 6580/Del/2015  
(Assessment Year: 2011-12)

Mahavir Prasad Gupta, E-165, Shastri Nagar, Delhi PAN: AGWPG5362M (Appellant)	Vs.	ACIT, Circle-38(1), New Delhi (Respondent)
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Assessee by :	Shri Ved Jain, Adv
Revenue by:	None
Date of Hearing	02/05/2018
Date of pronouncement	10/07/2018

O R D E R

PER PRASHANT MAHARISHI, A. M.

1. This is an appeal filed by the assessee against the order of the Id CIT(A)-20, New Delhi dated 12.10.2015 for the Assessment Year 2011-12, wherein, penalty levied by the Id AO u/s 271(1)(c) of the Act of Rs. 1701220/- by order dated 24.09.2014 is confirmed.
2. The assessee has raised the following grounds of appeal:-
  - "1. *On the facts and circumstances of the case, the order passed by the learned Commissioner of Income Tax (Appeals) {CIT(A)} levying penalty under section 271(1)(c) of the Income Tax Act, 1961 is bad, both in the eye of law and on the facts.*
  2. *On the facts and circumstances of the case, the Id. CIT(A) has erred, both on facts and in law, in confirming the levy of penalty amounting to Rs.17,01,220/-.*
  3. *On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in ignoring the contention of the appellant that the penalty on an addition of Rs.50,18,313/- is unsustainable in the absence of initiation of any penalty proceeding in respect of such addition as is evident from the assessment order.*
  - 4(i) *On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming the levy of penalty on an adhoc addition of Rs.50,18,313/- made by the AO by increasing the Gross Profit rate by 1%.*

- (ii) *That the above said penalty is untenable in the absence of any specific finding regarding any concealment of income or furnishing of inaccurate particulars of income.*
- 5(i) *On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming the levy of penalty in respect of an amount of Rs.4,87,263/- being the interest received on income tax refund.*
- (ii) *That the above said penalty has been confirmed ignoring the explanation submitted by the assessee in this regard."*

3. Though, the assessee has raised nine grounds of appeal, however, all of them are related to confirmation of penalty by the Id CIT(A).
4. Brief facts of the case shows that the assessee is an individual engaged in the business of Civil Construction Contractor in CPWD. The assessee filed his return of income on 19.09.2011 declared total income of Rs. 19104340/-. During the course of assessment proceedings when the assessee was asked to produce the original books of account, bills, vouchers, muster roll, wage sheets and log book etc for verification, the assessee produced them and after the verification by the Id AO on test check basis, he found that some of the purchase expenditure are not supported by proper bills and further the expenses are in cash and through self generated vouchers etc. Therefore, the Id AO asked the assessee to clarify the genuineness of the expenses in light of low net profit. In response to this the assessee agreed for a surrender of his income @1% of the turnover or gross receipt of Rs. 501831291/- amounting to Rs. 5018313/- and therefore, the Id AO made the above addition. The Id AO also initiated the penalty proceedings at the time of framing of final assessment order made u/s 143(3) of the Act on 28.03.2014, which was passed at Rs. 24681650/- against the return of income of Rs. 19104340/-. One further addition was also made on account of interest u/s 244A for Assessment Year 2008-09 and 2009-10, where the refund was issued to the assessee and interest was paid. The assessee was paid total interest of Rs. 643038/- and has shown only interest of Rs. 155775/- in his capital account but has not shown the

balance interest of Rs. 487263/-, therefore, the addition to the extent was also made.

5. The Id AO has initiated the penalty proceedings u/s 271(1)(c) of the Act and proceeded to pass penalty order on both the above additions. The show cause notice was issued on 28.03.2014 which was replied by the assessee on 09.09.2014. It was stated by the assessee that the addition was surrender on agreed basis to buy peace of mind and to avoid necessary litigation. He further stated that there is no concealment or furnishing any inaccurate particulars of income. The Id AO noted that the addition has been made on account of surrender because of the deficiency and sums paid in cash. He further stated that as the assessee has not shown the income on interest on refund of income tax the penalty is leviable as the assessee has concealed his income for furnishing inaccurate particulars of income. He has also drawn support from the decision of Hon'ble Delhi High Court in case of CIT Vs. Zoom Communication Pvt. Ltd 327 ITR 51. Consequently, he levied the penalty of Rs. 1701220/- vide order dated 24.09.2014.
6. The assessee preferred appeal before the Id CIT(A). The Id CIT(A) rejected the contention of the assessee and held that penalty is legally sustainable and correctly levied. He further held that the evidences produced by the assessee were not credible and because of the scrutiny proceedings only the wrong claim of the assessee was detected, he therefore, upheld the penalty.
7. The assessee aggrieved preferred appeal before us.
8. The Id AR submitted that:-
  - i. That the Id AO has not recorded his satisfaction in initiating penalty proceedings on addition of Rs. 5018313/-. He relied upon the decision of CIT Vs. Triveni Engineering and Industries 306 ITR 660 (All)
  - ii. He stated that penalty was levied on ad hoc basis @1% of the gross receipt made by the Id AO on account of low profit. He therefore,

stated that no clinching material suggesting concealment of income and furnishing inaccurate particulars of income were shown by the Id AO for levying of the penalty. He relied on the decision of the Hon'ble Delhi High Court in CIT Vs. Aero Traders Pvt. Ltd 322 ITR 316. He further stated that same is on estimated addition.

