

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ "एस.एम.सी", चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL, CHANDIGARH BENCHES, "SMC" CHANDIGARH

श्री एन.के.सैनी, उपाध्यक्ष
BEFORE: SHRI. N.K.SAINI, VICE PRESIDENT

आयकर अपील सं./ ITA No.923/Chd/2019
निर्धारण वर्ष / Assessment Year : 2007-08

Manpreet Singh Bhullar C/o Surinder Babbar, FCA, Babbar & Co. Chartered Accountant, Babbar Bhawan Green Tower, Sector-1, Parwanoo Himachal Pradesh	बनाम	The ITO Sector-2 Parwanoo, Himachal Pradesh
स्थायी लेखा सं./PAN NO: AAQPB1448K		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारित की ओर से/Assessee by : Shri Surinder Babbar, FCA
राजस्व की ओर से/ Revenue by : Shri Arvind Sudershan, JCIT
सुनवाई की तारीख/Date of Hearing : 09/01/2020
उद्घोषणा की तारीख/Date of Pronouncement : 09/01/2020

आदेश/Order

PER N.K. SAINI, VICE PRESIDENT

This is an appeal by the Assessee against the order dt. 30/05/2019 of Ld. CIT(A)-3, Shimla, H.P.

2. The only grievance of the assessee in this appeal relates to the sustenance of penalty of Rs. 77,393/- levied by the A.O. under section 271(1)(c) of the Income Tax Act, 1961 (hereinafter referred to as 'Act').

3. Facts of the case in brief are that the assessee was engaged in the business of manufacturing of paper tubes and cartons, wrappers and printed tables in the name of M/s Guru Impression boxes. The Assessee filed the return of income on 31/10/2007 and declared an income of Rs. 1,47,241/-. Later on the case was selected for scrutiny. The A.O. made the addition of Rs. 17,44,256/- on account of bogus purchase and also initiated the penalty proceedings under section 271(1)(c) of the Act.

4. Being aggrieved the assessee preferred the appeal before the Ld. CIT(A) against the addition of Rs. 17,44,256/-. The Ld. CIT(A) vide order dt. 03/06/2016 directed the A.O. to apply the GP rate of 14.50% on the aforesaid purchase and the A.O. after giving effect to the order of the Ld. CIT(A) worked out the addition of Rs 2,52,917/-. He also initiated the penalty proceedings under section 271(1)(c) of the Act and levied the penalty of Rs. 77,393,-/.

5. Being aggrieved the assessee carried the matter to the Ld. CIT(A) and submitted as under:

The appellant is an individual and during the assessment year 2007-08, he was carrying on the business of manufacturing of paper tubes, cartons, wrappers and printing of labels etc., under the name and style of M/s Guru Impression Boxes at Parwanoo. The return of income declaring a net taxable income of 1,47,241/- was filed by the appellant on 30th October 2007. The same was processed as such u/s 143(1) of the Income-tax Act, 1961. Subsequently, the case of the assessee was selected for scrutiny assessment and assessment was completed u/s 144 of the Income-tax Act, 1961 at an income of 19,23,290/- resulting in an addition of ' 17,76,046/- and the addition so made is on the allegation that the assessee has made bogus purchase to the tune of 17,44,256/-. The Ld. A.O. also disallowed expenses to the tune of ' 31,790/- and a demand of 7,75,419/- was raised against the assessee vide order dated 26th November 2009.

The assessee being aggrieved preferred appeal against the above said additions and vide order dated 03.06.2016 passed under s. 250(6) of the Income-tax Act, 1961 by the Ld. CIT(A)-18, New Delhi in Appeal No. IT/3277SMU2009-10, the addition of 17,44,256/- was deleted but restricted to the GP rate of the assessee. The Ld. CIT(A) deleted the addition of the entire purchase held as bogus purchase by mentioning categorically that there is nothing to prove the entry pass evidences are baseless and sustained the addition at the GP rate arrived at by the assessee. Consequently, the addition of 2,52,917/- was sustained. As against the addition of 31,790/- made by disallowing 20% of some of the expenses, the same was restricted to 10% which calculates at' 15,895/-.

2. That the Ld. A.O. has imposed the penalty of' 77,393/- being 100%, of tax calculated on addition of 2,52,917/- sustained by the Ld. CIT(A), Delhi and the assessee being aggrieved of the said penalty is in appeal before your honour.

3. From the above it is clear that whatever the addition has been sustained or confirmed by the Ld. CIT(A), the same is based on estimation only. This is clear from the order passed by the Ld. CIT(A) mentioned at Page 9 vide para 5.2.3. of his order that -

"Although the purchase from the party could not be established, the attended factors are worth considering. If the entire amount is added, the NP shoots up abnormally. There is nothing to prove that the entry pass evidences are baseless. In that view of the matter and the decisions as discussed above, it is directed that

the profit element i.e. GP on the additions be made and the order be modified accordingly".

Hence, from the above holdings of the Ld. CIT(A), it is clear that the attended factors which have been considered by him are, purchase bills issued by the supplier, Barrier ST-XXVI A forms which have generated at the Parwanoo Barrier at the time of crossing the material vehicle i.e. the 'Entry Pass' and further the sales tax assessment order for the assessment years 2005-06 to 2007-08. The Ld. CIT(A) has also observed that there is nothing to prove that the above evidences are baseless. So, considering the above, the Ld. A.O. suggested for addition to be sustained only to the extent of GP rate arrived at the by the assessee.

In view of above, it is clear that the Ld. CIT(A) sustained the addition on the basis of estimation of the GP rate and hence the issue is not at all covered within the mischief of provisions of section 271(1)(c) of the Income-tax Act, 1961 because the assessee has neither conceded the particulars of his income nor filed inaccurate particulars of such income. The assessee disclosed all the particulars along with documentary evidences in respect of the alleged purchases fully and truly in the return of income filed by him and as regard filing of inaccurate particulars by the assessee are concerned, again the assessee was not at fault because whatever purchase he made from the said party was duly evidenced by purchase bills, barrier STXXVI-A forms and sales tax assessment order.

Hence, this is not a case of falsification of information filed in the return of income and is not covered under the concealment of particulars of income or filing of inaccurate particulars of such income by the assessee, hence, provisions of section 271(1)(c) does not comes into play.

4. Reliance is placed on :

In CIT Vs. SSP (P) Ltd., (2008) 302 ITR 43 (Punjab & Haryana) : Penalty under s. 271(1)(c)—Concealment—Bona fide belief—Where the assessee does not include a particular item in the taxable turnover or claims a deduction under bona fide belief that he is not liable so as to include the same, or entitled to deduction, it would not be right to treat the return as a false return inviting imposition of penalty—Unless the filing of an inaccurate return is accompanied by a guilty mind, penalty cannot be imposed— Tribunal having found on consideration of material on record and law applicable that assessee had not filed inaccurate particulars of income or concealed its income, was justified in deleting penalty—No substantial question of law arose out of the order of the Tribunal. The order of the Tribunal does not suffer from any illegality and no substantial question of law arises in the appeal and the same is dismissed in limine.—Cement Marketing Co. of India Ltd. vs. Asstt. CST & Ors. (1980) 124 ITR 15 (SC) relied on. (Para 7)

In CIT v. Harsha N. Biliangady (Dr.) (2016) 133 DTR 223 (Kam.)(HC), it has been held that -Quantum appeal is admitted by High Court on substantial question of law hence addition itself becomes debatable, hence the levy of penalty was held to be not justified. [S. 54, 54F, 260A] The Assessee claimed deduction under section 54 against sale of commercial building which was denied by AO not being residential house. Alternate claim of 54F was also denied as at the time of inspection the residential house acquired was also demolished and site was used for construction of hospital. The disallowance was upheld upto Tribunal and quantum appeal was admitted by High Court on substantial question of law. The AO levied penalty under section 271(1)(c) for concealment which was upheld by CIT(A). On further appeal Tribunal reversed the orders and cancelled the penalty. On revenue appeal, the High Court upheld the decision of Tribunal holding that

where penalty is imposed in respect of an addition where High Court has admitted appeal as substantial question of law, then sustainability of the addition itself becomes debatable and therefore penalty cannot be imposed. (AY.2008-09).

In CIT vs. Aero Traders Pvt Ltd., (2010) 322 ITR 316 (Del.); It has been held that no penalty u/s 271(1)(c) can be imposed when income is determined on estimated basis. Similar view has been taken by the Hon'ble Punjab & Haryana High Court in Harigopal Singh vs. CIT (2002) 258 ITR 85 (P&H) and the Hon'ble Gujarat High Court in CIT vs. Subhash Trading Company (1996) 221 ITR 110 (Guj).

5. As regard disallowance of expenses for personal use, this does not include any element of concealment of particulars or filing of inaccurate particulars by the assessee. Mere disallowance in the assessment proceedings will not lead to the penalty u/s 271(1)(c). Addl. CIT v. Delhi Cloth & General Mills Co.Ltd (1986) 157 ITR 822 (Del); CIT v. Ajaib Singh & Co (2002) 253 ITR 630 (P&H)

In view of above submissions, it is prayed that the penalty of ' 77,393/-imposed by the Ld. A.O. under s. 271(1)(c) of the Income-tax Act, 1961 may kindly be waived.

6. The Ld. CIT(A) after considering the submissions of the assessee sustained the penalty by observing as under:

5.1 I have carefully considered by the facts of the case, the action of the A.O. and submission of the appellant. The appellant in this case claimed to have made purchases of Rs. 17,44,256/- from M/s. System Sales. The letter sent for confirmation to the seller came back with the postal remarks "no such number in B3 Block, Ramesh Nagar". The enquiries from SBOP Parwanoo, where the assessee was maintaining his bank account no. 6500075977, revealed that the so called payment by cheque to the above party was actually withdrawn in cash by the assessee. The perusal of the order of the appellate authority shows that the appellate authority directed the A.O. after considering the following submission of the appellant as summarized in para 5.1.3 as under:-

5.1.3 To sum up, it was contended that:

- a) The sales have been accepted by the assessing officer.
- b) in earlier assessment year the net profit rate shown is reasonable when compared to the net profit for this year (PB-33).
- c) All impugned purchases have been filed before the Assessing officer along with check post entries (PB-22) when the entry of the goods are being made to the state of Himachal Pradesh.
- d) The AR contended that merely because no confirmation could be given as the party has left (the case being old case) there is no reason why the entire amount be held bogus.
- e) The AR also relied on various judicial precedents to buttress his point.

5.1.1 The appellate authority thus concluded that the CIT(A) directed as under: -

5.2.3 Although the purchase from the party could not be established, the attendant factors are worth considering. If the entire amount is added, the NP shoots up abnormally. There is nothing to prove that the entry pass evidences are baseless. In that view of the matter and the decisions as discussed above, it is

directed that the profit element i.e. GP on the additions be made and the order be modified accordingly.

A perusal of the facts show that the goods may have been received by the appellant, the appellate authority allowed part relief as, once the sales had been accepted, the corresponding purchases cannot be doubted. However, the appellant has not commented on the findings of the A.O. that the appellant had furnished inaccurate particulars of its income. The receipt of goods does not lead to the inference that the entries made in the books of accounts with respect to the party from whom goods have been purchased, the purchase price recorded and the mode of payment for the same are correct and accepted. It is only in this context that the appellate authority has directed that the addition to the extent of GP rate on these purchases may be upheld. The appellant has also offered no comments with regard to the findings of the A.O. that the so called payment by cheque to the above party was actually withdrawn in cash by the assessee. Hence, this is a case wherein the furnishing of inaccurate particulars by the appellant has not been satisfactorily explained. In view of the same, and also considering the detailed findings of the A.O. in his order passed u/s 271(1)(c) of the Act, the order of the A.O. is upheld and the appeal of the assessee is dismissed.

7. Now the assessee is in appeal.

8. The Ld. Counsel for the assessee submitted that the addition in this case was made only on estimate basis therefore it cannot be said that the assessee concealed the income or furnished the inaccurate particulars of income. It was further submitted that the Ld. CIT(A) himself admitted that the assessee had received the goods i.e., the purchases were not doubted, therefore the penalty levied by the A.O. and sustained by the Ld. CIT(A) was not justified, particularly when the addition was only on estimate basis. The reliance was placed on the judgment of the Hon'ble High Court in the case of Harigopal Singh Vs. CIT reported in [2002] 258 ITR 85 (P&H).

9. In his rival submissions the Ld. Sr. DR supported the orders of the authorities below and further submitted that the assessee had not disclosed the true income therefore the penalty levied by the A.O. under section 271(1)(c) of the Act was rightly sustained by the Ld. CIT(A).

10. I have considered the submissions of both the parties and perused the material available on the record. In the present case it is an admitted fact that the income of the assessee was determined on estimate basis. On a

similar issue the Hon'ble Jurisdictional High Court in the case of Harigopal Singh Vs. CIT(supra) held as under:

“ In order to attract clause (c) of section 271(1) of the Income Tax Act, 1961, it is necessary that there must be concealment by the assessee of the particulars of his income or furnishing of inaccurate particulars of such income. The provisions of section 271(1)(c) of the Act are not attracted to cases where the income of an assessee is assessed on estimate basis and additions are made therein.”

11. I therefore, by following the ratio laid down by the Hon'ble Jurisdictional High Court in the aforesaid referred to case, delete the penalty levied by the A.O. and sustained by the Ld. CIT(A).

12. In the result, appeal of the assessee is allowed.

Sd/-
एन.के.सैनी,
(N.K. SAINI)
उपाध्यक्ष / VICE PRESIDENT

AG

Date: 09/01/2020

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