

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "SMC-1" NEW DELHI
(THROUGH VIDEO CONFERENCING)

BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER

ITA No. 6812/DEL/2017
A.Y.: 2014-15

Shri Gnyandeep Kantipudi,
B-112, Shivalik Near
Malviya Nagar, New Delhi
(PAN:AAQPK7333J)

vs.

ACIT, Circle-54(1),
New Delhi

(Appellant)

(Respondent)

Assessee by : Sh. Rajesh Mahana, Advocate
Department by : Sh. Prakash Dubey, Sr. DR

ORDER

The assessee has filed the present appeal against the impugned order dated 21.09.2017 passed by learned CIT(A), New Delhi relating to the assessment year 2014-15 on the following grounds:-

- 1. That the impugned order passed by the Ld. CIT (A) - XVIII is against the facts and circumstances of the case. The CIT(A)- XVIII in his order he has stated that 'On close scrutiny of the said letter produced before me and which was purportedly filed before the AO i.e. dated 05/09/2017 by the appellant was not adequately corroborated by any credible evidence. The inconsistency in the submission of the appellant pulverizes his claim that the disclosure was voluntary'.*
- 2. Whereas the fact in the matter is that the assessee filed a revised computation of income to the effect that no expense is claimed against income from other sources, vide letter dated 05/09/2016, for the AO's approval to avoid confusion in the matter (Copy of letter enclosed). Letter dated 23/09/2016 was filed with the AO on hearing held on 23/09/2016 itself (Copy enclosed vide submission dated 19/09/2017 with CIT(A)- XVIII). The Ld. CIT(A)- 18 has relied upon note sheet entry dated 23/09/2016 & 06/10/2016 that the AO has confronted*

about the nexus between the expense claimed and the income. Whereas the revised computation was filed vide letter dated 05/09/2016, i.e. before any confrontation from the AO during assessment proceedings. The Ld. CIT(A)- 18 has not acknowledged the same & has rather denied the fact while passing the impugned order.

3. *Admitted tax challan of Rs. 8,23,544/- was submitted during the assessment proceedings, filed with paper book vide letter dated 19/09/2017 with Ld. CIT(A)- XVIII. Balance payment of tax of Rs. 3,67,260/- against the notice of demand u/s 221(1) of the Act, dated 20-02-2017 was filed vide letter dated 23/06/2017 with the Ld. AO (above copies enclosed with this submission and earlier with Ld. CIT(A)- XVIII). Confirmation of levy of penalty of Rs. 5,12,977/- by the Ld. CIT (A)-XVIII is uncalled for and unwarranted & deserves to be set aside."*

2. The Assessing Officer made an addition of Rs. 16,60,121/- on account of disallowances of deduction under section 57 of the Income Tax Act, 1961 (hereinafter called 'the Act') under the head income from other sources. During the assessment proceedings, the assessee was asked to furnish the details of income from other sources and expenditure claimed against the same. In response to the same assessee filed his details showing an income of Rs. 21,81,654/- and claimed expenses of Rs. 16,60,121/- is against home loan taken from ING Vysya Bank. The AO confronted the expenses to the assessee and asked for the nexus with the income from assured return for the purpose of section 57(iii) of the I.T. Act and asked why not the same be disallowed. The assessee had not filed any explanation but to accept to agree the addition on account of disallowances of the same. The Assessing Officer has given various opportunities to the assessee for substantiating his claim but assessee has

not established the same before the Assessing Officer and surrendered the income of Rs. 16,60,121/- incurred on interest expenditure on home loan. After adopting the prescribed procedure under the law, the Assessing Officer has held that the assessee has furnished inaccurate particulars of his income and thus attracts penalty under section 271(1)(c) of the I.T. Act by further saying that assessee did not surrender of his own rather it came to light during the course of assessment proceedings only and finally AO is of the view that the assessee has filed inaccurate particulars of income to the tune of Rs. 16,60,121,- within the meaning of section 271(1)(c) of the Act thus there is concealment of income in as much as furnishing of inaccurate particulars of income and assessee is liable for penalty under section 271(1)(c) of the Act read with explanation 1, section 271(1)(c) of the Act and imposed the penalty of Rs. 16,60,121/- @ 100% of the tax sought to be awaited i.e. Rs. 5,12,977/- vide order dated 28.06.2017.

3. Aggrieved by the order dated 28.06.2017, assessee filed the appeal before the learned First Appellate Authority, who vide impugned order dated 22.09.2017 dismissed the appeal filed by the assessee. Aggrieved by the order dated 22.09.2017 passed by the learned CIT(A) assessee filed appeal before the ITAT vide ITA No. 6812/Del/2017, the same was dismissed by the ITAT order dated 14.03.2018. Assessee

aggrieved by the same filed W.P.(C) 12402/2018, CM APPL. 48082/2018 titled as Gnyandeep Kantipudi vs. ACIT Circle-54(1), New Delhi but the Hon'ble Supreme Court vide order dated 20.11.2018 allowed the writ petition filed by the assessee and restored to the file of the Income Tax Appellate Tribunal with direction to proceed with on merit and decide in accordance with law. In compliance of the order dated 20.11.2018 passed by the Hon'ble Delhi High Court. This appeal came up for hearing before me.

4. I have heard both the parties and perused the relevant material available with me apart from the facts narrated above, I am of the view that assessee has submitted a letter dated 05.09.2016 alongwith revised computation of income vide Annexure 1 filed during the assessment proceedings, the same was also filed with the learned CIT(A) during the appellate proceedings vide letter dated 21.09.2017 Annexure 2 stating that assessee has filed copy of revised computation for approval to avoid any confusion. The AO as well as learned CIT(A) did not appreciate the submission during the assessment proceedings and appellate proceeding and made the addition in dispute by the Assessing Officer and confirmed by the learned First Appellate Authority. In view of the documentary evidence filed by the assessee, assessee has made payment of tax and interest in response to the notice dated 20.02.2016 even otherwise assessee has claimed the expenses which were disallowed by the Assessing

Officer meaning thereby assessee has not concealed any opportunity of his income and not filed any inaccurate particulars of his income. Assessee may claim the expenses wrongly but not falsely therefore, keeping in view the facts and circumstances of the present case, the penalty in dispute is deserves to be cancelled. This view is supported by the judgment of Hon'ble Delhi High Court in the case of Reliance Petro Products reported in 322 ITR 158.

5. Keeping in view the facts and circumstances explained above, I am of the considered view that penalty in dispute is not sustainable in the eye of law in view of the judgment of Hon'ble High Court passed in the case of Reliance Petro Products reported in 322 ITR 158 and the same is deleted by allowing the appeal filed by the assessee.

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

Order pronounced in the Open Court today i.e. on 31.12.2020 in the presence of both the parties.

Sd/-
[H.S. SIDHU]
JUDICIAL MEMBER

Date: 31.12.2020

Copy forwarded to: -

1. Appellant -
2. Respondent -
3. CIT
4. CIT (A)
5. DR, ITAT

TRUE COPY

By Order,
Assistant Registrar,