

INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "D": NEW DELHI
BEFORE SMT DIVA SINGH, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER

ITA No. 624/Del/2015
(Assessment Year: 2009-10)

Jugal Kishore, Rk Malik, Advocate, 1 st Floor, Gurudwara Building, Roorkee Road, Muzaffarnagar PAN: ADKPK0416D	Vs.	ITO, Ward-1(1), Muzaffarnagar
(Appellant)		(Respondent)

Assessee by :	None
Revenue by:	Shri Amit Jain, Sr. DR
Date of Hearing	30/07/2018
Date of pronouncement	12/09/2018

O R D E R

PER PRASHANT MAHARISHI, A. M.

1. This appeal is filed by the assessee against the order of the Id CIT(A), Muzaffarnagar dated 24.11.2014, wherein, penalty u/s 271(1)(c) of the Act by the ITO, Ward-1(1) Muzaffarnagar of Rs. 1025100/- was partly confirmed. The assessee has challenged the same raising seven following grounds of appeal, however, the main crux of the grounds are challenged about the above penalty order.
2. The brief facts of the case is that the assessee is engaged in trading of mobile accessories. He filed his return of income on 30.09.2009 declaring income of Rs. 33189/-. The Id AO examined the gross profit of the assessee and held that for Assessment Year 2008-09 the assessee has disclosed GP of 5% wherein, for the current year it is 1.80%. Therefore, explanation was sought. The assessee explained the reason for the downfall in GP. The Id AO rejected the explanation and made an addition of Rs. 2 lac. The assessee also asked to explain the sundry creditors and to verify the same. The Id AO issued notice u/s 133(6) of the Act and

found certain difference in the balance of those creditors. The total difference of Rs. 829832/- was found and explanation of the assessee was called for. However, the Id AO made an addition of the above amount. The Id AO passed assessment order u/s 143(3) of the Act on 26.11.2012 determining total income of the assessee of Rs. 1371720/- against the return income of Rs. 3312891/-. The Id AO also issued penalty notice u/s 274 read with section 271(1)(C) of the Act. The assessee preferred appeal before the Id CIT, Muzaffarnagar who partially deleted the addition of Rs. 653002/- on account of creditors and confirmed the addition on account of gross profit.

3. In penalty proceedings, assessee submitted with respect to the gross profit that assessee was in retail business and further the assessee agreed for adhoc addition of Rs. 2 lakh on gross profit. With respect to the addition of sundry creditors, assessee has explained all the details as well as submitted the reason for difference. In view of this, it was prayed penalty may not levied. However, the Id AO held that the assessee has not disclosed correct profit and further the Id CIT(A) confirmed the addition of Rs. 176830/- with respect to the creditors, he held that assessee has furnished inaccurate particulars of his income and concealed particulars of his income. He therefore, levied a penalty of Rs. 102500/- as per order dated 16.05.2013. The assessee contested the above penalty order before the Id CIT(A), who confirmed the penalty holding that the addition in appeal are concealment of income. He further held that there is no infirmity in the order of the Id AO in levying the penalty. Therefore, assessee is in appeal.
4. The assessee filed an application for adjournment of hearing submitting that he is ill. Looking to the matter, adjournment application of the assessee was rejected and same is decided on the merits of the case.
5. The Id DR vehemently supported the orders of the lower authorities.
6. We have carefully considered the rival contentions and perused the orders of the lower authorities. Firstly, looking at the assessment order

passed by the Id AO, it is apparent that there was no satisfaction recorded by the Id AO in assessment order that whether the assessee has concealed income or furnished inaccurate particulars of income. Even in the penalty order dated 10.05.2013, the Id AO has held that the assessee is liable for penalty u/s 271(1)(c) of the Act as assessee has furnished inaccurate particulars of his income and concealed particulars of his income. Therefore, the Id AO is not certain about the exact charge on the assessee. Further on the merits the addition has been made on account of low gross profit on estimated basis. The Id AO has rejected the books of account and estimated the gross profit. However, he did not find any defect in the books of account produced before him. Therefore, the addition on account of gross profit was purely on estimation basis. In view of this it cannot be said that the assessee has furnished any inaccurate particulars of his income or concealed income on this issue. Furthermore, with respect to the addition of the sundry creditors, assessee has explained full details about difference between balance as per the books of assessee as well as the information obtained by the Id AO and reconciled. The assessee has shown that in some of the cases the customer has been billed certain goods which was not accepted by the assessee. In one of the case, the payment made by the assessee was also not recorded. Out of the total four creditors the addition was upheld only with respect to Rs. 177958/-. Though the addition is confirmed by the first appellate authority, but does not show that the assessee has not recorded any transaction in his books of account or any transaction recorded by him is false. Further the Id CIT(A) has also confirmed the penalty without verifying that whether the assessee is guilty of furnishing inaccurate particulars of income or concealment of income. It has been held by Hon'ble Karnataka High Court in case of CIT Vs. Manjunatha Cotton and Ginning Ltd 359 ITR 565 that the penalty proceedings are distinct from the assessment proceedings and the charge has to be specific. Even otherwise it should have been discernable from the

assessment order. Further even after the tax liability is admitted the penalty is not automatic. In view of this, we accordingly quash penalty orders passed by the lower authorities u/s 271(1)(c) of the Act as there was no specific charge against the assessee.

7. Accordingly, appeal of the assessee is allowed.

Order pronounced in the open court on 12/09/2018.

-Sd/-
(DIVA SINGH)
JUDICIAL MEMBER

-Sd/-
(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Dated:12/09/2018
A K Keot

Copy forwarded to

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

ASSISTANT REGISTRAR
ITAT, New Delhi