

IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD "SMC" BENCH
(Conducted Through Virtual Court)
Before: Shri Waseem Ahmed, Accountant Member
And Shri Siddhartha Nautiyal, Judicial Member

ITA No. 2622/Ahd/2017
Assessment Year 2008-09

Vijaybhai Dashrathbhai Patel, T-1, Saundarya Appartment, Bhuyangdev, Ghatlodia, Ahmedabad-380061 PAN: AGQPP0895G (Appellant)	Vs	ACIT, Circle-7(1), Room No. 401, 4 th Floor, Natureview Building, Ashram Road, Ahmedabad (Respondent)
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Assessee by: Shri A.C. Shah, A.R.
Revenue by: Shri Vijay Kumar Singh, Sr. D.R.

Date of hearing : 01-02-2022
Date of pronouncement : 25-02-2022

आदेश/ORDER

PER : SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER:-

This appeal has been filed by the assessee against the penalty order u/s 271(1)(c) of the Income Tax Act, 1961 ("Act") passed by Id. CIT(A)-7/84/16-17 vide order dated 01-09-2017 for the assessment year 2008-09. The assessee has raised the following grounds of appeal before us: -

“1. The learned CIT(A) has erred in confirming the penalty of Rs. 10,72,242 under Section 271(l)(c) in as much as the assessee has not committed the default contemplated under Section 271(l)(c).

2. The penalty order is bad in law in as much as the penalty is levied on the basis of the finding in the assessment order and that the AO has not brought any additional material on record.

Anantharam Veersinghaiah & Co. V/s. CIT 123 ITR 457 (SC)
CIT V/s. Khoday Eswarsa & Sons 83 ITR 369 (SC)
Dilip N. Shroff V/s. JCIT 291 ITR 519 [SC]

3. The penalty order is bad in law in as much as the AO has not discharged the burden to show that the assessee has in fact concealed the income or assessee has furnished which particulars of income which are inaccurate:

National Textiles Corp. Vs CIT 249 ITR 125
CIT Vs Jalaram Oil Mills 253 ITR 192

4. The penalty order is bad in law in as much as there is no specific charge as to whether the assessee has concealed the income or furnished inaccurate particulars of income.

CIT Vs Manu Engg. 122 ITR 506 (Guj)
Sorathia Engg. Co. Vs CIT 282 ITR 642 (Guj)
Mitsu Industries Ltd. Vs DCIT (Guj) Tax Appeal No. 216 of 2004 dated 16.10.2014”

2. Briefly stated, the facts of the case are that the assessee during the captioned year was having taxable income under the head “income from other sources” being interest income. The assessee however did not file return of income as required u/s 139 of the Act. The assessment was reopened u/s 147 of the Act and assessment order u/s 143(3) r.w.s. 147 of the Act was passed on 27-12-2013 determining the total income at Rs.

33,26,050/-. Subsequently, the Id. CIT(A) -7 Ahmedabad passed order u/s. 263 of the Act on 10-03-2015 holding that assessment order was erroneous and prejudicial to the interest of revenue, and accordingly a direction was given to re-frame the assessment order. Subsequently, assessment order u/s 143(3) r.w.s. 147 of the Act was passed on 26-02-2016 determining the total income at Rs. 33,26,050/-. In the assessment order, the Assessing Officer noted that assessee has not filed the original return of income though he had taxable income. The return of income was filed in pursuance of notice u/s 148 of the Act in which income from interest was shown at Rs. 33,26,050/-. The Ld. AO held that the assessee has disclosed the income only after the same has been detected by the Department and after issuance of notice u/s 148 of the Act. Therefore, the Ld AO initiated penalty proceedings u/s. 271(1) of the Act for concealment of particulars of income. During the penalty proceedings before Assessing Officer, it was submitted by the assessee that return of income had not been filed by him since he was under the bona-fide belief that since tax has been deducted at source, there was no need for him to file the return of income. The Assessing Officer however did not agree with the contention of the assessee and levied penalty of Rs. 10,72,242/- u/s. 271(1)(c) of the Act being 100% amount of tax sought to be evaded.

3. Before the Id. CIT(A), the assessee submitted that failure to furnish the return per se did not amount to concealment of income or furnishing inaccurate particulars of income. Explanation-3 to section 271(1)(c) provides that where any person fails to furnish return without reasonable cause, only then it is deemed to have concealed the particulars of income. However, in

this case, the assessee did not file return of income as he was under the bona-fide impression that there is no need to file the return of income since the tax has been deducted at source. The assessee had reasonable cause for not furnishing return of income since TDS was deducted from the interest earned and interest income was the only source of income for the assessee during the captioned year. Therefore, the assessee had discharged the initial burden and the Id. Assessing Officer has not proved beyond doubt that the failure to furnish the return was not because of reasonable cause. The assessee submitted that if there is reasonable cause then Explanation 3 is not attracted. The Id. Assessing Officer has not demonstrated that all the conditions of Explanation-3 to section 271(1)(c) of the Act are fulfilled and accordingly, penalty u/s. 271(1)(c) is liable to be deleted. The assessee placed reliance on the Hon'ble Gujarat High Court decision in the case of **Chhaganlal S. Suteriya Vs. ITO 337 ITR 350 (Guj)** in support of his contention that the conditions enumerated in Explanation 3 to section 271(1)(c) are cumulative. The assessee further relied on case of **National Textile Agriculture vs. CIT 249 ITR 125 (Gujarat)** and **CIT vs. Jalaram Oils 253 ITR 192** in support of his arguments that burden is always on the Assessing Officer to show that the assessee has failed to file the Income Tax Return without reasonable cause. The Id. CIT(A) however rejected the assessee's contention and upheld the levy of penalty with the following observations: -

"1. The AO has specifically levied the penalty by invoking Explanations to section 271(1)(c) of the Act. This has been mentioned by the AO in para-5 of his order as under:-

"Further, the 'assessee has failed to establish that the explanation offered by him was bonafide and all facts related to the same have been disclosed.

Therefore, the issue is squarely covered by explanations to provisions of Section 271(l)(c) of the Act."

*Thus it is evident that the penalty has been levied for **concealment of the particulars of his income.***

2. It is also seen that after receiving the notice vi/s. 148 of the Act, the appellant paid self assessment tax of Rs.15,52,640/- before filing his return of income. This goes to show that the appellant was actually aware that he was to file return of income and pay taxes thereon and had the notice u/s, 148 not been issued to him, he would not have filed the return of income voluntarily and paid the due taxes thereon.

3. It is also seen from the impugned order that the AO has duly considered the explanation given by the appellant and not found it as reasonable cause for not filing the return of income, just because the appellant has given his reason for not filing the return, does not mean that it is mandatory for the AO to accept the same on face-value and that he cannot differ from the appellant's view point.

3.2.2 Explanations to Section 271(l)(c) which has been reproduced above clearly shows that the words in question are "deemed to have concealed the particulars of his income in respect of such assessment year.....", These are the words which have been used-by the AO while initiating penalty proceedings during the assessment proceedings. The penalty has also been levied for concealment of particulars of income since the penalty order passed by the AO clearly mentions that he has levied the penalty by applying the Explanation 3 to Section 271(1)(c) of the Act, In view of the discussion above, I see no reason to disagree with the view taken by the AO and I am of the opinion that the penalty was correctly levied, by the AO. The penalty of Rs.10,72,242/- levied u/s.271(l)(c) of the Act is confirmed.

