

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES: 'A', NEW DELHI

BEFORE SMT. BEENA A PILLAI, JUDICIAL MEMBER
AND SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER

ITA No. 673/Del/2018

AY: 2009-10

ACIT, Circle 32(1) New Delhi	vs.	American Chamber of Commerce in India 4/2, 4 th Floor PHD House Siri Institutional Area August Kranti Marg New Delhi 110 016 PAN: AAATA7862N
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(Appellant)

(Respondent)

Department by : Sh. SN Pandey, Sr.D.R.

Assessee by : Sh. Ankit Sahni, Adv. &
Ms. Sumisha Murgai, CA

Date of Hearing : 16/05/2019

Date of Pronouncement: 27/05/2019

ORDER

PER BEENA A PILLAI, JUDICIAL MEMBER

Present appeal has been filed by revenue against order dated 13/11/17 passed by Ld. CIT (A)-11, New Delhi on following grounds of appeal:

"1. On the facts and in the circumstances of the case and in law, the Ld.CIT(A) has erred in deleting the penalty of Rs.25,91,473/- imposed by AO despite the fact that the satisfaction for initiation of

penalty was recorded in the order sheet and the assessee was also made aware of initiation of such penalty proceedings by issuing notice u/s 274 dated 31.03.2016.

2. On the facts and in the circumstances of the case and in law, the Ld.CIT(A) has erred in holding that this is not a case of inaccurate particulars of income despite fact that AO has detected inaccurate particulars of income during course of assessment proceedings. The assessee had not suo-moto disclosed application of section 2(15) of the Income Tax Act with a view of evade tax on income to tune of Rs.76,24,221/-.

3. The appellant craves leave to add/alter any/all grounds of appeal before or at the time of hearing of the Appeal."

2. Brief facts of the case are as under:

Assessee filed its return of income declaring loss of Rs.43,06, 801/- on 30/09/09 and assessment was completed on 05/12/11 computing assessed income at Rs.33,07,420/-. During assessment proceedings Ld. AO observed that activities carried out by assessee in main aims and objects given in Memorandum of Association are found not to be charitable as per amendment to section 2 (15) of the Income Tax Act, 1961 (the Act). Accordingly Ld. AO made addition of Rs76,24,121/-on account of income accumulated under section 11 (2) of the Act.

2.1. Against addition made by Ld.AO, assessee preferred appeal before Ld.CIT (A) who upheld order of Ld.AO.

2.2. Aggrieved by order of Ld.CIT (A), assessee filed appeal before this Tribunal, and this Tribunal vide order dated 28/01/15 remitted matter to Ld.AO for adjudication of issue on merits. Ld.AO,

accordingly on 31/03/2016, made addition of Rs.76,24,121/-, as made in original assessment order.

2.3. Subsequently penalty proceedings were initiated under section (1) (c) of the Act and notice under section 274 read with 271 (1) (c) was issued to assessee. Ld.AO passed penalty order on 30/09/16 by levying 100% penalty on tax sought to be evaded for filing of inaccurate particulars.

2.4. Aggrieved by order of Ld. AO, assessee preferred appeal before Ld. CIT (A) who observed as under:

"4.2. I have gone through the facts of the case along with the submission made by the AR. The main contentions of the AR are as under:

i. The AO has not recorded his satisfaction in the assessment order (original as well as the new assessment order) and therefore, the penalty proceedings are void ab initio;

ii. The appellant has not furnished any inaccurate particulars of income as the particulars of accumulated balance as on 31.03.2008 was duly reflected in the return of income and the charitable status of the appellant has undergone a change as a result of amendment to section 2(15) of the Act which was beyond the control of the appellant;

iii. The AR has distinguished the case laws relied upon by the AO and has stated that the appellant had made the claim under the bonafide belief that the claim was correct;

iv. The AR has further contended that there was no change in the activities and objects of the appellant;

v. The AR has also relied upon the judgment of the Hon'ble Supreme Court in the case of Reliance Petro Products Pvt. Ltd. as per which merely submitting a claim which is incorrect in law would not amount to giving inaccurate particular of income by the assessee;

The AR has also contended that the issue of taxability of accumulated balance as a result of amendment to the Act is a debatable issue and therefore, no penalty is warranted u/s 271(1)(c) of the Act.

