

IN THE INCOME TAX APPELLATE TRIBUNAL
AMRITSAR BENCH, AMRITSAR

BEFORE SH. B.R. BASKARAN, ACCOUNTANT MEMBER AND
SH. N.K.CHOUDHRY, JUDICIAL MEMBER

ITA No.657/Asr/2017
Assessment Year:2013-14

M/s Sachdeva & Sons
Industries Pvt. Ltd.,
17, Contonment Amritsar
[PAN:AACCS 4619Q]

Vs.

Dy. CIT
Circle-5
Amritsar

(Appellant)

(Respondent)

Appellant by : Sh. Padam Bahl (Ld. CA)
Respondent by: Sh. Charan Dass (Ld. DR)

Date of hearing: 27.08.2019
Date of pronouncement: 09.10.2019

ORDER

PER N.K.CHOUDHRY, JM:

The instant appeal has been preferred by the Assessee against the order dated 17.08.2017 impugned herein passed by the Ld. CIT(A)-2, Amritsar u/s 250(6) of Income Tax Act, 1961 (hereinafter called as the 'Act').

2. The brief facts of the case are that during the course of assessment proceedings, it was observed by the Assessing Officer that the assessee had shown income under the Head "Long Term Capital Gain" sale of land situated at Delhi at Rs.3,67,22,000/- and reduced Rs.3,78,50,000/- out of Business Income for separate consideration on account of sale of above land, on which the assessee

was show caused. The Assessee's Counsel/CA vide its reply dated 07.01.2016 submitted as under:

".....a mistake has been committed in the office of undersigned in including the Capital gain on sale of Delhi land at Rs.3,67,22,000/- in Computation of Income. Infact, no sale of land took place during the year. We are at loss to understand as to how this mistake occurred while preparing this return. Your honour is requested to exclude this capital gain from Computation of income as no sale of Land was made by the assessee."

The assessee also filed a revised return and computation of income by excluding the sale of land from return and furnished a copy of sale deed of Delhi land/property executed on 30.06.2014 for Rs.5,54,91,350/- before the Assessing Officer. Further the Director of assessee company also furnished an affidavit to the effect that no land situated at Delhi was sold during the year and the same was sold during the FY:2014-15 relevant to AY:2015-16 only. Further, that before preparation of ITR, an estimation was made in computer system that if Delhi land is sold, then what would be position of income/LTCG and losses to be carried forward and at the time of preparation of final return, the provisional figures were inadvertently omitted to be deleted and the ITR xml uploaded included that figure. It is a fact that audit balance sheet also does not show any sale of land. Though the stand taken by the assessee was taken into consideration by the Assessing Officer, however, did not get impress and ultimately imposed the penalty of Rs.3,48,550/-. The penalty was challenged before the Ld. CIT(A) who affirmed the penalty by concluding as under:

"Decision:- *The return of income was filed by appellant on 30- 09-2013 declaring a loss of Rs 315,80,509/-. The case was selected under scrutiny and the assessment was completed u/s 143(3) at a loss of Rs 2,97,52,485/- on 13-01-2016 by making an addition of Rs 11,28,000/-*

on account of adjustment of sale of land at Delhi wrongly made in the return. The penalty proceedings u/s 271(l)(c) of the Act were initiated. In the return the assessee had shown inter alia income under the head long term capital gain on sale of Delhi land for Rs 3,67,22,000/- and had reduced Rs 3,78,50,000/- out of business income for separate consideration. When confronted by AO the assessee had furnished revised computation of income by excluding the sale of land from the return stating that no sale of land took place during the year under consideration and that before preparation of ITR, an estimate was made in computer system that if Delhi land is sold then what would be the position of long term capital gain and losses to be carried forward that at the time of preparation of final return, the provisional figures were inadvertently omitted to be deleted and the ITR uploaded included that figure. In the assessment order, after excluding the sale of property, the net loss was determined at Rs 304,52,509/- and an addition of Rs 11,28,000/- was made to the income of the assessee i.e. loss to be carried forward was, reduced by Rs 11,28,000/-. The AO held that the assessee had no valid basis for claiming that there was no difference in the amount of loss C/F because as a result of assessment, loss to be carried forward was reduced by Rs.11,28,000/-. Income to that extent but for scrutiny would have escaped assessment. Therefore by following the decisions of several case laws the AO imposed the penalty of Rs.3,48,550/- u/s 271(l)(c) of the Act for furnishing inaccurate particulars of income by showing sale of land wrongly.

