

IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD “C” BENCH
(Conducted Through Virtual Court)
Before: Shri Mahavir Prasad, Judicial Member
And Shri Amarjit Singh, Accountant Member

ITA No. 2277/Ahd/2017
Assessment Year 2013-14

Pranit Kirtikant Nanavati, Block B, Satyam Corporate Square, S.G. Highway, Ahmedabad-54 PAN: AAKPN2736L (Appellant)	Vs	The ACIT, Circle-4(2), Partyaksh Kar Bhavan Ambawadi, Ahmedabad (Respondent)
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Revenue by: Shri L.P. Jain, Sr. D.R.
Assessee by: Shri S.N. Divatia, A.R.

Date of hearing : 27-08-2021
Date of pronouncement : 28-09-2021

आदेश/ORDER

PER : AMARJIT SINGH, ACCOUNTANT MEMBER:-

This assessee’s appeal for A.Y. 2013-14, arises from order of the CIT(A)-4, Ahmedabad dated 07-09-2017, in proceedings under section 271(1)(c) of the Income Tax Act, 1961; in short “the Act”.

2. The solitary ground of appeal of the assessee is directed against the decision of ld. CIT(A) in upholding the penalty of Rs. 3,80,000/- imposed u/s. 271(1)(c) of the Act.

3. The fact in brief is that return of income of Rs. 67,85,155/- was filed on 21st Sep, 2013. The case was subject to scrutiny assessment and notice u/s. 143(2) was issued on 1st Sep, 2014. During the course of assessment vide letter dated 18th December, 2015, assessee stated that he was working in USA and was a non-resident Indian. His global income was taxable in India. The assessee returned India on 01-04-2007 and his global income became taxable in India since then. The assessee had not offered his global income in the income tax return of the subsequent year. The assessee had filed a declaration in Form no. 6 under the Black Money (undisclosed foreign income and assets) and imposition tax act 2015. The total of such income disclosed by the assessee in the Form-6 was to the amount of Rs. 12,18,459/-. The same was added to the total income of the assessee while finalizing the assessment u/s. 143(3) of the act. The Assessing Officer has also initiated penalty proceedings u/s. 271(1)(c) of the act in respect of foreign income. During the course of penalty proceedings, the assessee explained that he has disclosed the said income suo moto at the time of assessment, therefore, no penalty should be levied in the case of the assessee. The Assessing Officer has not accepted the contention of the assessee and levied penalty to the amount of Rs. 3,80,000/- u/s. 271(1)(c) of the act stating that assessee has furnished inaccurate particulars of income in respect of Rs. 12,18,459/-

4. Aggrieved assessee has filed appeal before the Id. CIT(A). The Id. CIT(A) has dismissed the appeal of the assessee.

5. The ld. counsel during the course of appellate proceedings contended that assessee has declared the said income as per the scheme of the Government and this was not detected by the Assessing Officer as undisclosed income of the assessee, there was no suppression and concealment of income. The ld. counsel has also filed copies of Form no. 6 filed under Black Money Act, 2015 as per which the assessee has declared the income and paid the tax on the said income. The ld. counsel has also placed reliance on the decision of judicial pronouncement in the case of CIT vs. Ashok Taker (2008) 170 taxman 471 (Delhi) and the decision of ITAT Delhi in the case of Addl. CIT-CC-14, New Delhi vs. Premchand Garg (2009) 31 SOT 97 (Del). On the other hand, the ld. Departmental Representative has supported the order of lower authorities.

