

**IN THE INCOME TAX APPELLATE TRIBUNAL
CHANDIGARH BENCHES, 'SMC', CHANDIGARH**

BEFORE SHRI N.K. SAINI, VICE PRESIDENT

ITA No.1312/Chd/2018
Assessment Year: 2008-09

Sh. Nitin Chauhan
C/o Parikshit Aggarwal,
Chartered Accountant
H.No. 1238, Sector-22B
Chandigarh
PAN No. AEAPC5728F

Vs. The ITO
Ward
Nahan, Himachal Pradesh

(Appellant)

(Respondent)

Assessee By : Sh. Parikshit Aggarwal, CA
Revenue By : Shri. Manjit Singh, Sr. DR

Date of hearing : 20/02/2019
Date of Pronouncement : 20/02/2019

ORDER

This is an appeal by the Assessee against the order dt. 14/08/2018 of Ld. CIT(A)-Shimla, Himachal Pradesh.

2. The only grievance of the assessee in this appeal relates to the sustenance of penalty of Rs. 85,376/- levied by the Assessing Officer under section 271(1)(c) of the Income Tax Act, 1961 (hereinafter referred to as 'Act').

3. Facts of the case in brief are that the assessee filed the return of income on 30/03/2009 declaring an income of Rs. 1,52,030/- and agriculture income of Rs. 4,50,000/-. However the assessment was framed an income of Rs. 4,28,320 + agriculture income of Rs. 4,50,000/- vide order dt. 11/03/2015 under section 147 / 143(3) of the Act. The addition of Rs. 2,76,294/- was made to the income of the assessee on account of accrued interest on FDR's which was declared in the return of income. The Assessing Officer initiated penalty proceedings under section 271(1)(c) of the Act for concealment of income and furnishing of inaccurate particulars of income. The assessee submitted that he was under the bonafide belief that interest income from H.P. State Co-operative Agriculture & Rural Development Bank Ltd. was exempt from Income tax. The Assessing Officer however did not find merit in the submissions of the assessee and levied the penalty of Rs. 85,376/- under section 271(1)(c) of the Act.

4. Being aggrieved the assessee carried the matter to the Ld. CIT(A) who sustained the penalty levied by the Assessing Officer under section 271(1)(c) of the Act.

5. Now the assessee is in appeal.

6. The Ld. Counsel for the Assessee submitted that the Assessing Officer while initiating the penalty proceeding was not sure as to whether there was concealment of

income or furnishing of inaccurate particulars of income. He drew my attention towards the assessment order dt. 11/03/2015 wherein in para 3.2 the Assessing Officer initiated the penalty proceeding for concealment of income and furnishing of inaccurate particulars of income. It was further submitted that the assessee was under bonafide belief the interest income from the Co-operative Bank was not subject to tax since no TDS was deducted on the interest received from the said bank, however when this was brought to the notice of the assessee during the course of assessment proceeding, the income was declared and due taxes were paid. It was contended that the assessee did not furnish wrong particulars of income, therefore, the Assessing Officer was not justified in initiating the penalty proceeding for furnishing of the inaccurate particulars of income. It was also stated that in the penalty order the Assessing Officer levied the penalty under section 271(1)(c) by considering both the limb i.e; furnishing of inaccurate particulars of income and also for concealment of income. It was stated that the Assessing Officer in the notice under section 274 r.w.s 271 of the Act did not pointed out as to whether there was concealment of income or furnishing of inaccurate particulars of income, copy of the said notice dt. 11/03/2015 was furnished which is placed on record. It was contended that this issue is squarely covered by the order dt. 17/01/2019 of the ITAT, Amritsar, Camp Bench at Jalandhar in ITA No. 709/Asr/2017 for the A.Y. 2013-14 in the case of Smt. Harpreet Kaur Vs. ITO, Ward-3(4) Jalandhar, copy of the said order was furnished which is placed on record. Reliance was also placed on the following case laws:

