

आयकर अपीलीय अधिकरण "ए" न्यायपीठ पुणे में ।
IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH, PUNE

BEFORE SHRI PARTHA SARATHI CHAUDHURY, JM
AND DR. DIPAK P. RIPOTE, AM

आयकरअपीलसं. / ITA No.2216/PUN/2017
निर्धारणवर्ष / Assessment Year: 2012-13

Sou. Kantadevi V. Oswal, Teli Ali, Ratnagiri.	Vs	The Assistant Commissioner of Income Tax, Ratnagiri.
PAN: AABPO 0047 L		
Appellant/ Assessee		Respondent /Revenue

Assessee by	Shri M K Kulkarni & J R Chandekar – AR
Revenue by	Shri S P Walimbe – DR
Date of hearing	23/03/2022
Date of pronouncement	10/06/2022

आदेश/ ORDER

PER DR. DIPAK P. RIPOTE, AM:

This is an appeal filed by the Assessee is directed against the order of Id.Commissioner of Income Tax(Appeals)-2, Kolhapur dated 20.07.2017 for the Assessment Year 2012-13.The Assessee raised the following grounds of appeal:

“1) On the facts and circumstances of the case and in law the Ld.CIT(A) was not justified in confirming the penalty levied u/s.271(1)(c) of the Act by the A.O. of Rs.1,41,668/-. The penalty confirmed is contrary to law and judicial precedents. The penalty levied be deleted.

2) The appellant craves to leave, add/amend or alter any of the above grounds of appeal.”

2. Brief facts of the case are that the assessee is engaged in building and development. During the year under consideration the assessee claimed deduction u/s 80IB(10) of the Act for the project. During the scrutiny proceedings the Assessing Officer (AO) realised that the assessee had sold two adjacent units A20 &A19 to one person Smt Ruhee S Sharma. When

confronted with this fact, the Assessee submitted before the AO that the units were not adjacent. As per section 80IB(10)(f) the assessee will not be eligible to claim deduction under the section if two residential units are sold to one person or specified persons mentioned in the section. In this case it is an admitted fact that two adjacent units were sold to one person. Therefore, the AO hold that the assessee has violated the provisions of the Section 80IB(10) and accordingly disallowed the proportionate claim of the assessee. AO also initiated penalty u/s 271(1)(c) of the Act for filling inaccurate particulars. The AO levied Penalty of Rs.1,41,668/- u/s 271(1)(c) for filling inaccurate particulars.

3. Assessee filed an appeal before the Commissioner of Income Tax (Appeal). The Commissioner confirmed the penalty. The relevant part of the CIT(A)'s order is as under :

“5.1 However the facts are against the appellant. It is seen that the appellant has sold flats A20 on 19/10/2011 & A19 on 06/11/2012 to one Mrs Ruhi Shekhar Sharma. This single fact puts paid to the appellant's claim to be under bonafide belief. The ITAT decision relied upon by the appellant before the AO to claim bonafide belief itself speaks of sale deeds made prior to 01/04/2010 would not be hit by cl (f). The implication is clear and unambiguous that any sale deed after 01/04/2010 would be hit by cl (f). This is in plain English language not only in the section itself but also in the decision of the ITAT relied upon by the appellant. These facts indicate that the appellant was well aware of the implication of selling two adjacent flats to one person after 01/04/2010 and yet she claimed the profit from the sale of A19 & A20 as a deduction u/s 80IB(10). It may also be noted that appellant has not made a suo moto declaration about the facts. It is only after the AP specifically asked the appellant has fully and truly disclosed all material facts relevant to determination of total income. In fact the explanation offered by the appellant is found to be false on facts and not bonafide. The case laws relied upon the appellant are of no help to her as the facts in her case clearly show that in spite of being aware of the statutory position as well as judicial wisdom on the issue, the appellant chose to make a patently false well as judicial wisdom on the

issue, the appellant chose to make a patently false claim. I therefore have no hesitation in upholding the levy of penalty in this case.”

4. Aggrieved by the order of the Id.CIT(A), the Assessee filed the present appeal before this Tribunal.

5. The Ld.AR submitted that assessee was under bonafide belief that assessee is eligible for claiming deduction u/s 80IB on the impugned units. The Ld.AR further submitted that assessee had provided all the details to the AO during scrutiny and had never suppressed any information. Assessee had not filed any inaccurate particulars or there is no concealment. The LD.AR relied on the various case laws.

6. The Ld.Departmental representative took us through the Id.CIT(A)'s order to explain that the assessee had made a wrong claim thus filed inaccurate particulars. The Ld.DR submitted that had there been no scrutiny assessment, the wrong claim of the assessee would have gone unnoticed. The DR vehemently supported the order of the lower authorities.

7. We have heard both the parties, perused the order and submission. It is a fact that the assessee had submitted list of units, consideration etc as called by the AO. Assessee had not suppressed the fact that two units had been sold to one person. From the said list the AO detected that two units have been sold to one person. Thus, in this case the assessee had submitted relevant details. Therefore, it cannot be alleged that inaccurate particulars were filed.

Hon'ble Bombay High Court in the case of Ventura Textiles Ltd V/s CIT in ITA no 958 of 2017 has observed , Quote, “ *In Reliance Petroproducts (P.) Ltd. (supra), Supreme Court examined meaning of*

the words 'particulars' and 'inaccurate'. As per Law Lexicon, the word 'particulars' means 'detail or details; the details of a claim or the separate items of an account'. Therefore, it was held that the word 'particulars' used in section 271(1)(c) of the Act would embrace the meaning of the details of the claim made. Referring to Webster's Dictionary where the word 'inaccurate' has been defined as 'not accurate, not exact or correct; not according to truth; erroneous; as an inaccurate statement, copy or transcript', Supreme Court held that the two words i.e., 'inaccurate' and 'particulars' read in conjunction must mean that the details supplied in the return are not accurate, not exact or correct, not according to truth or erroneous. It was held that mere making of a claim which is not sustainable in law by itself would not amount to furnishing inaccurate particulars regarding the income of the assessee. Therefore, such claim made in the return cannot amount to furnishing inaccurate particulars of income. Elaborating further, Supreme Court held that if such stand of the Revenue was accepted then in case of every return where the claim made is not accepted by the Assessing Officer for any reason, the assessee will invite penalty under section 271(1)(c) of the Act which is clearly not the intendment of the Legislature.

34. This decision was followed by this Court in CIT v. Mansukh Dyeing & Printing Mills [2013] 38 taxmann.com 242/219 Taxman 91 (Bom.). In CIT v. DCM Ltd. [2013] 37 taxmann.com 447/359 ITR 101, Delhi High Court applied the said decision of the Supreme Court and further observed that law does not debar an assessee from making a claim which he believes is plausible and when he knows that it is going to be examined by the Assessing Officer. In such a case a liberal view is required to be taken as necessarily the claim is bound to be carefully scrutinised both on facts and in law. Threat of penalty cannot become a gag and/or haunt an assessee for making a claim which maybe erroneous or wrong. Again, in CIT v. Shahabad Co. Operative Sugar Mills Ltd. [2010] 332 ITR 73, Punjab & Haryana High Court held that making of wrong claim is not at par with concealment or giving of inaccurate information which may call for levy of penalty under section 271(1)(c) of the Act.

35. Reverting back to the present case it is quite evident that assessee had declared the full facts; the full factual matrix or facts were before the Assessing Officer while passing the assessment order. It is another matter that the claim based on such facts was found to be inadmissible. This is not the same thing as furnishing inaccurate particulars of income as contemplated under section 271(1) (c) of the Act.” Unquote

8. Facts of the present case are similar. The Assessee had not filed any inaccurate particulars. Respectfully following the above decision, it is held that, the penalty u/s 271(1)(c) is not leviable.

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

Order pronounced in the open Court on 10th June, 2022.

Sd/-
(PARTHA SARATHI CHAUDHURY)
JUDICIAL MEMBER

Sd/-
(DR. DIPAK P. RIPOTE)
ACCOUNTANT MEMBER

पुणे / Pune; दिनांक / Dated : 10th June, 2022/ SGR*

आदेशकीप्रतिलिपिअग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A) concerned.
4. The Pr. CIT concerned.
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, "ए" बेंच,
पुणे / DR, ITAT, "A" Bench, Pune.
6. गार्डफ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// TRUE COPY //

Senior Private Secretary
आयकरअपीलीयअधिकरण, पुणे/ITAT, Pune.

S.No	Details	Date	Initials	Designation
1	Draft dictated on	09.05.2022		Sr. PS/PS
2	Draft placed before author	09.05.2022		Sr. PS/PS
3	Draft proposed & placed before the Second Member			JM/AM
4	Draft discussed/approved by Second Member			AM/AM
5	Approved Draft comes to the Sr. PS/PS			Sr. PS/PS
6	Kept for pronouncement on			Sr. PS/PS
7	Date of uploading of Order			Sr. PS/PS
8	File sent to Bench Clerk			Sr. PS/PS
9	Date on which the file goes to the Head Clerk			
10	Date on which file goes to the A.R.			
11	Date of Dispatch of order			