6. Heard both the sides and perused the material on record. During the course of appellate proceedings, the assessee filed letter before the Assessing Officer informing that he has filed a declaration in Form no. 6 under the Black Money (Undisclosed Income and Assets) and Imposition Act, 2015 and declared income of Rs. 12,18,459/- for the year under consideration. Black Money (Undisclosed Foreign Income & Assets) and Imposition of Tax 2015 was enacted for controlling and regulating the Black Money stashed abroad. It contained 7 chapters and 85 sections. In addition to the general provisions this act also contains special provisions relating to declaration of foreign income and assets and payment of tax and penalty thereon. Section 59 of the Act is pertained to declaration of undisclosed foreign assets. This section specifically provides that a person can after the commencement of the act from 1st July, 2015 up to 30th Sep, 2015, make a

declaration in respect of any undisclosed asset located outside India (as defined in Section 5 of the Act) and acquired from income chargeable to tax under the Income Tax Act, 1961 for any assessment year prior to the assessment year beginning from 01-04-2016:-

- (a) for which he has failed to furnish a return under section 139 of the I.T. Act, 1961
- (b) which he has failed to disclose in a return of income furnished by him under the I.T. Act, before the date of commencement of this act.
- (c) which has escaped assessment by reason of omission or failure on the part of such person to make a return under the I.T. Act or to disclose fully and truly all material facts necessary for the assessment or otherwise.

Section 60 of the Act related to charge of tax on the undisclosed asset declared under section 59 of the Act @ 30% of value of such undisclosed asset.

Section 61 of the Act provides levy of penalty at the rate of 100% of such tax in respect of declaration of undisclosed asset located outside India in addition to 30% of tax to be paid as per the provisions of section 60 of the Act. Black Money (Undisclosed Foreign Income and Asset) and Imposition Tax Rules, 2015 has also been into force which comprised 12 Rules and 7 Forms for making compliance. As per Rule 9(1), Form VI is pertained to making tax compliance for undisclosed asset located outside India under section 59 of the Act. The Act provides a one time compliance Scheme (OTCS) for a limited period (1.7.2015 to 30.09.2015), in accordance to the scheme a declaration may be filed before the specified tax authority within a specified period followed by payment of tax at the rate of 30% and an equal amount by way of penalty. The relevant issue in this case is about the

acceptance of the Declaration filed by the assessee under the scheme. The CBDT has also issued circular No. 13 of 2015 dated 06.07.2015 regarding clarification for acceptance of declaration made by any person of an undisclosed foreign assets acquired from income chargeable to tax under the Income Tax for any assessment year prior to assessment year 2016-17.

After perusal of the material on record, it is noticed that assessee has made declaration in Form 6 on 29-09-2015 before the Commission of Income Tax in respect of undisclosed foreign assets on which the assessee has duly paid tax @ 30% along with 100% penalty on the declared amount. It is undisputed fact that the above referred declaration was accepted by the Commissioner of Income Tax and same was not declared invalid by the Commissioner of Income Tax . The valid declaration is not again prone to penalty under the Income Tact Act. Neither the Assessing Officer nor the Id. CIT(A) has considered the material facts that assessee has availed the one time compliance as laid down in section 59 to 72 of the Act and paid the tax @ 30% along with equal amount by way of penalty. The Commissioner of Income Tax has not declared the declaration filed in Form No. 6 by the assessee as invalid. It is noticed neither in assessment order nor in appellate order any discussion was made by authorities below about the declaration of undisclosed assets located outside India under section 59 of the Black Money (Undisclosed Foreign Income and Asset and Imposition of Tax Act, 2015) in Form No. 6 filed by the assessee on 29-09-2015. The Commissioner of Income Tax has acknowledged as per Form 7 dated 30-12-2015 that declaration accepted and assessee has made compliance with the payment of taxes including penalty under the scheme.

Looking to the facts and findings as supra in our view clearly show that the Assessing Officer did not apply his mind. The Id. CIT(A) has unreasonably sustained the impugned penalty levied u/s. 271(1)(c) of the Act. Therefore, the decision of Id. CIT(A) is unjustified and impugned penalty is deleted.

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

Order pronounced in the open court on 28-09-2021

Sd/-
(MAHAVIR PRASAD)
JUDICIAL MEMBER
Ahmedabad : Dated 28/09/2021

Sd/-
(AMARJIT SINGH)
ACCOUNTANT MEMBER

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण,
अहमदाबाद