

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

BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER

ITA No.7273/DEL/2018
[Assessment Year: 2007-08]

Shri Vinod Ahuja
Tower - 1, Flat 601,
Belmonte Golf Course Road
Sector 53, Gurgaon

Vs.

The A.C.I.T.
Circle -70(1)
New Delhi

PAN: AAAPA 0131 C

[Appellant]

[Respondent]

Date of Hearing : 24.04.2019
Date of Pronouncement : 26.04.2019

Assessee by : Shri Arun Kishore, CA.

Revenue by : Shri S.L. Anuragi, Sr. DR

ORDER

PER N.K. BILLAIYA, ACCOUNTANT MEMBER:

With this appeal, the assessee has challenged the correctness of the order of the Commissioner of Income Tax [Appeals] - 21, New Delhi dated 23.08.2018 pertaining to A.Y 2007-08.

2. The solitary grievance of the assessee is that the CIT(A) erred in confirming the levy of penalty u/s 271(1)(c) of the Income-tax Act, 1961 [hereinafter referred to as 'the Act'].

3. Roots for levy of penalty lie in the assessment order dated 10.12.2009 framed u/s 143(3) of the Act. During the course of scrutiny assessment proceedings, the Assessing Officer noticed that the assessee has claimed HRA deduction from his salary income. The assessee was asked to furnish details of HRA paid by him. The assessee filed details from which the Assessing Officer noticed that the assessee was also part owner of the property on which he has paid rent. Accordingly, HRA was disallowed and penalty proceedings u/s 271(1)(c) of the Act were separately initiated. In the penal proceedings, the Assessing Officer was convinced that the assessee has deliberately furnished inaccurate particulars of his income and intended to evade taxes within the meaning of section 271(1)(c) of the Act and levied penalty of Rs. 80,000/-

4. The assessee carried the matter before the CIT(A) but without any success.

9. Before me, the ld. AR vehemently stated that merely because the claim of HRA was denied, would not lead to furnishing of inaccurate particulars of income or concealment of particulars of income. Therefore, the penalty so levied u/s 271(1)(c) of the Act is bad on facts of the case and should be deleted.

10. Per contra, the ld. DR strongly supported the findings of the CIT(A).

11. I have given thoughtful consideration to the orders of the authorities below. I find that there is no dispute that the assessee was 1/3rd owner of the house property for which he has paid rent to the other co-owners, It cannot be said that the assessee paid rent with malafide intention to reduce his tax liability. The rent was actually paid to the co-owners and this fact has also not been disputed by the Assessing Officer. Merely because the claim of the assessee did

not find any favour with the Assessing Officer would not, *ipso facto*, become a bogus claim.

12. For this proposition, I draw support from the judgment of the Hon'ble Supreme Court in the case of CIT vs Reliance Petroproducts Pvt. Ltd, 322 ITR 158, wherein it has been held as under:

“A glance at the provisions of section 271(1)(c) of the Income-tax Act, 1961, suggests that in order to be covered by it, there has to be concealment of the particulars of the income of the assessee. Secondly, the assessee must have furnished inaccurate particulars of his income. The meaning of the word "particulars" used in section 271(1)(c) would embrace the details of the claim made. Where no information given in the return is found to be incorrect or inaccurate, the assessee cannot be held guilty of furnishing inaccurate particulars. In order to expose the assessee to penalty, unless the case is strictly covered by the provision, the penalty provision cannot be invoked. By no stretch of imagination can making an incorrect claim tantamount to furnishing inaccurate particulars. There can be no dispute that everything would depend upon the return filed by the assessee, because that is the only document where the assessee can furnish the particulars of his income. When such particulars are found to be inaccurate, the liability would arise. To attract penalty, the details supplied in the return must not be accurate, not exact or correct, not according to the truth or erroneous.”

Where there is no finding that any details supplied by the assessee in its return are found to be incorrect or erroneous or false there is no question of inviting the penalty under section 271 (1)(c). A 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.”

13. Adverting to the facts of the case, in the light of the ratio laid down by the Hon'ble Supreme Court, I direct the Assessing Officer to delete the penalty so levied u/s 271(1)(c) of the Act.

14. In the result, the appeal filed by the assessee in ITA No. 7273/DEL/2018 is allowed.

The order is pronounced in the open court on 26.04.2019.

[N.K. BILLAIYA]
ACCOUNTANT MEMBER

Dated: 26th April, 2019.

VL/

Copy forwarded to:

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

Asst. Registrar,
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
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Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
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