IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'SMC-II', NEW DELHI
Before Sh. N. K. Saini, AM

ITA No. 5899/Del/2014 : Asstt. Year : 2006-07
ITA No. 5900/Del/2014 : Asstt. Year : 2007-08
ITA No. 5901/Del/2014 : Asstt. Year : 2009-10

Wilima Wadhwa, D-48, Panchsheel Enclave, New Delhi-110017	Vs	ITO, Ward-23(1) New Delhi
(APPELLANT)		**(RESPONDENT)**
PAN No. AERPV3311C		

Assessee by : Sh. Ved Jain, CA
Revenue by : Sh. T. Vasantan, Sr. DR

Date of Hearing : 28.09.2015		**Date of Pronouncement : 30.09.2015**

ORDER

These appeals by the assessee are directed against the separate orders each dated 17.09.2014 of ld. CIT(A)-XXIII, New Delhi.

2. Since the common issue is involved in these appeals which were heard together, so these are being disposed off by this consolidated order for the sake of convenience and brevity.

3. First I will deal with the appeal in ITA No. 5899/Del/2014 for the assessment year 2006-07. Following grounds have been raised in this appeal:

"1. On the facts and circumstances of the case, the order passed by the learned Commissioner of Income Tax (Appeals) [CIT(A)] confirming the penalty of Rs. 1,54,346/- levied under section 271(1)(c) by the AO, is bad both in the eye of law and on facts.

2. On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming the penalty under section 271(1)(c) amounting to Rs. 1,54,346/- levied by the AO on account of remittance from US.

3. On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming the penalty rejecting the contention of the assessee that the non-inclusion of said amount in the income was on account of bonafide belief of the assessee as she was a non-resident in earlier year, as such the said amount was not taxable in those years.

4. On the facts and circumstances of the case, the learned CIT(A) has erred in confirming the penalty despite the fact that there is neither concealment nor furnishing of inaccurate particulars of income.

5. On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming penalty under Section 271(1)(c) amounting to Rs. 4,58,548/- despite the fact that the omission to include the amount of remittance was a bonafide mistake on the part of the assessee without there being any deliberate intention to furnish inaccurate particulars.

6. On the facts and circumstances of the case, the learned CIT(A) has erred in confirming penalty under section 271(1)(c) as no finding has been given on merit regarding concealment in the order passed by the AO.

7. On the facts and circumstances of the case, the learned CIT(A) has erred in ignoring the fact that penalty proceedings are independent proceedings and as such mere addition made in assessment does not tantamount to concealment of income or furnishing of inaccurate particulars.

8. The appellant craves leave to add, amend or alter any grounds of appeal."

4. From the above grounds it is clear that only grievance of the assessee in this appeal relates to the confirmation of penalty levied by the AO u/s 271(1)(c) of the Income Tax Act, 1961 (hereinafter referred to as the Act)

5. Facts of the case in brief are that the assessee filed her return of income on 27.12.2006 declaring an income of Rs. 8,61,300/- which was processed u/s 143(1) of the Act on 25.08.2007. Thereafter the department received information that the assessee had received foreign remittance in US Dollars from USA and the amount received and the said receipt was not declared in the return of income. Therefore, the AO initiated the proceedings u/s 147 of the Act and issued a notice u/s 148 of the Act. In response to the said notice the assessee stated that the

return of income was already filed on 27.12.2006 declaring total income of Rs. 8,61,300/-. The AO during the course of assessment proceedings observed that the assessee furnished a letter stating that the total foreign remittance received by her was 19257.63 USD. The assessee submitted to the AO that she incurred expenses in regard to house rent, air ticketing. It was pointed out that the Department of Economic, University of California has mentioned that the assessee will bear the travel and housing cost by own. The AO observed that for the other expenses the assessee had not furnished any material evidence on record. He therefore, disallowed 50% of the other expenses as claimed by the assessee and made the addition of Rs. 4,58,548/- by making the following calculations:

Total remittance received	*19257.63 USD*
Expenses in USD allowed	
Rent paid	*4163.00 USD*
Air Travel	*378.30 USD*
50% of the expenses as claimed by the assessee	*(6075+2025+250*50% = 4175 USD*
Total remittance received	*11541.33 USD*
Considering the average rate of exchange/conservation rate @ Rs. 43.50 total consideration is calculated as	*Rs. 4,58,548/- (11541.33 × Rs.43.50)*

6. The AO also initiated the penalty proceedings u/s 271(1)(c) of the Act for furnishing inaccurate particulars of income. The assessee in the penalty proceedings submitted to the AO as under:

"As already informed that the assessee was a non-resident Indian till 2002-03. She used to file income tax return in USA and her income from teaching profession in USA was not taxable in India. When she came to India, she was not aware that her income in the US had become taxable in India. When this was pointed out, she immediately revised her income tax return for A.Y. 2010-11 and included earnings from the US in taxable income and paid tax accordingly. After that, she has regularly shown her US earnings in income tax returns for A.Y. 2011-12 and A.Y. 2012-13. In view of the above recent decisions, it is requested to take a lenient view and not impose penalty."

7. The AO however did not find merit in the aforesaid submission of the assessee and levied the penalty of Rs. 1,54,346/- u/s 271(1)(c) of the Act.

8. Being aggrieved the assessee carried the matter to the ld. CIT(A) and submitted that the assessee was in profession of teaching Statistics and Economics and was associated with a renowned NGO ñPrathamò in India, she went to USA every year to teach in University of California and was a non-resident till the year 2002-03, after which she shifted to India. It was further stated that till that time she was regularly filing her return of income in USA and was duly assessed to tax. However, after coming to India she was not aware of her income, which now became taxable in India but when this was pointed out to her, she immediately revised her Income Tax Return for the assessment year 2010-11 and paid taxes accordingly. It was stated that the assessee had no intention to

conceal her income as she had filed her return of income for the assessment year 2009-10 in the USA, wherein she had duly disclosed the amounts received by her for teaching in the University of California. The copy of the said return was furnished to the ld. CIT(A). It was further stated that in the return of income filed by US Non-Resident Alien, the assessee disclosed in Column No. 22 an amount of $19,257 in Column No. 22 which had a narration ñTotal Income exempt by a Treaty from page 5 Item Mò. It was accordingly submitted that the assessee had disclosed an amount of US $19,257 in her Income Tax Return filed in the USA and had claimed the amount to be exempt under a DTAA between USA and India.

9. The ld. CIT(A) after considering the submissions of the assessee observed that the amount of $19,257 was neither brought to tax in USA as per the US Tax Laws, nor it was declared before the Income Tax Authorities in India for taxation purposes, even though the assessee was a resident in India at that time, so it was a clear case of filing of inaccurate particulars which attracted penalty u/s 271(1)(c) of the Act. Accordingly, the penalty levied by the AO was confirmed.

10. Now the assessee is in appeal. The ld. Counsel for the assessee reiterated the submissions made before the authorities below and further submitted that the AO made the addition on account of the foreign remittance received by the assessee and disallowed 50% of the expenses

incurred on estimate basis and levied the penalty u/s 271(1)(c) of the Act on the said addition & disallowance by alleging that the assessee had furnished inaccurate particulars of income. It was further submitted that the assessee was not aware of the facts that her income had taxable in India but when it was pointed out, she immediately revised her Income Tax Return for the assessment year 2010-11 and included the said earnings in her income and paid taxes accordingly. It was further stated that for the subsequent years as well, the assessee had included the similar earnings in the income of the respective years. So it was not a case of non-disclosure as the amount was disclosed by the assessee in the return filed with the US authorities, so it was a case of bonafide belief that the amount was considered as non-taxable and the facts were truly disclosed. It was further stated that there was no malafide intention of the assessee to either conceal any income or to furnish inaccurate particulars of income. Thus, the levy of penalty u/s 271(1)(c) of the Act was not justified. The reliance was placed on the following case laws:

