

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "A", MUMBAI

Before Shri Joginder Singh(JUDICIAL MEMBER)

AND

Shri G Manjunatha (ACCOUNTANT MEMBER)

I.T.A No.2880 /Mum/2017
(Assessment year: 2007-08)

Mrs Lorraine Maria Fonceca Flat No.10, 2 nd Floor, Berchman House, St. Peters 31, Pali Road, Bandra (W) Mumbai 400 050 PAN: AAAPF3419L	vs	Principal CIT-35, Mumbai
APPELLANT		RESPONDENT

Appellant by	Shri Behari Lal
Respondent by	Shri Himanshu Sharma

Date of hearing	30 -09-2018
Date of pronouncement	10 -10-2018

ORDER

Per G Manjunatha, AM :

This appeal filed by the assessee is directed against order of the Principal Commissioner of Income-tax-35, Mumbai u/s 273A of the I.T. Act, 1961 rejecting application for waiver of penalty levied u/s 271(1)(c) of the Income-tax Act, 1961 for the assessment year 2007-08. The assessee has raised the following grounds of appeal:-

- “1. 1 The Learned Pr. Commissioner of Income Tax 35 has erred in levying a Penalty U/s. 271 (l)(c) of the Income Tax Act, 1961 Of Rs. 10,32,3467- under the facts and. circumstances of the case, he ought not to have levied the same.
2. The order of the Learned Pr. Commissioner of Income Tax 35 is against the weight of evidence and equity of natural justice.”

2. The brief facts of the case are that the assessee was an employee of Delta Airlines Inc., a USA company having its branch office at Mumbai, filed her return of income for AY 2007-08 on 31-07-2008 declaring total income of Rs.9,91,050. During the year under consideration, the assessee has received a sum of Rs.30,78,664 towards voluntary separation payment, bonus and tax advisors allowance and the same has been claimed exempt u/s 10(10C) of the Income-tax Act, 1961 and accordingly a note has been given in the statement of total income. Subsequently, case has been reopened u/s 147 on the ground that income chargeable to tax had been escaped assessment on account of exemption claimed u/s 10(10C) in respect of benefits received from the company on account of voluntary retirement scheme. The assessment was completed u/s 143(3) r.w.s. 147 of the Act, on 26-10-2010 and determined total income of Rs.40,69,697 by making addition towards amount received on account of voluntary separation scheme. The assessee carried the matter in appeal before the Ld.CIT(A), but could not succeed as the Ld.CIT(A) has dismissed appeal filed by the assessee. The assessee carried the matter in further appeal before the ITAT. The ITAT has restored the matter back to the file of the AO to decide the issue afresh. Consequent to directions of the ITAT, the AO has issued notice u/s 143(2) and called upon the assessee

to file necessary details justifying exemption claimed u/s 10(10C) and relief claimed u/s 89(1) of the Income-tax Act, 1961. In response to notice, assessee has filed various details and claimed that her claim of exemption u/s 10(10C) and relief u/s 89(1) is in accordance with law. The AO, after considering relevant submissions of the assessee and also by relying upon certain judicial precedents held that the assessee is not eligible to get exemption u/s 10(10C) as well as relief u/s 89(1) of the Act, as said benefit is allowed to the employees, who got benefit under Voluntary Retirement Scheme from a public sector undertaking, but not for the employees, who took voluntary retirement from foreign company. Thereafter, the AO initiated penalty proceedings u/s 271(1)(c) and after considering necessary submissions of the assessee, levied penalty of Rs.10,32,346 for furnishing inaccurate particulars of income in respect of amount received on voluntary retirement.

3. The assessee has filed an application for waiver of penalty u/s 273A of the Income-tax Act, 1961 before the Principal Commissioner of Income-tax-35, Mumbai. The Principal Commissioner of Income-tax, after considering relevant facts stated in the application filed u/s 273A and on analysis of provisions of section 10(10C) observed that an employee, who receives amount under the ' Voluntary Separation / retirement scheme from a public sector organisation only is eligible for

exemption but not the assessee, who was in employment with a non resident company. As regards relief claimed u/s 89(1), the Principal Commissioner observed that only those amount received in the form of arrears or advance of salary are eligible for relief but not amount received under voluntary retirement scheme, therefore, he rejected application filed u/s 273A for waiver of penalty levied u/s 271(1)(c) of the Act.

4. The Ld.AR for the assessee submitted that the Ld.PCIT-35 has erred in rejecting application filed by the assessee u/s 273A for waiver of penalty levied u/s 271(1)(c) without appreciating the fact that the AO has levied penalty for furnishing inaccurate particulars of income in respect of a bona fide claim made by the assessee towards amount received from voluntary retirement scheme u/s 10(10C) of the Act.

5. On the other hand, the Ld.AR strongly supported the order of the PCIT.

6. We have heard both the parties and perused the material available on record. We find that the assessee has filed appeal against order passed by the PCIT u/s 273A of the Income-tax Act, 1961 against rejection of application for waiver of penalty levied u/s 271(1)(c) of the Act. We further notice that the provisions of section 253(1) does not provide for filing of appeal against order passed by the PCIT u/s 273A of

the Income-tax Act, 1961 rejecting application for waiver of penalty u/s 271(1)(c) of the Act. We further notice that the provisions of sub section 5 of section 273A make it very clear that every order under this section shall be final and cannot be called into question in any court or any other authority. When the law is not permitted to file appeal against order u/s 273A before the Tribunal, then there is no scope for the assessee to file appeal against such order. Therefore, we are of the considered view that the appeal filed by the assessee is not maintainable and accordingly, we dismiss appeal filed by the assessee. However, we keep open an option to the assessee to challenge the order passed by the PCIT u/s 273A of the Income-tax Act, 1961 in appropriate forum in accordance with law.

7. In the result, the appeal filed by the assessee is dismissed.
Order pronounced in the open court on 10th October, 2018.

Sd/-

sd/-

(Joginder Singh)	(G Manjunatha)
JUDICIAL MEMBER	ACCOUNTANT MEMBER

Mumbai, Dt : 10th October, 2018

Pk/-

Copy to :

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

/True copy/

By order

Sr.PS, ITAT, Mumbai