*4. In the result, the appeal is **dismissed.**"*

4. Being aggrieved by the order of Id. CIT(A), the assessee is in appeal before us. The Authorized Representative of the assessee submitted that the CIT(A) has erred in confirming penalty of Rs. 10,72,242/- u/s. 271(1)(c) of the Act without appreciating the fact that the assessee was under a bonafide

belief that since his income has been subjected to TDS, there is no requirement to file the return of income. In the assessee's case, the only source of income during the year was interest income and since the same had been subjected to TDS, the assessee was under a bona-fide belief that there was no requirement to file return of income. The confirmation of penalty by Id. CIT(A) is erroneous also for the reason that the Assessing Officer has not brought any additional material on record to show that there has been concealment of income or furnishing of inaccurate particulars of income. Reliance in support was placed by the assessee in the cases of **Anantharam Veersinghaiah & Co. V/s. CIT 123 ITR 457 (SC)**, **CIT V/s. Khoday Eswarsa & Sons 83 ITR 369 (SC)** & **Dilip N. Shroff V/s. JCIT 291 ITR 519 [SC]**. The assessee further submitted that the penalty order is bad in law as the Assessing Officer has not discharged the burden to show that the assessee has in fact concealed the income or assessee has furnished particulars of income which are inaccurate. Reliance was placed by the assessee on the cases of **National Textiles Corp. Vs CIT 249 ITR 125 & CIT Vs Jalaram Oil Mills 253 ITR 192**.

The Id. Departmental Representative primarily relied on the observations made by Id. CIT(A) in his order and confirmed the penalty u/s 271(1)(c) of the Act.

5. We have heard rival contentions and perused the material available on record. The issue for consideration before us is scope of Explanation 3 to section 271(1)(c) of the Act and whether in the instant set of facts it can be said that the assessee had reasonable cause for not furnishing return of

income. It may be useful to refer to the ITAT Kolkata decision in the case of **Smt. Anuva Bhattacharjee vs. ITO 1471/Kol/2014** dated 08-03-2017. In this case, the assessee, an individual was in receipt of a sum of Rs. 2,24,000/- as fee for technical services from M/s. Crisil Ltd., which the assessee had not declared in the return of income. During the course of assessment proceedings, when this fact was confronted to the assessee, the assessee agreed to the aforesaid sum being added to the total income of the assessee. In respect of the addition made by the Assessing Officer, the Assessing Officer initiated penalty proceedings u/s 271(1)(c) of the Act. In these proceedings, the assessee pointed out that there was a mistake at the time of filing the return of income and there was no intention whatsoever to conceal any particulars of income. The assessee pointed that M/s. Crisil Ltd. had deducted tax at source on the payment made to the assessee and in such circumstances, there was no reason for the assessee not to declare the aforesaid item of income in the return of income. The assessee pointed out that when the mistake was pointed out by the Assessing Officer, the assessee readily agreed to the addition and therefore the imposition of penalty u/s. 271(1)(c) of the Act was not called for. The explanation of the assessee was however rejected by the Assessing Officer.

5.1 On appeal by the assessee, the CIT(A) confirmed the order of Assessing Officer. The ITAT Kolkata decided in favour of the assessee and held that circumstances show that there was neither an attempt to conceal particulars of income by the assessee nor to furnish inaccurate particulars. Accordingly, ITAT deleted the imposition of penalty u/s. 271(1)(c) of the Act while passing the order, the ITAT observed as under:-

“8. We have considered the orders of AO and CIT(A) and also the facts and circumstances of the case and are of the view that imposition of penalty cannot be sustained. It is not in dispute that the amount in question was received by the assessee by way of cheque and that the payee had duly deducted tax at source on the payment made to the assessee. Thus the tax due and payable on the income in question has already reached the coffers of the revenue. When the fact that the receipt from M/s. Crisil Ltd was not disclosed in the return of income was confronted to the assessee, she immediately agreed to the addition and also appraised the AO that non disclosure of the said receipt in the return of income was inadvertent and not willful. This circumstance clearly show that there was neither an attempt to conceal particulars of income by the assessee nor to furnish inaccurate particulars thereof. We therefore accept the plea of the assessee and hold that in the facts and circumstances of the case imposition of penalty u/s 271(i)(c) of the Act was not called for. We therefore cancel the order imposing penalty and allow the appeal of the assessee.