- *Price Waterhouse Coopers (P.) Ltd. Vs CIT (2012) 348 ITR 306 (SC)*
- *M/s St. Soldier Properties & Industries Ltd. Vs ACIT (2013) 10 TMI 781 (ITAT, Delhi)*
- *Shri Amit Jain Vs ACIT (2015) 4 TMI 790 (ITAT, Delhi)*
- *CIT-I, Mumbai Vs M/s Bennett Coleman & Co. Ltd. in ITA No. 2117 of 2012*
- *Jain Bros. Vs Union of India (1970) 77 ITR 107 (SC)*
- *Devsons (P.) Ltd. Vs CIT (2011) 196 Taxman 21 (Del.)*
- *ACIT Vs Shiv Nadar (2007) 15 SOT 57 (Del)*

- *Banaras Taxterium Varanasi Vs CIT (1988) 169 ITR 782 (All)*
- *CIT Vs University Printers (1991) 188 ITR 206 (All)*
- *CIT Vs Dharamchand L. Shah (1993) 204 ITR 462, 468-69 (Bom)*
- *Dresser Rand India (P.) Ltd. Vs DCIT (2013) 37 Taxmann.com 328 (Mum-Trib.)*
- *DCIT Vs Eagle Iron & Metal Industries Ltd. (2012) 20 Taxmann.com 355 (Mum.)*

11. It was further submitted that the ld. CIT(A) without appreciating the facts in right prospective and without considering the explanation given by the assessee confirmed the penalty levied by the AO.

12. In his rival submissions the ld. DR strongly supported the orders of the authorities below and further submitted that the assessee revised return of income for the assessment year 2010-11 but not for the assessment year under consideration and if she was under a bonafide belief that the income earned in USA was taxable then she was duty bound to disclose this income when it was specifically pointed out, by filing the revised return but no such action has been taken by the assessee. Therefore, the AO rightly levied the penalty u/s 271(1)(c) of the Act and the ld. CIT(A) was justified in confirming the same. It was further stated that the assessee did not furnish the evidences for incurring the expenses. Therefore, the AO rightly made the disallowance and was justified in holding that the assessee furnished inaccurate particulars of

income to the extent of disallowance made. The reliance was placed on the following case laws:

- *Union of India Vs Dharamendra Textile Processors 306 ITR 277 (SC)*

13. I have considered the submissions of both the parties and carefully gone through the material available on the record. In the present case, it is an admitted fact that the assessee was a non-resident till the assessment year 2002-03, thereafter she shifted to India. The assessee was earning honorarium from the University of California, Irvine as there was a treaty between the USA and the India, the amount so received by the assessee was not taxable in USA. The assessee was under a bonafide belief that the income earned in USA was exempt under DTAA between USA and India and this fact was disclosed in Form No. 1040NR for the year 2005 comprising the Income Tax Return filed by US Non-Resident Alien. From the aforesaid facts it appears that there was no malafide intention of the assessee to either conceal any income or to furnish inaccurate particulars of income because the amount received as honorarium was disclosed by the assessee and due taxes was paid when it was pointed out that the said amount i.e. foreign remittance in USD received from USA was taxable. In the present case, the AO also made the addition by disallowing 50% of the expenses claimed by the assessee on account of her visit to University of California. The said disallowance was purely on adhoc basis, so it

cannot be said that the assessee furnished inaccurate particulars of her income or concealed the income. In my opinion the present case can be a good case or making the addition but not for levying the penalty u/s 271(1)(c) of the Act. I, therefore, considering the peculiar facts of this case deem it appropriate to delete the penalty levied by the AO and sustained by the ld. CIT(A).

14. In the other appeals i.e. ITA Nos. 5900 & 5901/Del/2014 for the assessment years 2007-08 & 2009-10, the facts are similar as were involved in ITA No. 5899/Del/2014. Therefore, the findings given in former part of this order shall apply *mutatis mutandis* for the appeals in ITA Nos. 5900 & 5901/Del/2014.

15. In the result, the appeals of the assessee are allowed.

(Order Pronounced in the Court on 30/09/2015)

Sd/-
(N. K. Saini)
ACCOUNTANT MEMBER

Dated: 30/09/2015
Subodh
Copy forwarded to:
1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR