

**IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES "A" : HYDERABAD
(THROUGH VIDEO CONFERENCE)**

**BEFORE SHRI A.MOHAN ALANKAMONY, ACCOUNTANT MEMBER
AND
SHRI S.S.GODARA, JUDICIAL MEMBER**

I.T.A. No.1030/HYD/2019

Assessment Year: 2015-16

Bobbiti Sushma, HYDERABAD [PAN: AJEPB2832Q]	Vs	Income Tax Officer, Ward-9(4) HYDERABAD
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(Appellant)

(Respondent)

For Assessee : Shri T.Rajendra Prasad, AR
For Revenue : Shri Sunil Kumar Pandey, DR

Date of Hearing : 31-12-2020

Date of Pronouncement : 05-01-2021

ORDER

PER S.S.GODARA, J.M. :

This assessee's appeal for AY.2015-16 arises from the CIT(A)-7, Hyderabad's order dated 14-05-2019 passed in case No.0046/CIT(A)-7/2018-19, in proceedings u/s.271(1)(c) of the Income Tax Act, 1961 [in short, 'the Act'].

Heard both the parties. Case file perused.

2. The assessee's sole substantive grievance raised in the instant appeal seeks to Section 271(1)(c) penalty of Rs.5,17,522/-, imposed by the Assessing Officer in his order dt.27-06-2018 affirmed in the CIT(A)'s lower appellate discussion reading as follows:

"4. The only issue involved in this case is levy of penalty u/s 271(1)(c) of the Act. The Assessing Officer in the order has stated as under:

"In the profit and loss account uploaded along with the audit report, assessee has shown gross receipts of Rs.7,49,67,500/-. Assessee vide letter dated 30.11.2017 submitted that gross receipts were inclusive of service tax whereas in the return of income net turnover is reflected. On verification of audit report and profit and loss account, it is noticed that, assessee has reduced Rs.36,83,371/- as service tax from the gross receipts.

From the P&L account it is clear that an amount of Rs.36,83,371/- is claimed as "service tax payments" made by reducing such amount from the gross receipts. But the assessee furnished challans to the extent of RS.20,51,856/- only at the time of verification. The difference amount of RS.16,31,515/- was not explained initially. On further verification of service tax returns filed by the assessee, it is noticed that even as per turns of service tax, liability and payment is only Rs.20,51,856/-.

In response furnished during the course of hearing, Sri Srinivas Reddy husband of assessee stated that the business enterprise made salary payments but due to clerical mistake, such amount has been reflected as service Tax. However, no evidence was furnished to substantiate this explanation. Hence, the penalty notice u/s 271(1)(c) was issued on 05/12/2017 duly highlighting the fact of furnishing of inaccurate particulars in respect of "service tax". The fact of furnishing "inaccurate particulars" was also discussed in the assessment order.

In response to the penalty notice, the assessee furnished a reply on 01/02/2018. The submissions of the assessee have been carefully considered. On going through his explanation, it is noticed that the assessee did not furnish any information regarding the difference amount of Rs.16,31,515/- which he claimed were "salary payments and wrongly reflected as Service Tax due to clerical mistake". The assessee's case is covered by the provisions of section 44AB of the IT Act. The books of account have been audited and it is not clear how payments to the extent of Rs.16,31,515/- have not been reflected either in the books of account or in bank account statements. If at all the claims of salary payments is genuine, such assessee's explanation ought to be substantiated. I am of the considered opinion that the assessee's explanation is not bonafide. In this regard, the provisions of section 271(1)(c) are attracted."

4.1 During the appellate proceedings, the assessee vide her letter dated 01.05.2019 has made following written submissions:

"Smt Sushma Bobbiti (the assessee) is engaged in the business of Man Power Recruitment Services. During the Assessment Year 2015-16, the

assessee filed its Return of Income on September 30, 2015 with Taxable Income of Rs.18,28,440/-.

The Scrutiny Assessment u/s 143(3) of the Income Tax Act, 1961 was completed on December 05, 2017 with taxable income of Rs.35,03,275/- by addition of Rs.16,31,515/- on account of difference in Service Tax between Profit & Loss Account and Service Tax Returns, Rs.43,320/- as interest on IT Refund and raised a demand of Rs. 6,34,290/-.

During the Financial Year 2014-15 relevant to Assessment Year 2015-16, the assessee has paid service tax to the tune of Rs.20,51,856/- on turnover of Rs. 7,49,67,500/-. While punching the data into Profit & Loss A/c the service tax amount of Rs. 20,51,856/- wrongly entered as Rs.36,83,371/-, which resulted in understatement of turnover to the extent of Rs.16,31,515/-

The above facts were explained during the assessment proceedings and the assessee agreed for addition of above difference and paid the demand.

Against the above disallowance a Notice U/s 271(1)(c) of the Income Tax Act, 1961 was issued on December 05, 2017 and the assessee has explained that the understatement was due to clerical error and also submitted relevant Judicial rulings in support of assessee's claim. A Show Cause Notice was issued on June 08, 2018 to provide information with respect to Salaries and Wages by June 18, 2018, for which the assessee was not able to provide information on-time.

