

आयकर अपीलीय अधीकरण, न्यायपीठ – “D” कोलकाता,
IN THE INCOME TAX APPELLATE TRIBUNAL “D” BENCH: KOLKATA
 (समक्ष)श्री पी. एम.जगताप, उपाध्यक्ष एवं श्री ए.टी. वर्की,न्यायिक सदस्य
 [Before Shri P.M. Jagtap, Vice President & Shri A. T. Varkey, JM]

I.T.A. No. 723/Kol/2017
Assessment Year: 2009-10

Assistant Commissioner of Income-tax, Central Circle-1(1), Kolkata	Vs.	Basil International Ltd. (PAN: AACCB0938K)
Appellant		Respondent

Date of Hearing	10.01.2019
Date of Pronouncement	23.01.2019
For the Appellant	Shri Sankar Halder, JCIT, Sr. DR
For the Respondent	N o n e

ORDER

Per Shri A.T.Varkey, JM

This appeal filed by the revenue against the order of Ld. CIT(A)-20, Kolkata dated 13.01.2017 for AY 2009-10.

2. At the outset itself it is brought to our notice that the Ld. CIT(A) has held the penalty levied u/s. 271(1)(c) of the Income-tax Act, 1961 pursuant to sec. 153A proceeding. Pursuant to the search after getting notice u/s. 153A of the Act the assessee had filed return of income disclosing an amount of Rs.1,13,11,393/- and the AO completed the assessment at the same figure, therefore, the Ld. CIT(A) has deleted the addition referring to the ratio laid by the Coordinate Bench of this Tribunal in the case of Ajit Kumar Surana Vs. ACIT, ITA No. 835 to 839/Kol/2013 dated 18.03.2014 and the decision of ITAT, Mumbai Benches in the case of Yogesh Parikh in ITA No. 6750/Mum/2008, 6751/Mum/2008 and 3409/Mum/2009 by observing as under:

“I have considered the finding of the AO in the penalty order and the written submission along with different case laws filed by the AR during the appellate proceedings. I find that the assessee filed its return of income in response to notice u/s. 153A declaring total income of Rs.11311393/- and the AO has completed the assessment at the total income of the same amount i.e. Rs.11311393/-. Thus, it is clear that the AO could not find any inaccurate

particulars or concealment of income during assessment proceedings u/s 153A read with section 143(3) i.e. returned income has been accepted in this case. Under these circumstances, I have also considered the ratio decided by the Jurisdictional Kolkata Bench of ITAT in the case of Ajit Kumar Surana vs ACIT, ITA No.835 to 839/Kol/2013 dt.18-03-2014. In this case it has been held that "concealment of income is to be determined with reference to return of income filed in response to notice u/s. 153A of the I T Act and that there is complete detachment of such proceedings from regular assessment proceeding." The AR has further relied on the case law of Yogesh Parikh in ITA No.6750/Mum/2008, 6751/Mum/2008 & 3409/Mum/2009 wherein The Mumbai Bench of ITAT has observed that in search case return filed u/s 139 cannot be considered. Only return filed u/s 153A is to-be considered for assessment and in case any further concealment is found in it only then penalty u/s 271(1)(c) can be levied.

I have considered all the case laws brought on record by the AR on this issue. I find that all the judicial authorities are unanimous that concealment or inaccurate particulars found in the return filed in response to notice u/s 153A will be the only basis for penalty u/s 271(1)(c). Courts have also held that return filed earlier u/s 139 for the same assessment year cannot be the basis for penalty in order passed u/s 153A/143(3). Keeping in view various case laws including some passed by the Jurisdictional Kolkata Tribunal i.e. in the case of Ajit Kumar Surana (supra), assessee's appeal on grounds no 1 to 11 are allowed."

Aggrieved, revenue is in appeal before us.

3. We have heard rival submissions and gone through the facts and circumstances of the case. We note that since factual aspect could not be controverted by the Ld. DR before us and the Ld. CIT(A) deleted the addition on the ratio laid down by the Tribunal, respectfully following the Tribunal's order, we confirm the order of the Ld. CIT(A) and dismiss the appeal of the revenue.

4. In the result, the appeal of revenue is dismissed.

Order is pronounced in the open court on 23rd January, 2018.

Sd/-
(P. M. Jagtap)
Vice President

Sd/-
(Aby. T. Varkey)
Judicial Member

Dated : 23rd January, 2019

Jd.(Sr.P.S.)

Copy of the order forwarded to:

1. Appellant – ACIT, Central Circle-1(1), Kolkata
2. Respondent – Basil International Ltd., 72A, P. C. Sarkar Sarani, 1st floor, Kolkata-700 019.
3. CIT(A)-20, Kolkata(sent through e-mail)
4. CIT, Kolkata.
5. DR, ITAT, Kolkata. (sent through e-mail)

/True Copy,

By order,

Assistant Registrar