The main argument of the appellant against the imposition of penalty u/s 271(l)(c) of the Act stated that the mistake has been committed in the office of the counsel where capital gain on the sale of Delhi land at Rs.3,67,22,000/- was included in the computation of income, when the fact was that no sale of land had taken place. The sale of land took place next year. That there is no sale of land in the audited P&L a/c and B/S of the assessee. That the AO had accepted this position. However the difference of Rs.3,78,50,000/- and Rs.3,67,22,000/- i.e. Rs.11,58,000/- went to reduce current year's loss. This was added back by the AO and the assessee did not file any appeal against the addition. That the assessee is being punished for the mistake committed by the counsel of the assessee.

The claim of the appellant that the mistake has been committed in the office of the counsel where capital gain on the sale of Delhi land at Rs.3,67,22,000/- was included in the computation of income, when the fact was that no sale of land had taken place, is not acceptable for the reason that the counsel of the assessee is a professional having experience of

more than two decades. Before the return of income is submitted in the Department by the assessee, it is expected that the Counsel of the assessee first checks the return of income and the computation of income prepared by his staff and then the same is checked by the assessee himself before he signs the verification of the return. Therefore to pass off the mistake as mere clerical error cannot be accepted. The AO was justified in stating that as per the scheme of the policy of the Department only a small number of returns are taken up for scrutiny and the other returns are accepted without any further verification from the books of accounts. It is evident that in the circumstances the assessee had taken a chance to file wrong particulars knowing the policy of Department about scrutiny assessment.

Therefore it is held that the AO is justified in holding that the appellant had furnished inaccurate particulars of income by showing sale of land wrongly in the computation of income as above and therefore the imposition of penalty of Rs 3,48,550/- u/s.271(l)(c) of the Act was justified and is upheld.

In the result, appeal is **dismissed.**”

3. Being aggrieved, the assessee filed the instant appeal before us by raising following grounds of appeal.

“1. That the learned Commissioner of Income Tax (Appeals)-2, Amritsar has grossly erred in confirming the penalty u/s 271(1)(c) amounting to Rs.3,48,550/- levied by Deputy Commissioner of Income Tax, Circle-5, Amritsar.

2. That the learned Commissioner of Income Tax (Appeals)-2, Amritsar has failed to appreciate that the addition of Rs.11,28,000/- could not be treated as conceal income of the assessee as no Land was actually said by it.

3. That learned Commissioner of Income Tax (Appeals)-2 Amritsar has failed to appreciate that the assessee could not be punished for the mistake committed by its counsel while filing the Income Tax Return.

4. That the penalty u/s 271(1)(c) may kindly be deleted.”

4. On the other hand, the Ld. DR relied upon the order of authorities below.

5. Having heard the parties at length and perused the material available on record. In nutshell the case of the assessee is that it is undisputed fact that property at Delhi which is in dispute has actually been sold only on 30.06.2014 as per registered sale deed, which also reflects from the assessment order and therefore, it is undoubtedly clear that no sale of land has ever took place during the year under consideration. The assessee further claimed that it was only an estimate which was made in computer system while calculating the excepted price of the land to be sold and what would be the position of long term capital gain and losses to be carried forward, however at the time of preparation of final return, the provisional figures were inadvertently omitted to be deleted and the ITR uploaded included that figure and in that eventuality the mistake has been committed in the office of the counsel only whereas it is an undisputed fact that no sale of land had taken place during the year under consideration, which also get strengthen from the audited P&L Account and balance sheet of the assessee in which no mention of such sale of land. Though the AO had accepted this position in the assessment order, however still imposed the penalty.

Considering the peculiar facts and circumstances of the case specifically to the effect that no sale of land has ever took place during the relevant year under consideration and showing the sale without reality, seems to be negligent act of the assessee's representative/counsel in filing the Income Tax return, therefore in our considered opinion the mistake of the counsel in the peculiar facts and circumstances of this case, cannot fasten the assessee because

even otherwise there was no concealment of income but seems to be mistakes may be occurred inadvertently resulting into increase the loss carried forward. From the peculiar facts and circumstances it reflects that the assessee on the misconception and/or lack of consciousness, knowledge and guidance committed the error which can be termed as inadvertent and/or bonafide and therefore, in our considered opinion does not entail any penalty, hence, the penalty levied by the Assessing Officer and upheld by the Ld. CIT(A) is liable to be deleted. Consequently, the same stands deleted.

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

Order pronounced in the open Court on 09/10/2019.

Sd/-
(B.R.BASKARAN)
ACCOUNTANT MEMBER

Sd/-
(N.K.CHOUDHRY)
JUDICIAL MEMBER

Dated: 09/10/2019.

/PK/ Ps.

Copy forwarded to:

1. The Appellant
2. The Respondent
3. The CIT
4. Then CIT(Appeals)
5. SR DR, I.T.A.T. Amritsar
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By Order