9. In the result the appeal by the assessee is allowed.”

6. We may also refer ITAT Mumbai Bench decision in the case of **M/s. Richa Dubey vs. ITO 68 taxmann.com 268 (Mum)** wherein the ITAT Mumbai held that where assessee has offered a bonafide explanation stating that her salary was understated in her return due to mistake of online tax return filing and there was no deliberate attempt on the part of the assessee to conceal income, penalty for concealment of income was not justified. While passing order the ITAT has made the following observations: -

“Further, the assessee salary income was subjected to deduction of tax at source by her employers and the employer also intimate the Revenue about the gross salary paid and tax so deducted at source on such salary by filing quarterly return of TDS in form 24Q and thus, the revenue is fully aware of the salary income of the tax-payer in its data-base. The employers issue form no 16 to employees whereby all the salary details are furnished along with details of tax

deducted at source and hence it is not possible under normal circumstances for a salaried employee to evade taxes by filing inaccurate salary particulars or concealing salary income in the return of income as the mismatch in the information furnished by the tax-payer vide return of income vis-à-vis information with Revenue in its database will be captured by the Revenue. We have seen that the authorities below have used the strong words like 'habitual tax evader' against the assessee which in our humble and respectful submissions are not correct observations of the authorities below and we direct that all such words used by the authorities below stand expunged from the orders of the authorities below. The citizens and the taxpayers of this country are participant in the nation building and also contributor to the exchequer and to use such harsh words against them are not warranted except in exceptional proven cases. In our considered view, the conduct of the assessee was not mala-fide and contemptuous and the assessee had come forward by offering a bona-fide explanation about the error committed by the online tax return filing portal 'Taxspanner' and hence in our considered view, the assessee is not liable for penalty u/s 271(1)(c) of the Act as the case is covered by the exceptions as contained in the explanation 1(B) to Section 271(1)(c) of the Act.

7. In our view, the facts of the above case-laws are applicable to assessee's set of facts as well. The assessee's interest income was subject to tax deducted at source and the assessee could not have evaded tax by not filing return of income since the same would appear in the Income Tax Department website. Therefore, in the present facts, the only reason for non-filing of return seems to be on account of bona-fide mistake on part of the assessee under the mistaken belief that once tax has been deducted at source, there is no further requirement to file return of income in respect to that particular source of income. It may be noted Explanation-3 to section 271(1)(c) starts with the words "*where any person fails, without reasonable cause, to furnish within such period specified in sub-section 1 to section 153*

a return of his income which he is required to furnish u/s. 139.....” Thus, for initiation of explanation- 3 to section 271(1)(c), the Revenue has to establish that there was no reasonable cause for failure to furnish return of income by the assessee. In the instant set of facts, assessee during the year is in receipt of interest income on which the TDS had been deducted and therefore prima facie the assessee seems to be under a bonafide belief that when tax has been deducted at source of income, there is no requirement to file income tax return.

8. We note that the facts in the above cases support the proposition that if on facts, the assessee is able to demonstrate that he has a reasonable cause for not filing return of income, then the assessee cannot be subject matter of penalty u/s 271(1)(c) of the Act. In order to invoke Explanation 3 to s. 271(1)(c) of the Act, the assessing officer has to establish that there was no ‘reasonable cause’ on part of the assessee for non-filing of return of income. However, if from the facts of the case, it seems that assessee did not file return of income under a bona-fide mistake, then unless the Ld. AO brings anything further to the record, it is not a fit case of levy of penalty u/s 271(1)(c) of the Act. In our considered view, in the instant set of facts, the assessee had earned interest income (being the only source of income for the captioned year) on which taxes had been duly withheld by the payer. Therefore, the assessee is conscious of the fact that the Income Tax Department is aware about his having earned income, but was of the mistaken view that once taxes have been deducted on this income, the assessee was not required to be filed return of income. Therefore, in our view, this is not a fit case for levy of penalty since the assessee in the instant

set of facts had reasonable cause for not filing return of income. We therefore cancel the order imposing penalty and allow the appeal of the assessee.

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

Order pronounced in the open court on 25-02-2022

Sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER
Ahmedabad : Dated 25/02/2022

Sd/-
(SIDDHARTHA NAUTIYAL)
JUDICIAL MEMBER

आदेश की प्रतिलिपि अग्रहित / 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