

आयकर अपीलीय अधिकरण "बी" न्यायपीठ पुणे में ।
IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH, PUNE

BEFORE SHRI ANIL CHATURVEDI, AM AND
SHRI PARTHA SARATHI CHAUDHURY, JM

आयकर अपील सं. / ITA No.474/PUN/2019

निर्धारण वर्ष / Assessment Year : 2009-10

M/s. Shree Hatkeshwara Cargo Movers,
Office No.8, Wonder City Building,
Katraj By Pass Road, Katraj,
Pune-411 046.
PAN : AATFS8504N

.....अपीलार्थी / Appellant

बनाम / V/s.

The Deputy Commissioner of Income Tax,
Circle-5, Pune

.....प्रत्यर्थी / Respondent

Assessee by : Shri Suyog Bhave
Revenue by : Shri Hoshang Boman Irani

सुनवाई की तारीख / Date of Hearing : 18.12.2019

घोषणा की तारीख / Date of Pronouncement : 18.12.2019

आदेश / ORDER

PER PARTHA SARATHI CHAUDHURY, JM :

This appeal preferred by the assessee emanates from the order of the
Ld. CIT(Appeals)-4, Pune dated 28.01.2019 for the assessment year 2009-10
as per the grounds of appeal on record.

2. The crux of the grievance of the assessee is with regard to the imposition of penalty u/s.271(1)(c) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') by the Assessing Officer and as confirmed by the Ld. CIT(Appeals).

3. The facts leading to the imposition of penalty is that the assessee is a partnership firm engaged in the business of transport and cargo mover. During the financial year 2012-13, a survey u/s.133A of the Act was carried out in the case. During the course of survey some incriminating documents were found suggesting some illegal payments to RTO Officers, Border Toll Officers etc. When confronted on this issue during the course of survey, Partner of the Firm agreed for the disallowance of such expenditure and accordingly, the assessee firm offered an income of Rs.19,05,861/- for the year under consideration. It may not be out of place to mention here that for assessment year 2009-10, the assessee had already filed its return of income on 22.09.2009 declaring total loss of Rs.2,40,76,016/- in which all illegal expenditures have been claimed as a deduction. Being satisfied that the assessee has wrongly claimed the expenditure within the meaning of Explanation 1 below Section 37(1) of the Act, the Assessing Officer initiated proceedings u/s. 147 of the Act after recording his satisfaction for doing so. In the meantime, the assessee filed a revised return of income on 29.11.2012 declaring total income of Rs.92,08,310/- which includes the admitted inadmissible expenditure of Rs.19,05,861/-. In response to notice u/s.148 of the Act, the assessee submitted that the revised return filed on 29.11.2012 may be treated as return filed in response to notice u/s.148 of the Act. The Assessing Officer then proceeded to finalize the assessment proceeding and passed order u/s.147 of the Act on 12.11.2014. Since the assessee has already disallowed the claim of illegal payments to RTO Officers and others,

no separate addition was made on this count. But the Assessing Officer has recorded his satisfaction that the assessee has concealed the particulars of income at the time of filing original return u/s.139(1) of the Act and hence, the Assessing Officer initiated penalty proceedings u/s.271(1)(c) of the Act.

4. The Ld. CIT(Appeals) upheld the penalty imposed by the Assessing Officer as per detailed reasoning in his order which is on record.

5. At the time of hearing, the Ld. Counsel for the assessee submitted that the original return was filed on 22.09.2009 and though therein illegal expenditures which are inadmissible expenditures have been claimed as deductions but thereafter, in the revised return filed on 29.11.2012 all those inadmissible expenditures of Rs.19,05,861/- were included and taxes paid accordingly. These facts have been accepted by the Ld. DR also. The Ld. Counsel for the assessee further submitted that there has been no concealment of income since all the particulars of income as well as inadmissible expenditures were disclosed in the revised return and included in the income and taxes paid accordingly and therefore, there was no loss to the revenue. Therefore there should not be any imposition of penalty u/s.271(1)(c) of the Act.

5.1 The Ld. Counsel for the assessee further stated that the satisfaction was recorded for levying penalty by the Assessing Officer at the time of framing original assessment. However, the trail of facts are clear that the penalty has been levied as a matter of consequence to the survey action u/s.133A of the Act and thereafter, unearthing some inadmissible expenditures, but at that point of time of survey, the Assessing Officer has not recorded his satisfaction before levying penalty u/s.271(1)(c) of the Act.

The Assessing Officer has passed his decision only on the basis of the satisfaction recorded as per the original return filed by the assessee u/s.139(1) of the Act. The Ld. Counsel for the assessee relied on the following decisions:

(i) Commissioner of Income-Tax Vs. Bhimji Bhanjee & Co., (1984) 146 ITR 145

(ii) Dilip Yeshwant Oak Vs. Assistant Commissioner of Income Tax, (2011) 10 Taxmann.com 264 (Pune)

(iii) Ashok S. Agarwal Vs. the Deputy Commissioner of Income Tax, ITA No.1227/PUN/2016.

6. Per contra, the Ld. DR placed strong reliance on the findings of the Assessing Officer as per the penalty order and also on the order of the Ld. CIT(Appeal) and submitted before us that if no survey u/s.133A of the Act would have been conducted then these inadmissible expenditures claimed as deductions as per the original return filed, the benefit would have been taken by the assessee. That since in the original return of income, these were not disclosed it amounts to concealment of income.

7. We have perused the case records and heard the rival contentions. We have also analyzed the facts and circumstances in this case while considering the judicial pronouncements placed before us. In this case when the original return was filed by the assessee u/s.139(1) of the Act, he had inappropriately claimed deductions on certain inadmissible expenditures and this fact came to the notice of the Revenue Authorities at the time of conducting survey u/s.133A of the Act. That thereafter, the assessee had filed revised return in which he has disclosed as income all those inadmissible expenditures which were earlier taken as deduction. The assessee has also paid requisite taxes on such income as filed in the revised return. The Ld. DR before us has accepted

these facts on record. Meaning thereby, there is no loss to the revenue from the conduct of the assessee.

8. Now, the question which arises whether penalty could be leviable u/s.271(1)(c) of the Act and such penalty is leviable either for 'concealment of income' or 'furnishing of inaccurate particulars of income'?

8.1 In the case of the assessee, while filing revised return, the assessee has disclosed his entire income in totality and have paid taxes and therefore, it cannot be said that there is 'concealment of income' or 'furnishing of inaccurate particulars of income' since by way of such revised return, all the inaccuracies which were there in the original return, were rectified by the assessee. Furthermore, the Revenue Authorities have not pointed out any irregularities in the revised return filed by the assessee nor before us the Ld. DR could point out any inaccuracies in the revised return filed. Such revised return has already been filed within the stipulated time. It is a matter of settled legal proposition that penalty provisions have to be strictly construed and penalty cannot be imposed on surmise, whims and fancies. That whether or not the assessee would have rectified the inadmissible expenditures if the survey was not conducted, this cannot be the reason for levying penalty.

9. The Hon'ble Jurisdictional High Court in the case of **Commissioner of Income-Tax Vs. Bhimji Bhanjee & Co. (supra.)** has held that "*when the assessee has nowhere admitted that it had concealed its income, no penalties are leviable.*"

10. The Pune Bench of the Tribunal in the case of **Dilip Yeshwant Oak Vs. Assistant Commissioner of Income Tax (supra.)**, the facts were that the Assessee had filed return of income declaring certain income and thereafter,

survey action was undertaken u/s.133A of the Act wherein certain discrepancies were unearthed. To cover up the same, assessee disclosed an additional income and accordingly filed a revised return of income. The Assessing Officer accepted income returned in revised return and accordingly passed assessment. Subsequently, Assessing Officer levied penalty u/s.271(1)(c) of the Act holding that discrepancies noted during course of survey action under section 133A of the Act and consequent disclosures of additional incomes, attracted penalty. The Tribunal had held in this case that the assessee had furnished valid revised return, which was accepted by Assessing Officer without pointing out a single inaccuracy and without making any further additions in assessment and in such circumstances, it was not a fit case for levy of penalty.

Reverting to the facts of the present case, the revised return was accepted and taxes paid accordingly. No further addition was made by the Assessing Officer in the case of the assessee. In such scenario, in the instant case of the assessee as well, no penalty u/s.271(1)(c) of the Act can be imposed.

11. That further, while levying penalty u/s.271(1)(c) of the Act, the Assessing Officer has recorded his satisfaction at the time of framing original assessment order based on the original return filed by the assessee u/s.139(1) of the Act. That however, while survey was conducted which resulted in levy of the penalty, during that time no separate satisfaction was recorded by the Assessing Officer before initiation of penalty proceedings. This is also not legally permissible as observed by the Pune Bench of the Tribunal in the case of Ashok S. Agarwal Vs. the Deputy Commissioner of Income Tax (supra.).

12. In view of the examination on merits of this case as well as judicial pronouncements, it is not a fit case for levy of penalty u/s.271(1)(c) of the Act. Hence, we set aside the order of the Ld. CIT(Appeal) and direct the Assessing Officer to delete the penalty from the hands of the assessee.

13. In the result, **appeal of the assessee is allowed.**

Order pronounced on 18th day of December, 2019.

Sd/-
ANIL CHATURVEDI
ACCOUNTANT MEMBER

Sd/-
PARTHA SARATHI CHAUDHURY
JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 18th December, 2019.
SB

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(Appeals)-4, Pune.
4. The Pr. CIT-3, Pune.
5. विभागीय प्रतिनिधि , आयकर अपीलीय अधिकरण, “बी” बेंच,
पुणे / DR, ITAT, “B” Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

// True Copy //

आदेशानुसार / BY ORDER,

निजी सचिव / Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.

		Date	
1	Draft dictated on	18.12.2019	Sr.PS/PS
2	Draft placed before author	18.12.2019	Sr.PS/PS
3	Draft proposed and placed before the second Member		JM/AM
4	Draft discussed/approved by second Member		AM/JM
5	Approved draft comes to the Sr. PS/PS		Sr.PS/PS
6	Kept for pronouncement on		Sr.PS/PS
7	Date of uploading of order		Sr.PS/PS
8	File sent to Bench Clerk		Sr.PS/PS
9	Date on which the file goes to the Head Clerk		
10	Date on which file goes to the A.R		
11	Date of dispatch of order		