- iii. With respect to the addition on account of income tax interest he submitted a chart where net interest is chargeable of Rs. 155775/- only, which is shown by the assessee in his return of income and therefore, there cannot be any addition on account of that, penalty at least cannot be levied.
  - iv. He further stated that penalty proceedings are independent proceedings and therefore, merely the addition made cannot be stated to be that assessee has furnished inaccurate particulars of income or has concealed the particulars of income.
  - v. He further stated that there is no satisfaction in the assessment order and there is no satisfaction in the notice itself. He stated that twin charges are not specified by the Id AO. He relied on the decision of the Hon'ble Karnataka High Court in case of CIT Vs. Manjunatha Cotton and Ginning Factory 359 ITR 505 as well as CIT Vs. SSA's Emerald Meadows, he further relied on the several judgment.
9. In the end he submitted the penalty cannot be levied in this case.
  10. Despite notice, none remained present for arguing the case, therefore,, appeal is decided on merits as per information available on record.
  11. We have carefully considered the contentions and perused the orders of the lower authorities pertaining to the assessment as well as the levy of the penalty. The assessee is engaged in the business of civil contractor in CPWD. The Id AO asked the assessee to produce certain records to support its books results and wherein, he found that some of the purchase expenses are not supported by proper bills and some of the expenditure are made in cash and there are self generated vouchers.

With respect to the labour register and muster roll the identity of the person could not be verified. The assessee has submitted that the expenditures are genuine, however, the assessee agreed for 1% addition on the gross receipt to the book result. On this addition penalty is levied. However, the Id AO did not mention where expenditure are not supported by proper bills and if the payments are made in cash, the Id AO should have disallowed it u/s 40A(3) to assess. With respect to the muster roll the Id AO has not pointed out any instance of any ingenuine payment verification. The Id AO did not find any instance of purchase expenses not supported by the bills. In fact the Id AO should have made the addition based on in absence of information such as proper bills etc as well as addition on account of any ingenuine expenditure. The Id AO has not made any detection but has agreed merely on the offer made by the assessee. The Id AO has also not brought out any instance to show that the assessee has concealed income or furnish any inaccurate particulars of income. Further, the book results of the assessee are accepted subject to the above addition. If the Id AO was of the view that the expenditure booked by the assessee are not genuine then he should not have accepted the book results of the assessee. Further, in the assessment order this addition is discussed at para No. 3(1), where no penalty has been initiated on this addition. There is no satisfaction recorded by the Id AO with respect to this addition that the assessee has furnished inaccurate particulars of income or has concealed income. Merely because the addition has been accepted it automatically does not result into liability for penalty u/s 271(1)(c) of the Act. The books of account of the assessee are duly audited by the Chartered Accountant u/s 44AB of the Act. On looking at the profit and loss account there are various accounts of expenditure recorded in the profit and loss account of the assessee and report of the Chartered Accountant was also unqualified. The book result are accepted. The letter by which the assessee agreed for the addition of 1% of the gross receipt was also of one line letter which does not show

that the assessee has also agreed that it has concealed its particulars of income or has furnished any inaccurate particulars. The assessee has merely agreed for the notional addition of 1% of gross receipt. Generally, on the estimated addition penalty u/s 271(1)(c) cannot be levied. Unless the agreement is made by the assessee based on substantial defect pointed out by the Id AO during the course of assessment proceeding which shows that the assessee has not shown the correct income. There is no such finding in the assessment order or in the penalty orders. The argument of the Id AR is also acceptable that there is no satisfaction of the Id AO with respect to the above addition which warranted the penalty u/s. 271(1)(c) of the Act.

12. With respect to the second addition the assessee has shown that total amount of refund was received of Rs. 11.51 lacs out of which tax refund was of Rs. 9.16 lakcs leaving the balance sum as interest of Rs. 2.35 lacs. The Id AO himself has withdrawn the interest of Rs. 79848/- vide order dated 01.08.2011 u/s 154 of the Act. Due to which the net interest shown of Rs. 1.55 lacs which has been disclosed by the assessee in his return of income therefore, on this count there cannot be any addition and therefore, there is no reason to levy any penalty thereon.
13. Further, the assessee has shown the copy of the show cause notice issued u/s 274 of the Act read with section 271(1)(c) dated 28.02.2013, where out of twin charges none of the them was cancelled by the Id AO. Further, in the assessment orders itself the Id AO has put general remark at the end of the assessment orders invoking twin charges. In the penalty orders also the assessee has levied penalty on both counts. The Id CIT(A) has confirmed the penalty by holding that the assessee has submitted inaccurate particulars of income. As the issue is squarely covered by the decision of the Hon'ble Karnataka High court in case of CIT Vs. Manjunatha Cotton and Ginning Factory (supra) as well as the decision of the CIT Vs. SSA's Emerald Meadows. In view of this we reverse the

finding of the Id CIT(A) in confirming the penalty of Rs. 1701220/- and direct the Id AO to delete the same.

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

Order pronounced in the open court on 10/07/2018.

-Sd/-  
(AMIT SHUKLA)  
JUDICIAL MEMBER

-Sd/-  
(PRASHANT MAHARISHI)  
ACCOUNTANT MEMBER

Dated:10/07/2018  
A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR  
ITAT, New Delhi