4.2.1 On perusal of the documents and the assessment orders (original and new), it is observed that the AO has not recorded his satisfaction in any of the orders for initiation of penalty proceedings. In the remand report, the AO has stated that the satisfaction was recorded by the AO on the order sheet on 31.03.2016 at the time of issue of new assessment order which was issued pursuant to the ITAT order. However, the AR of the appellant was not made aware of the fact about the initiation of penalty proceedings and recording of satisfaction during the course of assessment proceedings. The AR has rightly claimed that the satisfaction needs to be recorded in the assessment order in accordance with the provisions of section 271(1B) of the Act. In this case, no such satisfaction has been recorded in the assessment order.

*4.2.2 Moreover, no material has been placed on record by the AO to show that the appellant had filed inaccurate particulars of income. The particulars of accumulated balance as on 31.03.2008 was duly reflected in the return of income and it is seen that the charitable status of the appellant has under gone a change as a result of amendment to section 2(15) of the Act which was beyond the control of the appellant. In my view, it cannot be said that the appellant has furnished inaccurate particulars of income. It is a case of making a claim which is not in accordance with the provisions of the Act. As a result of the amendment to the provisions of the Act, the incorrect claim of the appellant can be treated as a bonafide mistake as claimed by the appellant. In the case of **Price Waterhouse Coopers Pvt.Ltd vs C.I.T & Anr**, Hon'ble Supreme Court has held that-*

"20. We are of the opinion, given the peculiar facts of this case, that the imposition of penalty on the assessee is not justified. We are satisfied that the assessee had committed an inadvertent and bona

vide error and had not intended to or attempted, to either conceal its income or furnish inaccurate particulars.

21. Under these circumstances, the appeal is allowed and the order passed by the Calcutta High Court is set aside. No costs."

4.2.3. In addition, it is also felt that the case of the appellant is squarely covered by the judgment of Supreme Court in the case of Reliance Petro Products Pvt. Ltd. as per which merely submitting a claim which is incorrect in law would not amount to giving inaccurate particulars of income by the assessee. In view of this, it is held that the case is not fit for levy of penalty u/s 271(l)(c) and therefore, the penalty levied is hereby deleted."

3. Aggrieved by order of Ld. CIT (A) revenue is in appeal before us now.

3.1. Ld.Sr.DR placed reliance upon order of Ld. AO.

3.2. On the contrary Ld. AR placed reliance upon observations of Ld.CIT(A). He submitted that in original assessment order dated 31/03/16 as well as assessment order passed subsequent to remand by this Tribunal, Ld.AO has failed to initiate penalty proceedings while passing assessment order.

3.3. He placed reliance upon page 151-152 of paper book, wherein remand report was called for by Ld. CIT (A). Ld. AO vide report dated 24/08/17 submitted that initiation of penalty under section 271 (1) (c) of the Act after recording satisfaction was carried out in order sheet entry dated 31/03/16.

4. We have perused assessment order originally passed and the order subsequent to remand by this Tribunal, and it is observed that penalty under section 271 (1) (c) of the Act, has not been initiated while passing assessment orders. The same has also been

observed by Ld. CIT (A) in the impugned order. Ld.CIT (A) has also analysed audited accounts of assessee which reflected accumulated balance as on 31/03/08 in the return of income of assessee. It has been observed that charitable status of assessee underwent a change pursuant to amendment to Section 2(15) of the Act. Because of this change in status, claim of assessee was inadmissible. We are therefore of considerable opinion, in present facts, it cannot be held that inaccurate particulars has been filed by assessee leading to concealment as argued by Ld.CIT(A).

4.1. We therefore do not find any infirmity in the view taken by Ld. CIT (A) and the same is upheld.

4.2. Accordingly ground raised by revenue stands dismissed.

5. In the result appeal filed by revenue stands dismissed.

Order pronounced in Open Court on 27th May, 2019.

Sd/-

**(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER**

Sd/-

**(BEENA A PILLAI)
JUDICIAL MEMBER**

Dt. 27th May, 2019

**gmv*

Copy forwarded to: -

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

- TRUE COPY -

By Order,

ASSISTANT REGISTRAR
ITAT Delhi Benches



	Date
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Date on which file goes to the AR	
Date on which file goes to the Head Clerk.	
Date of dispatch of Order.	