

आयकर अपीलिय अधिकरण, अहमदाबाद न्यायपीठ
IN THE INCOME TAX APPELLATE TRIBUNAL,
" D " BENCH, AHMEDABAD
(CONDUCTED THROUGH VIRTUAL COURT AT AHMEDABAD)

BEFORE SHRI MAHAVIR PRASAD, JUDICIAL MEMBER
And
SHRI WASEEM AHMED, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No. 517/AHD/2020
निर्धारण वर्ष/Asstt. Years: 2016-17

Shri Ashishbhai Natwarlal Soparkar, Lane 13, Bunglow No.246, Satyagrah Chhavni, Ahmedabad. PAN: ALRPS6235P	Vs.	A.C.I.T., Circle-3(3), Ahmedabad.
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(Applicant)		(Respondent)
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Assessee by :	Shri S.N. Soparkar, Sr. Advocate with Ms Urvashi Sodhan, A.R
Revenue by :	Shri Purushottam Kumar, Sr.D.R

सुनवाई की तारीख/**Date of Hearing** : **08/03/2022**
घोषणा की तारीख /**Date of Pronouncement**: **06/05/2022**

आदेश/O R D E R

PER WASEEM AHMED, ACCOUNTANT MEMBER:

The captioned appeal has been filed at the instance of the Assessee against the order of the Learned Commissioner of Income (Appeals)-3, Ahmedabad, dated 28/08/2020 arising in the matter of penalty order passed under s. 271(1)(c) of the Income Tax Act, 1961 (here-in-after referred to as "the Act") relevant to the Assessment Year 2016-17.

2. The only issue raised by the assessee is that the learned CIT-A erred in confirming the penalty levied by the AO for ₹ 2,55,048/- on account of furnishing inaccurate particulars of income under the provisions of section 271(1)(c) of the Act.

3. The facts in brief are that the assessee in the present case is an individual and earning income under the head salary and other sources. The assessee in the year under consideration has declared loss of ₹ 28,09,416/- on account of sale of unit of mutual funds under the head short-term capital gain which was carried forward to the subsequent assessment years. The impugned loss was inclusive of the loss of ₹ 8,25,387/- which was to be ignored under the provisions of section 94(7) of the Act.

3.1 On question by the AO about the impugned loss of ₹ 8,25,387/-, the assessee agreed that such loss has to be ignored for the purpose of computing the taxable income of the assessee. However, the AO was of the view that the assessee has furnished inaccurate particular of income by not ignoring the impugned loss while calculating the taxable income. Accordingly, the AO initiated the penalty proceedings by issuing notice under section 274 read with section 271(1)(c) of the Act.

3.2 The AO, finally held the assessee as guilty for furnishing inaccurate particulars of income and levied the penalty of ₹ 2,55,048/- being hundred percent of the amount of tax sought to be evaded under the provisions of explanation 1 to section 271(1)(c) of the Act.

4. Aggrieved assessee preferred an appeal to the learned CIT-A, who also confirmed the order of the AO.

5. Being aggrieved by the order of the learned CIT-A, the assessee is in appeal before us.

6. The learned AR before us contended that the assessee has made full disclosure of the particulars of income. Likewise, there was no furnishing of inaccurate particulars of

income in the return of income. As such, the amount of loss claimed by the assessee, which was to be ignored under the provisions of section 94(7) of the Act, at the most can be regarded as inaccurate claim which is different from the allegation of furnishing inaccurate particulars of income. Therefore, there cannot be any penalty in the instant case.

7. On the other hand, the learned DR contended that the assessee admitted to have claimed the loss of ₹ 8,25,387/- which was to be ignored by the assessee while calculating the taxable income under the provisions of section 94(7) of the Act. As such, the assessee agreed for the amount of impugned loss on being confronted by the AO during the assessment proceedings. Thus the learned DR contended that there was no bona fides of the assessee available on record in the given facts and circumstances. The learned DR vehemently supported the order of the authorities below.

8. We have heard the rival contentions of both the parties and perused the materials available on record. In the present case the short term capital loss to the extent of dividend income of Rs. 8,25,387/- claimed by the assessee was disallowed under the provisions of section 94(7) of the Act. Thus, the AO levied the penalty of Rs. 2,55,048/- being 100% of the amount of tax sought to be evaded under the provisions of explanation 1 read with section 271(1)(c) of the Act which came to be confirmed by the learned CIT-A.

8.1 Admittedly, the claim of the assessee with respect to the short-term capital loss subject to the amount of dividend income was not eligible under the provisions of section 94(7) of the Act. But the assessee has claimed the same. Accordingly, it appears that the penalty provisions under section 271(1)(c) have to be invoked. Thus, if we apply this logic, then any addition/disallowance made by the AO in the assessment would lead either to concealment of income or furnishing inaccurate particulars of income. In other words the assessee furnishes the particulars of income in his income tax return which is subsequently verified by the revenue. If in the process of verification of the income of the assessee, the AO calculates different total income than the income declared by the assessee, then the difference between the income declared by assessee and assessed by the AO would amount

to furnishing of inaccurate particulars of income or concealment of income. Definitely this is not the intention of the legislator to treat every addition or disallowances in assessment proceeding as either concealment or furnishing inaccurate particular of the income and thereby levying the penalty. The phrase furnishing in accurate particular of incomer has not been defined under the provision of the Act. However, we note that the Hon'ble Supreme Court in the case of Dilip N Shroff vs. JCIT reported in 161 taxman 218 has discussed the term inaccurate by observing that the word inaccurate signifies a deliberate act or omission on the part of the assessee. Thus, to arrive at the conclusion that, the assessee has furnished inaccurate particulars of income, it has to be tested whether it has been done so with the dishonest intent which cannot be regarded as an innocent act. In other words the element of consciousness in furnishing inaccurate particulars of income coupled with circumstantial evidences should be present in the particular case. Unless, the characters of inaccurate particulars of income as discussed above are present in any particular case, the penalty provisions under section 271(1)(c) of the Act cannot be attracted.

8.2 Moving further, as per explanation 1 to section 271(1)(c) of the Act the addition or disallowances in computation income by the AO deemed concealment of income subject to condition provided therein. Under the explanation 1 to section 271(1)(c) of the Act, there are 2 situations. In situation (A), if the assessee failed to offer an explanation or offers an explanation which is found to be false with respect to any fact material to the computation of income, then the amount added or disallowed shall be deemed as concealment of income. In situation (B), the assessee offer an explanation but fails to substantiate the explanation offered by him and fails to prove that such explanation is bona fides and that all the facts relating such explanation and material to the computation of income have been disclosed by him, then the amount added or disallowed to the total income of the assessee shall be deemed as concealment of income.

8.3 Coming to the present case, we have to test whether the case of the assessee falls under the main provisions of section 271(1)(c) of the Act or explanation 1 attached with it.

As regards the main provisions of section 271(1)(c) of the Act, we find that there was no allegation that the assessee has claimed bogus loss by furnishing inaccurate particulars of income. Thus, to our considered view, the claim of the assessee at the most can be regarded as inaccurate claim which cannot be equated with the inaccurate particulars of income. It is for the reason that nothing has been brought on record by the authorities below suggesting that the assessee has furnished the particulars of income with dishonest intent.

8.4 In holding so, we draw support and guidance from the order Delhi ITAT in the case of Harish Kumar (HUF) Vs. DCIT reported in 109 taxmann.com 4 wherein it was held as under:

7. We have heard both the counsel and perused the relevant records especially the orders passed by the Revenue authorities as well as the Paper Books filed by both the parties and the case laws relied by them therein. On the merits of the case, we find that assessee filed its return Income of Rs. 35,29,470/- with income from investments i.e. dividends, capital gains and interest and AO taken the return for scrutiny u/s. 143(2) of the Act under CASS and no income escaping based on the information on section 94(7) of the Act disallowance on information based on AIR. We further note that AO has issued various notices u/s. 143(2)/142(1) of the Act, but has not made any enquiry for the disallowance in the case of the assessee u/s. 94(7) of the Act. AO on the basis of the query for dividend income on 07.12.2017 issued a notice u/s. 142(1) and asked the assessee to file the detail of all dividend/bonus income earned by the assessee in a specified format and filed all the details in the original return of income. In compliance of the same on 13.12.2017 Ld. Counsel for the assessee appeared and took adjournment for 15.12.2017 and examined all details of dividend/bonus income and found that there is an inadvertent clerical error committed by the Chartered Accountant and on the advice of Senior Chartered Accountant, the assessee filed voluntary revised computation of income wherein a Long Term Capital Gain (LTCG) of Rs. 1,43,53,921/- has been increased to Rs. 3,42,05,795/- due to the disallowance of Rs. 1,98,51,874/- u/s. 94(7) of the Act at the first opportunity as soon as it came to the notice of the assessee. We note that Assessee has committed this mistake for furnishing of inaccurate particulars in the return due to the inadvertent bona fide error in the claim due to one entry by the accounts staff posted at wrong date due to huge voluminous transactions and dividend coupons for dividend from same security punched at one voucher i.e. entry of two dividend received on same security (Rs. 1,98,51,874/- received on 28.1.2015 and Rs. 3,38,62,717/- received on 25.3.2015 made cumulatively on 26.3.2015 i.e. date of sale of investments (26.3.2015) and receipt date of second dividend. We further note that AO has completed the assessment on the basis of details furnished by the assessee, hence, under the circumstances assessee has not furnished inaccurate particulars of income. It is noted that Assessee has paid voluntary taxes on disallowance u/s. 94(7) of the Act and not filed the appeal against the assessment order passed by the Assessing Officer. It is an admitted fact that assessee has not filed any false claim. We further note that the assessee fully disclosed all the information asked for and has nowhere furnished any inaccurate particulars. We find that there is no conclusive proof that the assessee has furnished inaccurate particulars of income. The AO has not brought enough incriminating material for furnishing of inaccurate particulars and there is no material for establishing the same and therefore in the given facts and circumstances of the penalty is not leviable, because all the documents submitted by the assessee were neither rejected by the AO as false or incorrect facts nor AO had clinched any further evidence for furnishing of inaccurate particulars of income. We also find that section 271(1)(c) postulates imposition of penalty for furnishing of inaccurate particulars and concealment of income.

On the facts and circumstances of this case the assessee's conduct cannot be said to be contumacious so as to warrant levy of penalty.

8.5 As regards the explanation 1 to section 271(1)(c) of the Act, there was no iota of evidence suggesting that the explanation offered by the assessee was false. Thus, STCG loss claimed by the assessee cannot be said amounting to concealment of particulars of income. Likewise, there was no finding of the authorities below qua the fact that the assessee fails to substantiate the explanation offered by him and fails to prove that such explanation is bona fides with respect to material facts relating to the computation of total income. Thus, in our considered view the provisions of expression 1 to section 271(1)(c) of the Act cannot be attracted in the given facts and circumstances. In view of the above and after considering the facts in totality, we set aside the finding of the learned CIT (A) and direct the AO to delete the penalty levied by him under section 271(1)(c) of the Act. Hence the ground of appeal of the assessee is allowed

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

Order pronounced in the Court on 06/05/2022 at Ahmedabad.

**Sd/-
(MAHAVIR PRASAD)
JUDICIAL MEMBER**

**Sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER**

Ahmedabad; Dated
Manish

(True Copy)
06/05/2022