

IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "F", NEW DELHI  
BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER  
AND  
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER  
I.T.A. No. 6619/Del/2015  
A.Y. : 2011-12

Raman Chopra,  
L-10, Lajpat Nagar-3,  
New Delhi

(PAN: AAAPC0771A)

**(Appellant )**

vs. DCIT, Circle 48(1),  
New Delhi  
Room No. 505, 5<sup>th</sup> floor, D-Block,  
Pratyaksh Bhawan  
Civic Centre, JL Nehru Marg,  
New Delhi

**(Respondent )**

Assessee by : Sh. Amit Srivastava, AR  
Department by : Sh. R.S. Negi, Sr. DR

**Date of Hearing: 21-4-2016**

**Date of Order : 05-5-2016**

**ORDER**

**PER H.S. SIDHU, JM**

This appeal by the Assessee is directed against the order of the  
Ld. Commissioner of Income Tax (Appeals)-21, New Delhi dated  
10.9.2015 pertaining to assessment year 2011-12.

2. The assessee has raised so many grounds challenging the order of the Ld. Commissioner of Income Tax (A) dated 10.9.2015 wherein he has confirmed the penalty of Rs. 10,98,721/- levied u/s. 271(1)(c) of the I.T. Act imposed by the AO.

3. In this case the return for the assessment year 2011-12 was filed on 29.7.2011 declaring income of Rs. 32,71,133/-. The case was selected for scrutiny through CASS and notice u/s. 143(2) was issued on 10.9.2012. Notice u/s.142(1) alongwith questionnaire was issued on 21.8.2013 to the assessee. The assessee earned salary income from M/s UOP India Pvt. Ltd. and also "income from other sources". During the assessment proceedings AO noted that that during financial year 2010-11, the assessee was working in USA during the period from 01/04/2010 to 01/07/2010 and the assessee claimed exemption amounting Rs.35,55,722/- citing Article 16(1) of DTAA between India and US. On being asked to explain the claim made by the assessee he placed reliance on OECD commentary so as to justify his action in claiming exemption based on spilt residency position. However, the AO was not convinced with assessee's above contention. AO observed that since the period of assessee's stay In India was more than 183 days the AO held the assessee as resident and ordinary resident of India

and consequently his entire global income for the whole financial year was subjected to tax in India. As such assessee's claim for exemption of Rs.35,55,722/- under Article 16(1) of DTAA between India and USA was disallowed and added back to the total income of the assessee. Based on above disallowance, the AO initiated penalty proceeding u/s 271(1)(c) and show cause notice u/s 274 read with section 271(1)(c) was issued on 31/03/2014 allowing opportunity to the assessee of being heard. A fresh show cause notice was also issued on 28/08/2014 in response to which the assessee appeared and filed written submission dated 10/04/2014. In consideration of entire facts and circumstances of the case, the AO held assessee guilty of furnishing inaccurate particulars of income which attracted the penal provisions of section 271(1)(c), and accordingly levied a penalty of RS.10,98,721/- vide order dated 26/09/2014. Aggrieved with the penalty order, assessee appealed before the Ld. CIT(A), who vide impugned order dated 10/9/2015 has upheld the penalty and accordingly, dismissed the appeal of the Assessee.

4. Against the above order of the Ld. CIT(A) dated 10.9.2015, assessee is in appeal before the Tribunal.

5. During the hearing, Ld. Counsel of the assessee has filed a small Paper Book containing pages 1 to 37 having the copy of return of income tax for AY 2011-12; copy of Rectification application under section 154; copy of India USA DTAA and Notice of demand u/s. 156 dated 24.3.2014. He submitted that during the course of assessment proceedings, the assessee fully disclosed all the information asked for and has nowhere furnished any inaccurate particulars. It was the further contention that nowhere in the assessment order, it has been recorded that the appellant furnished inaccurate particulars of income. Therefore, he stated that no penalty can be levied in this case as it cannot be said that there was any attempt by the assessee to conceal particulars of income. In this behalf, he filed a copy of the decision rendered by the Hon'ble Supreme Court of India in the case of ***CIT vs. Reliance Petroproducts Pvt. Ltd. reported in (2010) 322 ITR 158 (SC)*** and stated that the present case is fully covered by said decision and accordingly, requested that the penalty in dispute may be deleted.

6. On the contrary, Ld. DR relied upon the order of the authorities below and stated that the Ld. CIT(A) has passed a well reasoned order

which does not need any interference, hence, the same may be affirmed.

