

IN THE INCOME TAX APPELLATE TRIBUNAL "G" BENCH, MUMBAI

BEFORE SHRI PRASHANT MAHARISHI, AM
AND
MS. KAVITHA RAJAGOPAL, JM

ITA No. 1485/Mum/2021

(Assessment Year 2016-17)

Gautam Hiralal Gandhi
1801, Chandanbala,
Retilal R Thakkar Marg,
Malabar Hill S.O,
Mumbai-400 006

(Appellant)

The DCIT,
Circle 22(1)
Vs. Piramal Chamber, Lalbaug,
Parel, Mumbai-400 012

(Respondent)

PAN No. AABPG7668F

Assessee by : Shri Rajnikant Chaniyari, AR
Revenue by : Shri Hoshang B Irani, DR

Date of hearing: 26.05.2022
Date of pronouncement : 31.05.2022

ORDER

PER PRASHANT MAHARISHI, AM:

01. This appeal is filed by the assessee against the order passed by the Commissioner of income-tax (Appeal) [the learned CIT(A)], National Faceless Appeal Centre (NFAC) dated 29th June, 2021 for A.Y. 2016-17, wherein the penalty levied under Section 271(1)(c) of the income tax Act, 1961 (the Act) by ACIT, Circle 21(1), Mumbai of Rs.1,10,000/- was confirmed. Therefore, assessee is in appeal on this solitary issue.
02. Briefly stated facts shows that the assessee is an individual engaged in the business of plastic products. He filed return of income on 15th October, 2015 at a total income of Rs.1,22,83,260/-. The assessment under

section 143(3) of the Act was passed on 21st December, 2018.

03. The learned Assessing Officer noted that assessee has not shown interest of Rs.20,575/- received from HDFC Ltd. of Rs.2,05,752/- and from executive engineering of Rs.91,370/-. Thus, total interest of Rs.2,97,122/- was not shown in the income of the assessee.
04. The assessee submitted that these incomes are credited to assessee's account, however as the income belongs to Jolly Containers, where assessee is a partner. Therefore, the same is chargeable to tax there.
05. The learned Assessing Officer rejected the contention of the assessee stating that the income was credited in the name of the assessee and corresponding TDS also claimed, therefore, he made an addition of Rs.2,97,122/-. On the same, penalty proceedings under section 271(1)(C) of the Act were initiated separately for 'concealment of income and furnishing inaccurate particulars of income'. Accordingly, total income of the assessee was assessed at Rs.1,25,83,380/-.
06. Assessee did not prefer any appeal and therefore, penalty proceedings initiated were concluded by order dated 28th June, 2019 levying penalty of Rs.1,10,000/- on the above addition of Rs.2,97,122/-.
07. The explanation before learned Assessing Officer by the assessee was that assessee started his business initially as proprietor of Jolly Containers, at that time there were certain investment in fixed deposits and also security

deposit with Electricity Board. Interest income is earned on that. At the time of making those deposits, the Permanent Accountant Number of the assessee was given. Subsequently, from 1st April, 2015, the sole of proprietorship business of assessee was converted into partnership firm and consequently, the fixed deposit and other deposits were appearing in the books of partnership. The interest income received on these deposits was already offered as income in the hands of partnership for Assessment Year 2016-17. However, as the Permanent Accountant Number of the assessee was available with the bank and Electricity Board, they deducted tax at source by using the Permanent Accountant Number of the assessee instead of firm. Thus, TDS on this interest appeared in form no. 26AS of the assessee. Being the small amount, inadvertently, the credit of TDS was taken by the individual assessee where as the interest income was offered in the hands of partnership firm. The partnership firm also did not claim credit for this TDS. The assessee produced only account and return of income of the partnership firm. However, the learned Assessing Officer rejected the contention and levied penalty of Rs.1,10,000/- stating that the assessee has filed 'inaccurate particulars of income'.

08. The assessee preferred the appeal before the learned CIT(A), who confirmed the penalty on the merits. The assessee also contested before him that the notice issued to the assessee under section 274 of the Act was without striking off of one of the twin charges. Further, as per assessment order, the learned Assessing Officer initiated

the penalty on twin charges but ultimately levied it only for furnishing of inaccurate particulars of income. Therefore, the penalty order is not sustainable. Assessee relied on the decision of Hon'ble Supreme Court. The learned CIT(A) held that when the penalty ultimately have been levied for 'furnishing of inaccurate particulars of income', this technical ground was also rejected. Aggrieved, with that order assessee is in appeal before us.

09. The learned Authorised Representative submitted the paper book containing 48 pages and referred to page no. 30 of the paper book stating that notice issued under section 274 read with section 271(1)(c) of the Act dated 11th June, 2019 shows that none of the twin charges have been struck off by the learned Assessing Officer . It is stated in the assessment order that the penalty was initiated for twin charges and ultimately, levied for 'furnishing of inaccurate particulars'. It was stated that case of the assessee is squarely covered by the decision of Hon'ble Supreme Court in case of CIT vs. SSA'S Emerald Meadows [2016] 73 taxmann.com 248 (SC). Even on the merits, he submitted that income belongs to the partnership firm and not to the assessee. He further referred to the assessment order in the case of partnership firm where the above income of Rs.2,97,122/- was already offered to tax under section 143(3) of the Act.
010. The learned Departmental Representative vehemently supported the orders of the lower authorities.
011. We have carefully considered the rival contentions and perused the order of the lower authorities. In the present

case, the levy of penalty under Section 271(1)(c) of the Act is agitated by the assessee stating that notice issued dated 11th June, 2019, under section 274 read with section 271(1)(c) of the Act none of the twin charges were struck off by the learned Assessing Officer. Further, in the assessment order also, the learned Assessing Officer was not sure whether the assessee has furnished inaccurate particulars or has concealed the income. In such circumstances, the penalty levied by the learned Assessing Officer suffers from severe defects. The issue is squarely covered in favour of the assessee by the decision of Hon'ble Supreme Court in case of SSA'S Emerald Meadows (supra). The learned CIT(A) is not correct in upholding the penalty on this ground. Further, on the merits of the case, the income has already been offered in the hands of partnership firm which has already been taxed when order under section 143(3) of the Act was passed in case of partnership firm on 27th November, 2018. The learned Assessing Officer despite showing the above facts, has taxed the income of interest income in the hands of the assessee. In fact, the income does not belong to the assessee but to the partnership firm. Therefore, this addition could not have been made in the hands of the assessee. However, we find in the penalty proceedings also assessee submitted the complete information. The explanation given by the assessee clearly shows that there is neither concealment of income nor furnishing of inaccurate particulars of income. The only fault of the assessee was of claiming Tax deducted at source wrongly. The learned Assessing Officer should have refused the



credit of such TDS but should not have taxed interest income in the hands of the assessee. Therefore, even on the merits the penalty under section 271(1)(c) of the Act cannot be levied.

012. In the result, the appeal filed by the assessee is allowed reversing the findings of the lower authorities. The learned Assessing Officer is directed to delete the penalty of Rs.1,10,000/- levied & confirmed under section 271(1)(c) of the Act.

013. In the Result, the appeal is allowed.

Order pronounced in the open court on 31.05.2022.

Sd/-
(KAVITHA RAJAGOPAL)
(JUDICIAL MEMBER)

Sd/-
(PRASHANT MAHARISHI)
(ACCOUNTANT MEMBER)

Mumbai, Dated: 31.05.2022

Sudip Sarkar, Sr.PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A)
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

BY ORDER,

True Copy//

Sr. Private Secretary/ Asst. Registrar
Income Tax Appellate Tribunal, Mumbai