

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES "SMC" : DELHI

BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER

ITA.No.6098/Del./2017
Assessment Year 2013-2014

Shri Manjit Singh, 69, Sant Nagar, New Delhi – 110 065. PAN ABTPS4939A	vs.	The Income Tax Officer, Ward-30(4), New Delhi.
(Appellant)		(Respondent)

For Assessee :	Shri Naveen Kumar, Advocate.
For Revenue :	Shri S.L. Anuragi, Sr. D.R.

Date of Hearing :	01.05.2019
Date of Pronouncement :	03.05.2019

ORDER

This appeal by Assessee has been directed against the Order of the Ld. CIT(A)10, New Delhi, Dated 26.07.2017, for the A.Y. 2013-2014, challenging the levy of penalty under section 271(1)(c) of the I.T. Act, 1961.

2. Briefly the facts of the case are that assessee filed return declaring Income of Rs.10,68,360/-The assessee was engaged in the business of trading of wallpapers, flooring tiles and false ceiling. The A.O. on perusal of the details

submitted by the assessee observed that assessee has not deducted TDS on professional charges paid amounting to Rs.70,600/-. The assessee was show caused as to why the same should not be disallowed under section 40(a)(ia) of the I.T. Act, 1961. The assessee offered the amount for taxation. The A.O, therefore, noted that since no TDS have been deducted, the same amount is not allowable deduction. The addition was accordingly made.

3. The A.O. further noted that during the year under consideration bank account filed by the assessee shows that there are numbers of cash deposits entries are appearing in Bank account of the assessee. The assessee was asked to file details of cash deposits coming to his Bank account amounting to Rs.14,06,899/-. The assessee was directed to provide the confirmation of the parties from whom amounts have been received and cash deposited in the bank accounts exceeding Rs.20,000/-. Despite providing ample opportunities of being heard, the assessee failed to provide any confirmation from any of the parties. In the absence of any confirmation and any explanation from the side of the

assessee and even in the absence of providing the PAN and address of the cash depositors, the assessee failed to establish the identity of the depositors also. The assessee did not file any details. No explanation was filed. In response to the query raised by the A.O. on this issue, the assessee ultimately, surrendered Rs.13,29,200/- on account of the cash deposits in the Bank account. The A.O. accordingly made addition under section 68 of the I.T. Act, 1961.

4. The A.O. further noted that assessee has taken unsecured loans amounting to Rs.32,16,000/-. However, assessee failed to file confirmation, PAN and address of two of the lenders namely Khullar and Trilok Singh in a sum of Rs.2,20,000/-. The assessee in response to the query of the A.O. surrendered the amount of Rs.2,20,000/-. The A.O. added the same amount under section 68 of the I.T. Act, 1961.

5. The A.O. on perusal of the balance-sheet filed by the assessee found that assessee has shown sundry creditors amounting to Rs.44,16,313/-, assessee was asked

to provide confirmation, PAN and address of the three sundry creditors namely (1) ART N Glass Inc., (2) Critianbas Masi and (3) Syali in a sum of Rs.1,33,897/-. Assessee did not provide any details to the query of the A.O. and ultimately, surrendered the amount of Rs.1,33,897/-. The A.O. treated the same as unexplained credit under section 68 of the I.T. Act, 1961 and made the addition.

6. Thus, on all four issues, the A.O. made total addition of Rs.17,53,697/-. The A.O. initiated the penalty proceedings for concealing the income. The A.O. vide separate Order, initiated the penalty proceedings under section 271(1)(c) of the I.T. Act, 1961. The assessee, in response to the show cause notice submitted that assessee has surrendered and agreed for the above additions at the assessment stage merely to buy peace of mind and to avoid further litigation. The A.O. however, did not accept the explanation of assessee because the assessee surrendered the amount in question of his own and assessee was not forced to surrender the amount. The assessee made the surrender because he was unable to explain the issue and

surrender made because the case was selected for scrutiny. Explanation-1 to Section 271(1)(c) of the Act is clearly attracted in the case of the assessee. The assessee failed to explain any of the issues above. The A.O, therefore, held that assessee has concealed the particulars of income and levied the penalty under section 271(1)(c) of the I.T. Act, 1961.

