

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ "बी", चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL, CHANDIGARH BENCH "B", CHANDIGARH
(VIRTUAL COURT)

श्री एन.के.सैनी, उपाध्यक्ष एवं श्री संजय गर्ग, न्यायिक सदस्य
BEFORE: SHRI. N.K.SAINI, VP & SHRI, SANJAY GARG, JM

आयकर अपील सं./ ITA NO.1278/Chd/2018

निर्धारण वर्ष / Assessment Year : 2014-15

Smt. Renu Garg 61-A, Sant Nagar, Civil Lines Ludhiana, Punjab	बनाम	The ITO W-7(3), Rishi Nagar Ludhiana, Punjab
स्थायी लेखा सं./PAN NO: ACZPG7152L		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारित की ओर से/Assessee by : Shri Ashwani Kumar, C.A
राजस्व की ओर से/ Revenue by : Sh. Daya Inder Singh Sidhu, Addl. CIT
सुनवाई की तारीख/Date of Hearing : 29/10/2020
उद्घोषणा की तारीख/Date of Pronouncement : 29/10/2020

आदेश/Order

PER N.K. SAINI, VICE PRESIDENT

This is an appeal by the Assessee against the order dt. 28/08/2018 of Ld. CIT(A)-3 Ludhiana.

2. Following ground has been raised in this appeal :

" That order passed u/s 250(6) of the Income Tax Act, 1961 by the Ld. Commissioner of Income Tax (Appeals)-3, Ludhiana is against law and facts on the file in as much as she was not justified to arbitrarily uphold the action of the Ld. Assessing Officer in levying the penalty u/s 271(1)(c) at Rs. 11,43,300/-."

3. From the aforesaid grounds it would be clear that the only grievance of the assessee relates to the sustenance of penalty of Rs. 11,43,300/- levied by the A.O. under section 271(1)(c) of the Income Tax Act, 1961 (hereinafter referred to as 'Act').

4. During the course of hearing the Ld. Counsel for the Assessee at the very outset stated that the similar issue having identical facts was involved in the case of Smt Neelu Garg Sister in law of the assessee, the facts are identical in both the cases and the issue has already been adjudicated by the ITAT, Chandigarh 'SMC' Bench in ITA No.

1472/Chd/2018 vide order dt. 26/04/2019. He also furnished a Chart depicting the similarity of the events in both the aforesaid cases, which read as under:

		A/Y 2014-15
Particulars	Smt. Renu Garg	Smt. Neelu Garg
Return of income filed	06.11.2014	04.11.2014
Notice u/s 143(2) issued on	18.09.2015	18.09.2015
A Compliance to the notice made by filing POA. No information was called for and as such no information was filed	05.10.2015	05.10.2015
Summons issued by ADIT(Inv)-II, Ludhiana on	29.09.2015	29.09.2015
Letter submitted before DDIT, Ludhiana on	12.10.2015	12.10.2015
Notice u/s 142(1) issued on	08.04.2016	08.04.2016
Reply to notice u/s 142(1) dt. 08.04.2016 filed on	27.04.2016	24.06.2016
Order u/s 143(3) passed on	04.08.2016	28.10.2016
Date of deposit of tax	12.10.2015	12.10.2015

5. In his rival submissions the Ld. DR strongly supported the impugned order passed by the Ld. CIT(A) and reiterated the observations made in the impugned order.

6. We have considered the submissions of both the parties and carefully gone through the material available on the record. It is noticed that an identical issue having similar facts has already been adjudicated by the ITAT Chandigarh 'SMC' Bench in ITA No. 1472/Chd/2018 in case of Smt. Neelu Garg Vs. ITO vide order dt. 26/04/2019 and as pointed out by the Ld. Counsel for the Assessee sequence of the events in the case of present assessee and her Sister in law Smt. Neelu Garg(supra) are similar which is clear from the aforesaid referred to Chart furnished by the Ld. Counsel for the Assessee. In the case of Smt. Neelu Garg (supra) it has been held as under:

10. The assessee suomoto surrendered Rs.37 lacs and filed the revised statement of net assessable income and deposited the due tax on the said surrender on 12.10.2015. The A.O. issued the notice u/s 142(1) of the Act on 8.4.2016 and asked the assessee to furnish various details. According to the A.O. the assessee concealed the income to the extent of Rs.37 lacs. It is not iced that the assessee furnished various details asked by the A.O. vide letter dated 30.4.2016, copy of which is placed at page No.16 of the assessee's Paper Book and informed that an amount of Rs.37 lacs was surrendered (equivalent to Long Term Capital Gain of Rs.36,23,134/-) and an amount of Rs.12,55,871/- as income tax & interest thereon was deposited on 12.10.2015. Therefore, from the facts of the present case, it is clear that the assessee suomoto surrendered an amount of Rs.37 lacs before any of the authorities of the Income Tax pointed out any undisclosed income of the assessee. It is not iced that the assessee informed the D.D. I. (Investigation- II) , Ludhiana vide letter dated 12.10.2015 (in response to the summon u/s 131(1A) of the Act dated 29.9.2015) that a

recomputation of taxable income was filed, wherein an amount of Rs.37 lacs was surrendered under the head 'miscellaneous income', which is evident from page Nos.9 to 11 of the assessee's Paper Book, which are the copies of the reply, computation income and copy of challan in respect of tax and interest amounting to Rs.12,55,871/-, deposited on 12.10.2015. It is not iced that the A.O. got the Investigation Report from the Principal CIT-I, Ludhiana vide letter dated 24.2.2016 that there were certain brokers in different towns, who contacted the prospective clients and took paper book entries, this fact has been mentioned at para 3 of the assessment order dated 28.10.2016. However, the assessee suomoto surrendered a sum of Rs.37 lacs much before the said date. Therefore, it cannot be said that the Department pointed out to the assessee that the income amounting to Rs.37 lacs had escaped assessment. On the contrary, the assessee herself surrendered the amount of Rs.37 lacs and paid the due taxes & interest on the said surrendered income on 12.10.2015 much before the discrepancy, if any, was pointed out by any of the departmental authorities. On a similar issue, the Hon'ble Jurisdiction; High Court in the case of CIT Vs. Raj iv Garg (2009) 313 ITR 256 (supra) held as under:

" that the Tribunal had recorded a pure finding of fact to the effect that the Revenue had not placed on record any material or evidence to discharge its burden of proving concealment. No such finding was recorded in the assessment order. The Tribunal further held that the additional income so offered by the assessee was done in good faith and to buy peace. The burden shifts to the assessee only if he fails to offer any explanation for the undisclosed income or offers an explanation which is found to be false by assessing authority. The revised return of income was filed in which the entire income was surrendered with an explanation. The revised return was regularized by the Revenue. The assessing authority had failed to take any objection that the declaration of income made by the assessee in his revised return and his explanation were not bonafide. The Tribunal was justified in upholding the order of the Commissioner (Appeals) deleting the penalty imposed under section 271(1) (c) of the Act."

11. By following the aforesaid judgment of the Hon'ble Jurisdictional High Court, the ITAT Chandigarh Bench "A" in the case of Ajay Sangari & Co. Vs. Addl. CIT (supra) held as under:

"10. The AO and the CIT(A) had placed reliance on the ratio laid down in the case of Rajesh Chawla (supra). On the facts of the case before the Hon'ble Court, the assessee was found to be a member of group known as M/s. Baldav Electricals, Ludhiana against which information was received by the Intelligence Wing that the members of the group were indulging in tax evasion by showing income from other sources as agricultural income. During the course of investigation the persons were asked to produce evidence about agricultural income and in the absence of any documents being produced the said persons offered to disclose income/s subject to no penalty. The Hon'ble High Court held that in such circumstances it could not be held that the assessee had (sic - not) concealed its income and the assessee was held to be liable to levy of penalty under s. 271(1)(c) of the Act."

12. In the present case also, the assessee suo moto surrendered an amount of Rs.37 lacs and paid the due tax alongwith interest thereon much before the Investigation Wing or the A.O. pointed out any discrepancy about the undisclosed or concealed income of the assessee. I, therefore, considering the facts of the present case am of the view that the impugned penalty levied by the A.O. u/s 271(1) (c) of the Act and sustained by the Ld.CIT(A) was not justified. Accordingly, the same is deleted. This finding has been given by considering the peculiar facts of the present case, therefore, it is made clear that it may not be considered as a precedent in the other cases.

Since the facts involved in the case of the Assessee and Smt. Neelu Garg(supra) are similar which is also evident from the Chart reproduced in para 4 of this order, so respectfully following the aforesaid referred to order dt. 26/04/2019 in ITA No.

1472/Chd/2018 in the case of Smt. Neelu Garg Vs. ITO, the penalty under section 271(1)(c) of the Act levied by the A.O. and sustained by the Ld.CIT(A) is hereby deleted.

7. In the result, appeal of the Assessee is allowed.

(Order pronounced in the open Court on 29/10/2020)

Sd/-
संजय गर्ग
(SANJAY GARG)

न्यायिक सदस्य/ Judicial Member

AG

Date: 29/10/2020

Sd/-
एन.के.सैनी,
(N.K. SAINI)

उपाध्यक्ष / VICE PRESIDENT

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