

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ, चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL
DIVISION BENCH, 'SMC', CHANDIGARH

श्री संजय गर्ग, न्यायिक सदस्य
BEFORE SHRI SANJAY GARG, JUDICIAL MEMBER

आयकर अपील सं./ ITA No. 1570/CHD/2018

निर्धारण वर्ष / Assessment Year : 2008-09

Shri Gurbinder Singh Randhawa, 6-B, New Rajguru Nagar, Ludhiana New Address: C/o M/s Sudhir K Sehgal & Associates, 172-A, Tagore Nagar, Civil Lines, Ludhiana	Vs. बनाम	The ITO, Ward-6(5), Ludhiana
स्थायी लेखा सं./PAN NO: AGHPR3635B		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/Assessee by : Shri Sudhir Sehgal, Advocate

राजस्व की ओर से/ Revenue by : Sh. Modhit Srivastava, Sr. DR

सुनवाई की तारीख/Date of Hearing : 10.06.2019

उद्घोषणा की तारीख/Date of Pronouncement : 10 .06.2019

आदेश/Order

The present appeal has been preferred by the assessee against the order dated 20.07.2018 of the Commissioner of Income Tax (Appeals)-3, Ludhiana [hereinafter referred to as 'CIT(A)'].

2. The sole issue raised in this appeal relates to the levy of penalty u/s 271 (1)(c) of the Act in respect of the quantum additions sustained by the Ld. CIT(A).

3. The appeal is time barred by limitation period of 39 days. The assessee has moved a separate application pleading therein that the assessee who is NRI, though, tried to arrange for / sent the necessary papers for filing the appeal in time to his counsel, however, in the process, the delay of 39 days has occurred which was beyond the control of the assessee.

Considering the above submissions of the assessee and the shortness of the delay in filing the appeal, the delay of 39 days is hereby condoned.

4. At the outset, Ld. Counsel for the assessee has submitted that the assessee is engaged in the business activity of sale and purchase of old cars / vehicles. That certain amounts were found deposited in the account of the assessee. On being asked to explain in this aspect, the assessee explained to the Assessing Officer that the said amount belonged to the clients / intending purchasers who used to handover certain amounts for the purchase of the vehicles of their choice through the assessee and as and when such vehicles are found available for the sale. However, the Assessing Officer did not get satisfied with the above explanation of the assessee and made the addition of Rs. 8.41 lacs taking the figure of peak cash credited in the account of the assessee. Apart from that, the Assessing Officer estimated 10% of the profits on the total amount found deposited in the bank account of the assessee.

5. In appeal, the Ld. CIT(A) after considering the submissions of the assessee in respect of the income already declared as well as source of certain deposits, reduced the addition in respect of peak cash credit to Rs. 4.91 lacs. He also restricted the addition to Rs. 1.14 lacs as against 2.30 lacs made by the Assessing Officer on account of estimated 10% profits. Separate penalty proceedings u/s 271 (1)(c) were also initiated by the Assessing Officer, whereupon, the Assessing Officer had levied the impugned penalty in respect of the additions so confirmed by the Ld. CIT(A).

The assessee did not prefer appeal against the order of the Ld. CIT(A) in relation to the quantum additions, however, in the present appeal, the assessee has contested the levy of penalty u/s 271 (1)(c) of the Act.

6. I have considered the rival contentions. In this case Ld. Counsel for the assessee has explained that the assessee was engaged in the activity of sale and purchase of old vehicles and that the customers used to deposit certain amounts with the assessee so that the assessee may immediately book / purchase vehicles of their choice as and when the same are found available for purchase. The above contention of the assessee has not been totally rejected by the Revenue, that is why the Assessing Officer apart from making the addition's on peak cash credit also estimated the unaccounted profits on the deposits found in the bank

account of the assessee. If the Assessing Officer was of the view that such deposits were out of unaccounted income of the assessee, there was no reason with the Assessing Officer to estimate profits on such deposits on the basis of the turnover. The Ld. CIT(A) has also given relief to the assessee observing that the assessee himself has also declared certain profits in respect of its activities of sale / purchase of vehicles. Under the circumstances, it is apparent that the impugned additions have been made by the lower authorities on estimation basis. However, there was no reliable or un-rebutted evidences on the file to prove that the assessee had actually furnished inaccurate particulars of income or concealed particulars of his income. Though, the additions have been made by the Assessing Officer and further confirmed by the Ld. CIT(A) on the basis of estimation / preponderance of possibilities of introducing some unaccounted income into the bank account of the assessee, however, after appreciating the facts and circumstances of the case, I do not find it a fit case for levy of penalty u/s 271 (1)(c) of the Act and the same is accordingly ordered to be deleted.

In the result, the appeal of the assessee is treated as allowed.

Order dictated and pronounced in the Open Court immediately on completion of hearing.

Sd/-
(संजय गर्ग / SANJAY GARG)
न्यायिक सदस्य/ Judicial Member

Dated : 10. 06.2019

“आर.के.”

आदेश की प्रतिलिपि अग्रेषित/ Copy of the order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT,
CHANDIGARH
6. गार्ड फाईल/ Guard File

आदेशानुसार/ By order,
सहायक पंजीकार/ Assistant Registrar