7. The assessee challenged the penalty order before the Ld. CIT(A). The Ld. CIT(A) after considering the explanation of assessee, noted that Explanation-1 to Section 271(1)(c) of the I.T. Act, is attracted in the case. The Ld. CIT(A) relied upon Judgment of Hon'ble Supreme Court in the case of Mak Data P. Ltd., vs. CIT [2013] 358 ITR 593 [SC] and held that "assessee failed to discharge the onus to prove and justify its claim. No explanation have been given. The assessee agreed for these additions. Merely because assessee surrendered the amount to buy peace of mind and to avoid further litigation will in no way exonerate the assessee from penal provisions contained under section

271(1)(c) of the I.T. Act. The appeal of assessee was accordingly dismissed.

8. Learned Counsel for the Assessee reiterated the submissions made before the authorities below and submitted that assessee surrendered the amount in question to buy peace of mind and to avoid further litigation. Therefore, penalty is not leviable in the matter. He has relied upon the following decisions :

- (i) Judgment of Madhya Pradesh High Court in the case of CIT vs. Suresh Chandra Mittal [2000] 241 ITR 124 (MP).
- (ii) Judgment of Hon'ble Allahabad High Court in the case of Punjab Rice Mills vs. CIT, Bareilly [2011] 16 taxmann.com 284 (All.)
- (iii) Judgment of Hon'ble Madras High Court in the case of CIT, Chennai vs. Smt. Anita Kumaran, Chennai in Tax Case (Appeal) Nos.139 to 141 of 2017, Dated 01.03.2017

- (iv) Order of ITAT, Delhi E-Bench in the case of Shri Nikunj Jain, Meerut City vs. CIT, Muzaffarnagar in ITA.No.3075/Del./2013, Dated 09.12.2015.

9. On the other hand, Ld. D.R. relied upon the Orders of the authorities below and relied upon Judgment of Hon'ble Delhi High Court in the case of PCIT vs. Dr. Vandana Gupta [2018] 92 taxmann.com 229 (Del.), in which it was held as under :

“Mere voluntary offer of a sum during survey in absence of any explanation for source of income, invites concealment penalty when original return was silent about said sum.”

10. I have considered the rival submissions and do not find any justification to interfere with the Orders of the authorities below and in levying and confirming the penalty under section 271(1)(c) of the I.T. Act, 1961. It is an admitted fact that the case was selected for scrutiny and A.O. raised questionnaire to the assessee and called for the explanation of assessee on all the above four issues. The

assessee instead of explaining any of the above issues or to file any documentary evidences in support of the same, surrendered the amounts in question for taxation. It would, therefore, clearly show that assessee made the surrender of the above amounts in question only when A.O. has confronted the assessee with above issues and cornered the assessee at the assessment stage. Thus, the assessee did not make any voluntary surrender of the amounts in question. The above facts clearly show that assessee had concealed the material facts and given incorrect statement of fact in the return of income. The assessee provided incorrect facts which were marshaled by the A.O. It would show that assessee's disclosure was not voluntary but under compulsion when cornered by the A.O. at the assessment stage. The assessee did not offer any explanation on any of the above issues either at the assessment stage or at the penalty proceedings. Thus, Explanation-1 to Section 271(1)(c) of the I.T. Act is clearly attracted. Had the case would not have been selected for scrutiny assessment, the assessee would not have

surrendered the amount in question for the purpose of taxation. The assessee, therefore, had guilty mind and show that assessee concealed the particulars of income from the Revenue Department which invited penalty proceedings under section 271(1)(c) of the I.T. Act, 1961. In support of this proposition, I rely upon the Judgment of Hon'ble Delhi High Court in the case of Zoom Communications 327 ITR 510 (Del.) and Judgment of Hon'ble Allahabad High Court in the case of CIT vs. Rakesh Suri [2011] 331 ITR 458 (Del.), in which it was held as under :

“Held, allowing the appeal, that the assessee had concealed the material facts and given incorrect statement of facts in the application and also not provided information required by the Assessing Officer, after receipt of notice. Accordingly the action of the assessee was neither bona fide nor voluntary. The manner in which the assessee had tried to prolong the case before the Assessing Officer by not providing information immediately and by narrating incorrect facts in the letter dated

December 6,2006 showed that the assessee had concealed the income and disclosure was not voluntary but under compulsion being cornered by the Assessing Officer. Penalty had to be imposed.”