- CIT & Anr. Vs. Manjunatha Cotton & Ginning Factory, 359 ITR 565 (Kar HC)
- CIT & Anr Vs. M/s SSA's Emerald Meadows, CC No. 11485 of 2016 (SC)
- CIT Vs. Dee Contol and Electric Pvt.Ltd. in ITA No. 82 of 2017 (All HC)
- Pr. CIT Vs. Baisetty Revathi, 398 ITR 88 (AP HC)
- Smr. Gurdeep Karu & Anr. Vs. DCIT in ITA No. 459 to 462/Chd/2015

7. In his rival submissions the Ld. Sr. DR strongly supported the orders of the authorities below and further submitted that the assessee did not declare the income received as an interest from the Co-operative Bank and when confronted during the course of assessment proceedings it was declared by the assessee therefore the concealment of income was there and the Assessing Officer rightly levied the penalty under section 271(1)(c) of the Act. The reliance was placed on the following case laws :

Sh Munish Jain, Ludhiana Vs. The DCIT, CC-II, Ludhiana in ITA No. 254 & 255/Chd/2017, A.Y. 2010-11 & 2011-12, order dt. 19/03/2018

MAK Data Pvt. Ltd. Vs. CIT 358 ITR 593 (SC)

8. I have considered the submissions of both the parties and perused the material available on record. In the present case, it is an admitted fact that the Assessing Officer in the notice dt. 11/03/2015, issued under section 274 r.w.s 271 of the Act has not clearly mentioned as to whether there was concealment of income or furnishing of inaccurate particulars of income. He simply ticked the printed performa of the notice.

A similar issue having identical facts has been adjudicated by the ITAT Amritsar Camp Bench at Jalandhar in case of Smr. Hardeep Kaur Vs. ITO, Jalandhar (supra) wherein the relevant findings have been given in para 7 and 8 of the order dt. 17/01/2019 which read as under:

7. We have considered the submissions of both the parties and perused the material available on the record. It is noticed that an identical issue having similar facts has been adjudicated by the ITAT Delhi Bench 'A', New Delhi in the case of Aman Mehtani Vs DCIT (supra) wherein one of us (Vice President) is a co-signatory in the said order dated 22.11.2017, it has been held as under: "8. We have heard both the parties and perused the material available on record. There is no concealment in the present case. The Assessee has also filed all the details during the regular assessment proceedings. From the notice dated 28.12.2011 produced by the Ld. AR during the hearing, it can be seen that the Assessing Officer was not sure under which provisions of Section 271 of the Income Tax Act, 1961, the assessee is liable for penalty. The issue is squarely covered by the decision of the Hon'ble Supreme Court in case of M/s SSA' Emerald Meadows. The extract of the Hon'ble Karnataka High Court in M/s. SSA' Emerald Meadows are as under which was confirmed by the Hon'ble Apex Court: "3. The Tribunal has allowed the appeal filed by the assessee holding the notice issued by the Assessing Officer under Section 274 read with Section 271(I)(c) of the Income Tax Act, 1961 (for short 'the Act') to be bad in law as it did not specify which limb of Section 271(I)(c) of the Act, the penalty proceedings had been initiated i.e., whether for concealment of particulars of income or furnishing of inaccurate particulars of income. The Tribunal, while allowing the appeal of the assessee, has relied on the decision of the Division Bench of this Court rendered in the case of COMMISSIONER OF INCOME TAX -VS- MANJUNATHA COTTON AND GINNING FACTORY (2013) 359 ITR 565. 4. In our view, since the matter is covered by judgment of the Division Bench of this Court, we are of the opinion, no substantial question of law arises in this appeal for determination by this Court. The appeal is accordingly dismissed. "

8. Since, the facts of the present case are similar to the aforesaid referred to case. So, respectfully following the aforesaid referred to order dated 22.11.2017, the impugned penalty levied by the AO and sustained by the Id. CIT(A) is deleted.

So respectfully following the aforesaid referred to order dt. 17/01/2019, the penalty under section 271(1)(c) of the Act, levied by the Assessing Officer and sustained by the Ld. CIT(A) is deleted.

9. In the result appeal of the Assessee is allowed.

(Order pronounced in the open Court on 20/02/2019.)

**Sd/-
(N.K. SAINI)
VICE PRESIDENT**

Place: Chandigarh
Dated : 20/02/2019
AG

Copy to: The Appellant, The Respondent, The CIT, The CIT(A), The DR