7. We have heard both the counsel and perused the orders passed by the Revenue authorities alongwith documentary evidences filed by the assessee in the shape of paper book and the case law cited by him. From the records, it reveals that the assessee is a "Resident and Ordinarily Resident" individual for the assessment year (AY) 2011-12. He derived income from salary and from other sources. He is also a resident of USA for the period April 1 2010 to June 30 2010. As the assessee may be considered liable to tax both in India and US as per the tax laws in each jurisdiction, a determination of the residential status as per the India - USA Double Taxation Avoidance Agreement (Treaty) has to be done based on the tie breaker analysis as contained in Article 4(2) of the Treaty. Based on the tie breaker analysis as contained in Article 4(2), the assessee is tie-breaking to USA for the period April 1 2010 to June 30 2010. Accordingly, the assessee shall be considered as a resident of USA for the period April 1 2010 to June 30 2010 as per the Treaty. Since the assessee is a resident of USA for the period April 1 2010 to June 30 2010 and has exercised his employment in USA during the above period, he is entitled to claim

exemption of salary in India as per Article 16(1) of the Treaty. Accordingly, the assessee has claimed an exemption on remuneration received in India amounting to Rs. 35,55,722/- in respect of the services rendered in USA.

7.1 We find that the assessee filed a return of income on July 29, 2011 declaring Rs. 32,71,133/- as the total taxable income under the provisions of the Income Tax Act, 1961 after claiming the benefits as per the provisions of the Treaty. The return of income was selected for scrutiny assessment and the assessment was completed under section 143(3) vide order dated March 28 2014. The assessee fully co-operated with the assessment proceedings. Also, all the details relating to the claim of exemption of salary in the tax return were provided to the AO. However, the AO did not agree with the claim of exemption of remuneration. In the order, the AO has disallowed the claim and added back to the total income of the assessee. Based on above disallowance, the AO initiated penalty proceedings u/s 271(1)(c) and held that assessee is guilty of furnishing inaccurate particulars of income which attracted the penal provisions of section 271(1)(c), and accordingly levied a penalty of RS.10,98,721/- vide order dated

26/09/2014 and in appeal before the Ld. CIT(A), the Ld. CIT(A) vide impugned order dated 10/9/2015 has upheld the penalty in dispute.

7.2 We also find that section 271(1)(c) postulates imposition of penalty for furnishing of inaccurate particulars and concealment of income. On the facts and circumstances of this case the assessee's conduct cannot be said to be contumacious so as to warrant levy of penalty.

7.3 In this regard, we find that assessee's counsel reliance from the Hon'ble Apex Court decision in the case of ***CIT vs. Reliance Petro Products Ltd. in Civil Appeal No. 2463 of 2010*** is squarely applicable in the present case of the assessee. In this case vide order dated 17.3.2010 it has been held that the law laid down in the Dilip Sheroff case 291 ITR 519 (SC) as to the meaning of word 'concealment' and 'inaccurate' continues to be a good law because what was overruled in the Dharmender Textile case was only that part in Dilip Sheroff case where it was held that mensrea was a essential requirement of penalty u/s 271(1)(c). The Hon'ble Apex Court also observed that if the contention of the revenue is accepted then in case of every return where the claim is not accepted by the Assessing

Officer for any reason, the assessee will invite the penalty u/s 271(1)(c). This is clearly not the intendment of legislature.

7.4 We further place reliance from the Apex Court decision rendered by a larger Bench comprising of three of their Lordships in the case of ***Hindustan Steel vs. State of Orissa in 83 ITR 26*** wherein it was held that *"An order imposing penalty for failure to carry out a statutory obligation is the result of a quasi-criminal proceedings, and penalty will not ordinarily be imposed unless the party obliged either acted deliberately in defiance of law or was guilty of conduct contumacious or dishonest, or acted in conscious disregard of its obligation. Penalty will not also be imposed merely because it is lawful to do so. Whether penalty should be imposed for failure to perform a statutory obligation is a matter of discretion of the authority to be exercised judicially and on a consideration of all the relevant circumstances. Even if a minimum penalty is prescribed, the authority competent to impose the penalty will be justified in refusing to impose penalty, when there is a technical or venial breach of the provisions of the Act, or where the breach flows from a bonafide belief that the offender is not liable to act in the manner prescribed by the statute."*

8. In the background of the aforesaid discussions and precedents, we find that the levy of penalty in this case is not justified. Accordingly, we set aside the orders of the authorities below and delete the levy of penalty in dispute.

9. In the result, the appeal filed by the Assessee stands allowed.

Order pronounced in the open court on 05/5/2016.

**Sd/-**

**[PRASHANT MAHARISHI]  
ACCOUNTANT MEMBER**

**Sd/-**

**[H.S. SIDHU]  
JUDICIAL MEMBER**

**Date: 05-5-2016**

**"SRBHATNAGAR"**

**Copy forwarded to: -**

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

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By Order,

Assistant Registrar,  
ITAT, Delhi Benches