10.1. The Hon’ble Delhi High Court in the case of CIT vs. Harprashad and Company Ltd., [2010] 328 ITR 53 (Del.) held as under :

“The findings given in assessment proceedings are relevant and have probative value. Where the assessee produces no fresh evidence or presents any additional or fresh circumstance in penalty proceedings, he would be deemed to have failed to discharge the onus placed on him and the levy of penalty could be justified.

Even if there is no concealment of income or furnishing of inaccurate particulars, but on the basis thereof the claim which is made is ex facie bogus, it may still attract penalty provision.”

10.2. The Hon'ble Punjab & Haryana High Court in the case of Rajinder Mohan Lal vs. Pr. CIT [2017] 399 ITR 223 (P&H) held that *“when assessee failed to prove genuineness of the gifts and identity and creditworthiness of the donors and explanation offered by assessee was not substantiated through any evidence or material on record, would amount to concealment of income. Penalty to be imposed under section 271(1)(c) of the I.T. Act.”*

10.3. The Hon'ble Punjab & Haryana High Court in the case of Basant Singh, Prop. Basant General Store vs. CIT [2017] 399 ITR 247 (P&H) held that *“when addition was made to the income in quantum assessment, it would invite levy of penalty under section 271(1)(c) of the Act.”*

10.4. Learned Counsel for the Assessee lastly contended that assessee surrendered the amount in question to buy peace of mind and to avoid further litigation. However, on such explanation assessee would not be absolved from levy of penalty under section 271(1)(c) of the I.T. Act, 1961. The Hon'ble Supreme Court in the case of Mak Data P. Ltd., vs. CIT [2013] 358 ITR 593 held as under:

“Voluntary disclosure does not release the assessee from the mischief of penal proceedings. The law does not provide that when an assessee makes a voluntary disclosure of his concealed income, he has to be absolved from penalty. The Assessing Officer should not be carried away by the plea of the assessee such as "voluntary disclosure", "buy peace", "avoid litigation", "amicable settlement", to explain away its conduct. The question is whether the assessee has offered any explanation for concealment of particulars of income or furnishing inaccurate particulars of income.”

10.4.1. The Hon’ble Supreme Court further held as under :

“Held, affirming the decision of the High Court, that the assessee had only stated that it had surrendered the additional sum of Rs.40,74,000 to avoid litigation, buy peace and to channelize the energy and resources towards productive work and to make amicable settlement with the Income-tax Department. The statute did not recognize those types of defences under

Explanation 1 to section 271(1)(c) of the Act. The surrender of income in this case was not voluntary in the sense that the offer of surrender was made in view of detection by the Assessing Officer in the search conducted in the sister concern of the assessee. The survey was conducted more than 10 months before the assessee filed its return of income. Had it been the intention of the assessee to make full and true disclosure of its income, it would have filed the return declaring an income inclusive of the amount which was surrendered later during the course of the assessment proceedings. Consequently, it was clear that the assessee had no intention to declare its true income. It is the statutory duty of the assessee to record all its transactions in the books of account, to explain the source of payments made by it and to declare its true income in the return of income filed by it from year to year. The Assessing Officer had recorded a categorical finding that he was satisfied that the assessee had concealed the true particulars of income and was liable for

penalty proceedings under section 271 read with section 274 of the Act. There was no illegality in the Department initiating penalty proceedings.”

10.5. Considering the above discussion, the decisions relied upon by the Learned Counsel for the Assessee would not support the case of the assessee. In view of the above discussion, I am of the view that authorities below were justified in levying and confirming the penalty under section 271(1)(c) of the I.T. Act, 1961. No interference is required in the matter. Appeal of assessee is dismissed.

11. In the result, appeal of Assessee dismissed.

Order pronounced in the open Court.

Sd/-
(BHAVNESH SAINI)
JUDICIAL MEMBER

Delhi, Dated 03rd May, 2019

VBP/-

Copy to

1.	The appellant
2.	The respondent
3.	CIT(A) concerned
4.	CIT concerned
5.	D.R. ITAT 'SMC' Bench, Delhi
6.	Guard File.

// BY Order //

Assistant Registrar : ITAT Delhi Benches :
Delhi.