

IN THE INCOME TAX APPELLATE TRIBUNAL
AMRITSAR BENCH, AMRITSAR

BEFORE SH. N.S.SAINI, ACCOUNTANT MEMBER AND
SH. N.K.CHOUDHRY, JUDICIAL MEMBER

ITA No.461(Asr)/2015
Assessment Year:2007-08

Asst. CIT,
Circle-I, Bathinda.

Vs. Sh. Daljit Singh,
Prop. M/s. Sra Construction
Co., SCF-96, Rose Garden
Market, Bathinda.

[PAN:AXWPS 9271J]

(Appellant)

(Respondent)

Appellant by: Sh. Bhawani Shankar (Ld. DR)
Respondent by: None

Date of hearing: 12.02.2019
Date of pronouncement: 12.02.2019

ORDER

PER N.K.CHOUDHRY, JM:

The instant appeal has been preferred by the Revenue Department against the order dated 25.06.2015 passed by the Ld. CIT(A)-Bathinda, u/s 250(6) of the I.T. Act, 1961 (hereinafter called as 'the Act').

2. The brief facts of the case are that while rejecting the books of account of the assessee, the amount of Rs.75,87,949/- and 3,90,000/- was added in the income of the assessee and amount of Rs.6 Lakhs which was claimed as deduction under Chapter-6A of the Act was

restricted to 5 lakhs by the Assessing Officer and penalty proceedings u/s 271(c) of the Act for furnishing inaccurate particulars of income have also been initiated. Thereafter, a penalty of Rs.26,88,743/- @ 100% tax sought to be evaded, was levied by the Assessing Officer and on challenge before the Ld. CIT(E), the Ld. CIT(A) while following the judgments of the jurisdictional High Court deleted the penalty, relevant part of which, for the sake of brevity and convenience and ready reference is reproduced herein below.

“9. The factual matrix of the case, averments of the appellant and the cited judicial precedents have been carefully examined and considered. The law on penalty has now crystallized and almost a trite proposition of law has emerged that penalty would not be exigible merely because an addition is made on estimate basis. This proposition has been reiterated by the Hon’ble jurisdictional High Court of Punjab and Haryana in a catena of decision. In CIT vs. Dhillon Rice Mills [2002] 256 ITR 447 (P&H), the Hon’ble High Court held that in a case of addition based upon estimated higher yield in manufacture and low gross profit, there can be no penalty unless the Department brings something on record to indicate that there has been concealment on the part of the assessee. In coming to this conclusion, it followed its own earlier decision in CIT vs. Metal Products of India [1984] 150 ITR 714 (P&H). The proposition that penalty cannot be

imposed, -ere an addition is based merely on estimate finds further support in Harigopal Singh Vs CIT [2002] 258 ITR 85 (P&H).

It cannot be gainsaid that the appellant's case falls in the category of estimated addition as the Assessing Officer, for the reasons discussed in the assessment order, insisted on the parity of the net profit rate with that disclosed by the appellant himself in the immediately preceding Assessment Year. Application of a presumed net profit rate and addition thereon based on howsoever good and adequate reasons, tantamount to estimation of income. Such an estimated addition may be a good ground for quantum addition but the same cannot have a justification for imposition of penalty, the exigibility of which postulates an act of positive concealment. Though concealment of income is presumed in every case of difference between the reported and assessed income under Explanation 1 to section 271(1)(c), but such presumption is rebuttable. The Explanation itself provides for such rebuttal in cases, where the taxpayer has an explanation for the difference, produces all the materials available with him and such explanation is not found to be mala fide. In the instant case, the appellant did provide explanation for the lesser profit disclosed, which was not accepted by the Assessing Officer who applied a higher rate of profit resulting in a

substantial addition to the returned income. Even when such assessment is confirmed in appeal, which has been the case here, there cannot be an inference of concealment for the levy of penalty u/s 271(1)(c). Adoption of agricultural income for rate purpose, which had not been done by the appellant in his return of income and the disallowance of claim of deduction for want of documentary evidence also do not qualify as positive concealment for levy of penalty. In this view of the matter, it is held that penalty is not exigible in the instant case. The Assessing Officer is thus directed to delete the penalty.

3. While arguing the case, the Ld. DR agitated that the penalty is rightly been imposed by the Assessing Officer because the onus to prove non-concealment or non-furnishing of inaccurate particulars of its income was squarely on the assessee and he failed to discharge such onus. Further the assessee has failed to substantiate his claim of deduction u/s 80C and has furnished inaccurate particulars of income/concealed particulars of income to that extent. Further the assessee has failed to produce the books of account before the Assessing Officer which could substantiate his claim for low net profit and therefore order under challenge has suffered from perversity, impropriety and illegality and hence, liable to be set aside.

4. Having heard the parties at length and perused the material available on record including the orders passed by the authorities below and observed that the Ld. CIT(A) deleted the penalty, while following the propositions laid down by the jurisdictional High Court in the case of CIT vs. Dhillon Rice Mills [2002] 256 ITR 447 (P&H), CIT vs. Metal Products of India [1984] 150 ITR 714 (P&H) and Harigopal Singh vs. ITO [2002] 258 ITR 85 (P&H) whereby, the jurisdictional High Court has held that penalty would not be exigible merely because an addition is made on estimate basis. We do not find any contrary material/substance either on record or in the submissions of the Ld. DR to controvert the findings of the Id. CIT(A) in the impugned order, hence in our considered view the order under challenge does not suffer from any perversity, illegality or impropriety and therefore do not require any interference.

5. In the result, the appeal filed by the Revenue Department stands dismissed.

Order pronounced in the open Court on 12.02.2019.

Sd/-
(N.S.SAINI)
ACCOUNTANT MEMBER

Sd/-
(N.K.CHOUDHRY)
JUDICIAL MEMBER

Dated: 12.02.2019

/PK/ Ps.

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- (2) The Asst. CIT, Circle-I, Bathinda
- (3) The CIT(A)-Bathinda
- (4) The CIT concerned
- (5) The SR DR, I.T.A.T., Amritsar

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