As the information was not provided by June 18, 2018, without providing any further opportunity, the AO has levied penalty U/s 271(1)(c) of the Income Tax Act, 1961 to the extent of Rs.5,17,522/- i.e, 100% of tax against the addition of Rs. 20,51,856/-.

Aggrieved by the above penalty order, the assessee is in appeal before Appellate Commissioner 7, Hyderabad.

The above under statement of income was purely on account of clerical error in Profit & Loss A/c and but not on account of any willful income escapement.

Further, the books of accounts of the assessee is also audited U/s 44AB of the Income Tax Act, 1961 and the tax auditor was also overlooked the above clerical error.

The above clerical error was identified only during the assessment proceedings and the assessee has voluntarily accepted for addition of above income on account of clerical error.

The assessee had committed an inadvertent and bonafide error and had not intended to or attempted to either conceal its income or furnish inaccurate particulars.

In view of the above bonafide clerical error, the assessee prays the Hon'ble Commissioner of Income Tax (Appeals), Hyderabad-7 to allow the appeal by deleting the penalty u/s.271(1)(c) of the Income Tax Act, 1961".

5. I have considered the findings of the Assessing Officer in the assessment order and the submissions of the appellant carefully. The Assessing Officer levied penalty u/s.271(1)(c) for furnishing inaccurate particulars of income for an amount of RS.16,31,515/- being the difference of Rs.36,83,371/- claimed as Service Tax payments and an amount of Rs.20,51,856/- being the extent of the challans furnished for verification during the course of assessment proceedings. The Assessing Officer further held that a claim of inflated service tax payments were made by reducing such inflated amount from the gross receipts. The contention of the AR of the appellant was that inadvertent mistake happened at the time of claiming service tax payments to the extent of Rs.20,51,856/-. The AR of the appellant further claimed that the Auditor has given a certificate determining the net profit at Rs.18,64,831/- on the net turnover of Rs.7,12,84,129/- and hence, mistake done by 7 appellant was through oversight and on the basis of the certificate of auditor in Form No.3CD. The claim made by the AR of the appellant that the mistake occurred was due to oversight is not acceptable. The appellant did not furnish any revised return rectifying its mistake, before the case was taken for scrutiny. It is pertinent to mention here that during the course of penalty proceedings, the appellant sought to explain the difference as salary payments. Thereafter, the Assessing Officer vide show-cause letter dated 8-6-2017 required the appellant to furnish details of the salaries paid furnished the salary / wage register, reconciliation of the amounts paid etc. The appellant failed to furnish the same. Hence, the claim of the appellant that inflated service tax payments reflected in the P&L account due to oversight is not acceptable. The appellant had made a conscious attempt to inflate the expenses in the name of service tax payment and reduced the tax liability while filing the return of income. But for the examination of the case during the scrutiny proceedings and confrontation of the appellant with positive evidence, the appellant would not have come forward for acceptance of the disallowance. The facts of the cases relied upon by the AR of the appellant are different and are not identical. Hence, the Assessing Officer is fully justified in levying penalty. All the grounds raised by the appellant are rejected".

3. We have given fruitful consideration to rival pleadings against and in support of the impugned penalty imposed in both the lower proceedings. A perusal of the foregoing detailed lower appeal discussion sufficiently suggests that the

impugned penalty has arisen on account of the difference in the actual service tax paid and that claimed (supra) at the assessee's behest. The same appears to have arisen on account of assessee's auditor's certificate issued inadvertently. Hon'ble apex court decision in Price Waterhouse Coopers Pvt. Ltd., Vs. CIT (2012) [348 ITR 306] (SC) holds in such a case of an inadvertent mistake in raising a claim is neither concealment nor that of filing of inaccurate particulars of income. Their lordships yet another decision in CIT Vs. Reliance Petroproducts P. Ltd., [322 ITR 158] (SC) also settled the law much earlier that - *quantum and penalty are distinct proceedings wherein each and every disallowance/addition made in case of the former and does not automatically attract the latter penal provision.*

3.1. We keep in mind the above factual and legal proposition to hold that both the learned lower authorities have erred in penalising assessee u/s.271(1)(c) in this case of the assessee's auditor's inadvertent mistake in raising higher service tax claim. This penalty is directed to be deleted therefore.

4. This assessee's appeal is allowed.

Order pronounced in the open court on 5th January, 2021

Sd/-
(A. MOHAN ALANKAMONY)
ACCOUNTANT MEMBER

Sd/-
(S.S. GODARA)
JUDICIAL MEMBER

Hyderabad, Dated: 05-01-2021

Copy to :

1. Bobbiti Sushma, 10-41/1, Flat No.404, 4th Floor, Padmalaya Apartments, New Gaddi Annaram Colony, Dilsukh Nagar, Hyderabad.

2. The Income Tax Officer, Ward-9(4), Hyderabad.

3. CIT(Appeals)-7, Hyderabad.

4. Pr. CIT-7, Hyderabad.

5. D.R. ITAT, Hyderabad.

6. Guard File.