IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'SMC', NEW DELHI

Before Sh. N. S. Saini, Accountant Member

ITA No. 4753/Del/2018 : Asstt. Year : 2006-07

Dehradun Club Ltd., 15, New Survey Road, Dehradun, Uttarakhand	Vs	DCIT, Circle-1(1)(1), Dehradun
(APPELLANT)		**(RESPONDENT)**
PAN No. AAACD8246L		

Assessee by : Sh. V. Raja Kumar, Adv.
Revenue by : Sh. S. L. Anuragi, Sr. DR

Date of Hearing: 06.02.2019		**Date of Pronouncement:07.02.2019**

ORDER

This is an appeal filed by the assessee against the order of CIT(A), Dehradun dated 17.04.2018.

2. The sole issue involved in this appeal is that the CIT(A) erred in confirming the action of the AO levying penalty of Rs.4,05,000/- u/s 271(1)(c) of the Income Tax Act, 1961.

3. The brief facts of the case are that the assessee is a mutual benefit club registered as a company limited by guarantee u/s 25 of the Companies Act, 1956. The assessee filed return of income declaring Nil income. Thereafter, the Assessing Officer reopened the assessment by issue of notice u/s 148 of the Act and in the assessment framed thereafter u/s 147 r.w.s. 143(3) of the Act made addition to the income of the assessee of Rs.9,69,937/- under the head interest income on FDR and Rs.2,28,000/- under the head messing commission.

4. Thereafter, the Assessing Officer issued notice u/s 271(1)(c) of the Act and levied penalty u/s 271(1)(c) of the Act for furnishing inaccurate particulars of income of Rs.4,03,225/-.

5. The assessee carried the matter in appeal before the CIT(A) who confirmed the action of the AO.

6. Before me, the AR of the assessee filed order of Delhi 'G' Bench of the Tribunal in the case of assessee itself in ITA Nos. 5360 to 5362/Del/2015 for the assessment years 2010-11 to 2012-13, order dated 14.05.2018 and submitted that on the similar facts the penalty levied was deleted by the Tribunal. He also filed copy of the order of Delhi 'SMC' Bench of the Tribunal in the case of the assessee itself in ITA Nos. 462 & 463/Del/2018 for the assessment years 2007-08 and 2008-09, order dated 31.07.2018 and submitted that on similar facts penalty levied was deleted by the Tribunal. Hence, he submitted that following the same, the penalty levied during the year under appeal should also be deleted.

7. The DR agreed with the above submission of the AR of the assessee.

8. I find that the Tribunal in the assessment years 2007-08 and 2008-09 has held as under:

> *"14. I have considered the rival arguments made by both the sides and perused the material available on record. It is an admitted fact that when the oiiginal return of income was filed by the assessee for both the assessment years the law of mutuality on such income was in favour of the assessee by the decision of the Tribunal. Only when the matter for assessment year 2009-10 travelled to the Hon'ble Jurisdictional High Court that the matter was decided in favour of the Revenue and against the assessee. Based on it, the Assessing Officer reopened the assessment. No doubt, the assessee in the returns filed in response to the notice u/s 148 for both the years did not offer the interest income on FDR to tax and claimed the same as exempt. At the same time, it is to be kept*

in mind that all particulars were very much available in the records based on which the Assessing Officer had reopened the assessment and also made the addition subsequently in the reopening assessment. I find merit in the argument of the Id. counsel for the assessee that the claim of exemption made by the assessee can at best be a wrong claim but it cannot be called a false claim. The Courts have invariably held in various decisions that while the penalty proceedings u/s 271(1)(c) are attracted for making a false claim, however, such penalty is not leviable merely because the assessee has made a wrong claim. The Hon'ble Supreme Court in the case of Reliance Petroproducts Pvt. Ltd. (supra) has held that mere making of a claim which is not sustainable in law by itself will not amount to furnishing inaccurate particulars regarding the income of the assessee. Such a claim made in the return cannot amount to furnishing inaccurate particulars. It has further been held that merely because the assessee has claimed the expenditure, which claim was not accepted or was not acceptable to the Revenue that by itself would not, in our opinion, attract the penalty u/s 271(1)(c). The relevant observation of Hon'ble Supreme Court read as under:

> *"12. It was tried to be suggested that Section 14A of the Act specifically excluded the deductions in respect of the expenditure incurred by the assessee in relation to income which does not form part of the total income under the Act. It was further pointed out that the dividends from the shares did not form the part of the total income. It was, therefore, reiterated before us that the Assessing Officer had correctly reached the conclusion that since the assessee had claimed excessive deductions knowing that they are incorrect; it amounted to concealment of income. It was tried to be argued that the falsehood in accounts can take either of the two forms; (i) an item of receipt may be suppressed fraudulently; (ii) an item of expenditure may be falsely (or in an exaggerated amount) claimed, and both types attempt to reduce the taxable income and, therefore, both types amount to concealment of particulars of one's income as well as furnishing of inaccurate particulars of income. We do not agree, as the assessee had furnished all the details of its expenditure as well as income in its Return, which details, in themselves, were not found to be inaccurate nor could be viewed as the concealment of income on its part. It was up to the authorities to accept its*

claim in the Return or not. 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, in our opinion, attract the penalty under Section 271(1)(c). If we accept the contention of the Revenue then in case of every Return where the claim made is not accepted by Assessing Officer for any reason, the assessee will invite penalty under Section 271(1)(c). That is clearly not the intendment of the Legislature."

14.1 I further find the Id. CIT(A) has cancelled the penalty levied by the Assessing Officer u/s 271(l)(c) for assessment year 2010-11 to 2012-13 and on appeal by the Revenue, the Tribunal vide ITA Nos.5360 - 5362/Del/2015 order dated 14.05.2018 has dismissed the appeals filed by the Revenue.

15. In view of the decision of the Hon'ble Supreme Court (cited supra) and the decision of the Tribunal in assessee's own case and considering the fact that all details are already available in the assessment records, I am of the considered opinion that it is not a fit case for levy of penalty u/s 271(l)(c) of the I.T. Act.

Therefore, I set-aside the order of the Id. CIT(A) and direct the Assessing Officer to cancel the penalty so levied. The ground raised by the assessee is accordingly allowed.

16. The facts for assessment year 2008-09 in ITA No.463/Del/2018 are identical to that of the facts in assessment year 2007-08. Following the parity of reasoning for assessment year 2007-08, the penalty levied by the Assessing Officer and confirmed by the Id. CIT(A) for assessment year 2008-09 is also cancelled."

9. Further, the Tribunal in the assessment years 2010-11 to 2012-13 has held as under:

"We have heard the Id. Authorized Representatives of the parties to the appeal, gone through the documents relied upon and orders passed by the revenue authorities below in the light of the facts and circumstances of the case.

6. Undisputedly, at the time of filing the original return of income, the captioned issue was debatable. It is also not in dispute that the assessee has brought on record all the necessary details in its return

of income on the basis of which the AO has made disallowances and then proceeded to initiate the penalty proceedings u/s 27 1(1)(c) of the Act.

7. In the backdrop of the aforesaid facts and circumstances of the case, order passed by the lower Revenue authorities and arguments addressed by the Id. AR to the parties, the sole question arises for determination in this case is:-

> *"as to whether the assessee has concealed particulars of income or has furnished inaccurate particulars of income during assessment proceedings?"*

8. When as on the date of filing the original -return it was settled proposition of law that the assessee's business was governed by the Doctrine of Mutuality and its activities of business and annual value of the club house was outside the purview of levy of income-tax, we are of the considered view that it does not amount to concealment of particulars of income or furnishing of inaccurate particulars of income by the assessee particularly when it has given all the necessary details regarding interest income of FDRs and messing up charges. This proposition of law was settled by the Hon'ble Apex Court in Chelmsford Club vs. CIT-243 ITR 89 (SC), the operative part of which is reproduced as under:

> *"Held, reversing the decision of High Court, that the assessee's business was governed by the doctrine of mutuality. It was an admitted fact that the business of the assessee did not come within the scope of business referred to in section 2(24)(vii). It was not only the surplus from the activities of the business of the club that was excluded from the levy of income-tax, even the annual value of the club house, as contemplated in section 22 of the Act, would be outside the purview of the levy of income-tax."*

9. The Revenue swanged into action only after the decision of Hon'ble Apex Court in case of Bangalore Club vs. CIT - 350 ITR 509 (SC) by way of reopening the assessment u/s 148 of the Act.

10. It is the case of the assessee that at the time of filing the return consequent upon the issue of notice u/s 148 of the Act, he was not aware of the decision rendered by Hon'ble Apex Court in Bangalore Club (supra). When the assessee has accepted the quantum, paid the taxes as well as interest pursuant to the decision rendered by Hon'ble Uttarakhand High Court and confirmed by Hon'ble Apex Court whereby deposit of surplus funds in FDRs are held to be not covered by Doctrine of Mutuality, we are of the considered view that it does not amount to concealment of particulars of income and furnishing of inaccurate particulars of income particularly when all the necessary details were already furnished by the assessee at the

time of filing original return in accordance with the settled principles of law as per decision rendered by Hon'ble Apex Court in Chelmsford Club (supra) case. AT the most, assessee has put forth a wrong claim at the time of filing return pursuant to the reopening u/s 148 and has never concealed the particulars of income nor has furnished inaccurate particulars of income.

11. In view of what has been discussed above, we are of the considered view that AO has failed to make out the case of concealment of income or furnishing of inaccurate particulars of such income by the assessee rather it is a case of imposing penalty on the basis of decision rendered by the Hon'ble Apex Court in Bangalore Club (supra) case which was not in the notice of assessee at the time of filing the return pursuant to the notice u/s 148 of the Act sufficient to attract the provisions contained u/s 271(1)(c), so we find no illegality or perversity in the deletion of penalty made by the Id. CIT(A). Consequently, all the aforesaid appeals filed by the Revenue are hereby dismissed."

10. Facts being identical respectfully following the precedent, I set aside the orders of the lower authorities and deleted the levy of penalty of Rs.4,05,000/- and allow the ground of appeal of the assessee.

11. In the result, the appeal of the assessee is allowed.

(Order Pronounced in the Open Court on 07/02/2019).

Sd/-
(N. S. Saini)
Accountant Member

Dated: 07/02/2019
Subodh
Copy forwarded to:
1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR