

**IN THE INCOME TAX APPELLATE TRIBUNAL "SMC", BENCH MUMBAI
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER
&
SHRI G. MANJUNATHA, ACCOUNTANT MEMBER**

**ITA No.6509/Mum/2018
(Assessment Year: 2012-13)**

Steelfab Building System 101-A, Poonam Chambers B Dr. Annie Besant Road, Worli Mumbai-400 018	Vs.	ACIT-31(3) 1 st Floor, C-13 Building 7 th Floor, Aaykar Bhawan BKC, Bandra(E) Mumbai-400 051
PAN/GIR No.AAXFS5995B		
(Appellant)	..	Respondent)

Revenue by	Ms. R.Kavitha, DR
Assessee by	Shri Dharmesh Shah & Shri Dhaval Shah, AR's
Date of Hearing	20/02/2020
Date of Pronouncement	04/03/2020

आदेश / O R D E R

PER G.MANJUNATHA (A.M):

This appeal filed by the assessee is directed against order of the Id. Commissioner of Income Tax (Appeals)-42, Mumbai, dated 13/07/2018 and it pertains to the A.Y 2012-13.

2. The assessee has raised the following grounds of appeal:-

Grounds of Appeal No.1

The Commissioner of Income Tax (Appeals) - 42 hereinafter referred to as the CIT erred in confirming the penalty of Rs.3,03,756/-- imposed by the Assessing Officer under the provisions of Section 271 (1)(c) of the Income Tax Act, 1961.

Your Appellant submits [hat they have received interest of Rs. 491,513/- on the Income Tax refund LI'S 244A and the accountant of the Firm credited the same in the books of account to Income [ax Account and since the amount of interest was not appearing separately it was clubbed in the Income Tax Refund figure and therefore by mistake was credited to

the Income Tax account and thus left out to be credited to Profit and Loss Account and thus left to be clubbed in taxable income.

Further the actual Income tax refund together with Interest was received in the subsequent Assessment Year 2013-14 and the same amount was credited To Interest Income and added to taxable income and you Appellant has paid the tax on this Interest amount.

Your Appellant further submits that the refund or Payment of Government dues like Income Tax, VAT, excise was accounted in the year of receipt or payment of demand.

Under the given circumstances there is no concealment of Income nor there has been any fiving of inaccurate particulars of Income and therefore the issue does not fall within the mischief of the provisions of section 271(l)(c) of the Income Tax Act, 1961 and therefore the Assessing Officer be directed to delete the penalty.

Grounds of Appeal No. 2

Your Appellants further submits that the addition of Interest in the A.Y. 2012-13 and the same amount of Income has been offered in [he subsequent Year A.Y. 2013-14 amounts to double addition and therefore it is against the provisions of Income Tax as (he same income cannot be taxed twice and as the same can either be taxed on either of the years but not both and therefore the Assessing Officer be directed to delete the penalty.

As regards the double addition the Assesses is taking up the matter in rectification with the A.O

3. The brief facts of the case are that the assessment for the impugned assessment year has been completed u/s 143(3) of the I.T.Act, 1961 on 24/03/2015, determining the total income at Rs.43,06,401/-, as against the total income declared for Rs.38,14,887/-. The Ld. AO has determined total income of Rs.43,06,401/- by making additions towards income from other sources being interest received on income tax refund u/s 244A amounting to Rs. 4,91,513/-. Thereafter, penalty proceedings u/s 271(1)(c) of the I.T.Act, 1961 was initiated for furnishing inaccurate particulars of income. During the course of penalty proceedings, the assesee vide letter dated 14/08/2015 has filed detailed submissions

and argued that it is has neither concealed particulars of income, nor furnished inaccurate particulars of income, which warrants levy of concealment penalty u/s 271(1)(c) of the I.T.Act, 1961. The Ld. AO did not convince with arguments of the assessee and by taking note of various facts, including by following certain judicial precedents, opined that the assessee has deliberately concealed particulars of income by not disclosing interest received on income tax refund, even though it has received interest on income tax refund during the relevant period and accordingly, levied penalty of Rs.3,03,756/-, which is equivalent to 200% of tax sought to be evaded.

4. Aggrieved by the penalty order, the assessee preferred an appeal before the Ld.CIT(A). Before the Ld.CIT(A), the assessee contended that the Ld. AO was erred in levying penalty u/s 271(1)(c) of the I.T.Act, 1961, in respect of additions made towards interest received on income tax refund, without appreciating the fact that although, the department has generated income tax refund, but the amount of refund has been received by the assessee during AY 2013-14 and the same has been offered to tax. The Ld.CIT(A) after considering the relevant submissions of the assessee and also by relied upon various judicial precedents, including the decision of Hon'ble Delhi High Court, in the case of CIT vs Zoom Communication Pvt.Ltd (2010) 327 ITR 510, confirmed penalty levied by the Ld. AO u/s 271(1)(c) of the I.T.Act, 1961, on the ground that the assessee has failed to explain the accounting of interest on refund on receipt basis, when the details of refund issued were available to it and when, it was following mercantile system of

accounting. Aggrieved by the Ld.CIT(A) order, the assessee is in appeal before us.

5. The Ld. AR for the assessee submitted that the Ld.CIT(A) has erred in confirming penalty levied by the Ld. AO u/s 271(1)(c) of the I.T.Act, 1961, without appreciating the fact that the assessee has offered interest received of income tax refund u/s 244A of the Act, in the subsequent AY 2013-14, when the actual refund was credited to the account of the assessee. The Ld. AR, further submitted that the Ld. AO, as well as the Ld.CIT(A) were erred in coming to the conclusion that the assessee has made deliberate attempt to evade tax on interest income, ignoring the fact that interest on income tax refund was very much available with the department in Form No. 26AS and there is no possibility of non disclosure of said interest income for taxation. The assessee has not offered interest income for the year under consideration, because the major portion of interest was credited to assessee account in subsequent financial year and also fact that when, refund advise was issued to the assessee, there is no breakup, in respect of refund of taxes and interest. In this regard, he relied upon by the decision of Hon'ble Punjab & Haryana High court, in the case of CIT vs SSP Pvt.Ltd. 302 ITR 43

6. The Ld. DR, on the other hand, strongly supporting order of the Ld.CIT(A) submitted that the assessee has deliberately concealed particulars of income, in respect of interest received on income tax refund and hence, the Ld. AO, as well as the Ld.CIT(A) were right in levying penalty u/s 271(1)(c) of the I.T.Act, 1961

7. We have heard both the parties, perused the material available on record and gone through orders of the authorities below. The fact with regard to receipt of interest on income tax refund u/s 244A of the Act, 1961 was not disputed by the assessee. But, the dispute is only with regard to timing of receipt of interest income and taxability of such interest in the year under consideration. Although, the refund for AY 2009-10 was encashed on 24/12/2011, but the same has been adjusted to refund voucher issued for AY 2007-08, dated 30/03/2012. Insofar as, refund issued for AY 2010-11, the same has been directly encashed by the assessee on 05/04/2011. The assessee has not offered interest on income tax refund amounting to Rs.4,91,513/- for the impugned Assessment Year, because it was not having specific details with regard to interest received on income tax refund, although the refund vouchers were generated by the department. Further, refund generated for AY 2009-10 was adjusted to tax payable for AY 2007-08 and was finally refund was issued on 30/03/2012. This information was available to the assessee on 23/05/2012. Therefore, the assessee claimed that it has not considered interest income for the impugned assessment year, however fact remains that said interest income has been offered to tax for the AY 2013-14 and this fact has not been disputed by the lower authorities. But, the Ld. AO has levied penalty only on the ground that although, the assessee is following mercantile system of accounting, it has not offered interest income for tax for the year under consideration. Otherwise, there is no dispute with regard to the fact that said interest income has been offered to tax in subsequent financial year. Therefore, we are of the considered view that once, the fact with regard to taxability of interest income in AY 2013-14 was not disputed by the Ld. AO, then he is erred in levying

penalty u/s 271(1)(c) of the Act, 1961 for not offering interest income to tax for the year under consideration, more particularly when, the assessee has explained the reasons for not accounting and considering interest income to tax for the year under consideration. When, the assessee has offered to tax interest income in subsequent financial year, there is no reason for the Ld. AO to levy penalty on the same income for the year under consideration for not offering to tax said income, because the timing difference in offering income to taxes cannot be considered as concealment of particulars of income or furnishing inaccurate particulars of income. Therefore, we are of the considered view that the Ld. AO, as well as the Ld.CIT(A) were erred in levying penalty u/s 271(1)(c) of the I.T.Act, 1961 in respect of additions towards interest on income tax refund. Hence, we direct the Ld. AO to delete penalty levied u/s 271(1)(c) of the I.T.Act, 1961.

8. In the result, appeal filed by the assessee is allowed.

Order pronounced in the open court on this 04 /03/2020

Sd/-
(VIKAS AWASTHY)
JUDICIAL MEMBER

Sd/-
(G. MANJUNATHA)
ACCOUNTANT MEMBER

Mumbai; Dated 04/03/2020
Thirumalesh Sr.PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

सत्यापित प्रति //True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai