

**IN THE INCOME TAX APPELLATE TRIBUNAL
CIRCUIT BENCH, VARANASI
BEFORE SHRI.VIJAY PAL RAO, JUDICIAL MEMBER
AND
SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER
ITA No.72/VNS/2018
AY: 2010-11**

Sh. Dilip Kumar Singh, Sarani Koth, Sikanderpur, Ballia, Uttar Pradesh PAN-ADUPS6163M	v.	Income Tax Officer, Ward-2(4), Ballia
(Appellant)		(Respondent)

Appellant by:	None
Respondent by:	Sh. A.K. Singh, Sr. DR
Date of hearing:	05.07.2022
Date of pronouncement:	22.07.2022

ORDER

PER VIJAY PAL RAO, J.M.

This appeal by the assessee is directed against the order dated 26.7.2018 of CIT(A) arising from penalty order passed under section 271(1)(c) of the Income Tax Act, for the assessment year 2010-11. The assessee has raised the following grounds:-

- “1. Because the learned Commissioner of Income Tax (Appeals) has erred in law and on facts in holding that A.O. was legally right in imposing the penalty under section 271(1)(c) and directing to compute the penalty with reference to the addition of Rs. 3,11,649/- on account of income declared by the appellant before the Commissioner of Income Tax (Appeals) during the course of appellate proceedings.*
- 2. Because the additions made on account of deposit in the bank account with reference to which the AO had initiate the penalty proceeding under section 271(1)(c) is deleted by the Hon’ble ITAT vide order dated 31.05.2016.*
- 3. Because the appellant has voluntarily declared the Income of Rs. 3,11,649/- before the learned Commissioner of Income Tax (Appeals) and no satisfaction is recorded by the AO to levy penalty with reference to income of Rs. 3,11,649/- declared before the CIT(A).*
- 4. Because the notice issued under section 271(1)(c) is vague and without specifying the charge against the appellant whether he is guilty of concealment of income or furnishing of inaccurate particulars of his income, therefore the consequential penalty order is vitiated.*

5. Because the order appealed against is contrary to the facts, law and principle of natural justice.”

2. None has appeared on behalf of the assessee when this appeal was called for hearing. It transpires from the record that after filing of the present appeal, none has appeared on behalf of the assessee whenever this appeal was taken up for hearing on 17.10.2019, 25.2.2022, 23.3.2022, 20.4.2022, 25.5.2022 and finally on 5.7.2022. On each occasion a fresh notice was issued to the assessee through RPAD as well Email. Despite several efforts made to serve the assessee, none appeared on behalf of the assessee, accordingly, we propose to hear and dispose of the present appeal *ex parte*.

3. We have gone through the impugned orders passed by the AO under section 271(1)(c) as well as order passed by the CIT(A) and noted that the AO imposed the penalty under section 271(1)(c), vide order dated 22.3.2016 in respect of the concealed income of Rs. 88,95,720/- @ 100% of tax sought to be evaded which comes to Rs. 26,19,622/-. The CIT(A) restricted the penalty only in respect of addition of Rs. 3,11,649/- against which the assessee has filed the present appeal.

4. The learned DR has submitted that in the assessment passed under section 143(3), the AO made the addition of Rs. 63,89,000/- on account of unexplained cash deposit and Rs. 74 as interest income. The CIT(A) in quantum appeal enhanced the assessment by making an addition of Rs. 3,11,649/- on account of income from contract receipt, interest on FDR and interest on income tax refund. All these amounts were received by the assessee in the bank account which was not disclosed in the return of income or during the assessment proceedings. The assessee has first time disclosed these incomes only during the first quantum appeal proceedings. Accordingly, the CIT(A) directed the AO to make an addition of Rs. 3,26,849/- (Rs. 3,10,000 plus Rs. 16,849/-) on account of

entries found in the bank account with SBI declared by the assessee during the appellate proceedings. On further appeal, the Tribunal has deleted the additions made by the AO however, the enhancement made by the CIT(A) on account of income from contract receipts, interest on FDR and interest on income tax refund was upheld. Therefore, the penalty confirmed by the CIT(A) under section 271(1)(c) in respect of the enhancement made by the CIT(A) is justified.

5. We have considered the submissions of learned DR as well as relevant material on record. The dispute in the present appeal is only with respect to the penalty levied under section 271(1)(c) which was confirmed by the CIT(A) on the addition of Rs. 3,11,649/- which was made by the CIT(A) being enhancement of assessment during the quantum appellate proceedings. Though the assessee has explained that it was not a case of concealment as the assessee has voluntarily revised the computation of total income during the course of first appellate proceedings however, the fact remains that the assessee has not disclosed the bank account in which these amounts were found credited either in the return of income or during the assessment proceedings. Originally, the Assessing Officer made the addition on account of cash deposit in the bank account of Rs. 63,89,000/-. The assessee produced some evidence before the CIT(A) showing the deposits are the sale proceeds of agriculture produce. The CIT(A) in the quantum appeal noted that the assessee received contract receipt of Rs. 34,50,003/- and estimated the net profit @ 8% which comes to Rs. 2,76,000/-. Further it was also found from the bank account which was not disclosed either in the return of income or during the assessment proceedings that the assessee was having an income on account of interest on refund of income tax as well as interest on fixed deposit. Thus, during the quantum proceedings before the CIT(A), the assessee surrender the additional income of Rs. 3,11,649/- comprising of income from contract receipts amounting to Rs. 2,76,000/-, interest on income tax refund of Rs. 18,800/- and interest on FDR Rs. 16,849/-. In

the quantum appeal, this Tribunal, though deleted the other additions sustained by the CIT(A) but not disturbed the addition on account of this additional income surrendered by the assessee as detected by the CIT(A) during the appeal proceedings. The Tribunal, vide order dated 31st May, 2016 in ITA No. 267/Alld/2015 in para 3 has dealt with this issue as under:-

“3. We have heard the rival submissions, carefully considered the same along with the orders of the tax authorities below. We noted that the assessee has submitted the return for a sum of Rs.82,082/- consisting of interest and remuneration from partnership firm Rs.70,015/- and income from contract receipt Rs. 12,000/-. During the course of appellate proceedings, the assessee surrendered the further income in respect of income from contract receipt u/s 44AD, 8% of the total contract receipt of Rs. 34,50,003/- amounting to Rs. 2,76,000/-, interest on income tax refund Rs. 18,800/- and interest on FDR Rs. 16,849/-. Thus, the income as returned at Rs. 82,020/- was revised by the assessee during the course of appellate proceedings at Rs. 3,81,664/-. The CIT(A) estimated the net profit @8%, wrongly taken the contractual receipt at Rs. 35,34,003/- instead of Rs. 3,450,003/- and made the addition taking it to be the unexplained expenditure. In our considered opinion, this addition of Rs. 15,18,283/- cannot be sustained because the source in respect of incurring the expenditure is the contract receipt of Rs. 34,50,003/-. Once the profit has been estimated @8%, the balance 92% amount in any case represent the expenditure incurred by the assessee out of which the assessee has paid the cheque towards the expenses for a sum of Rs. 17,33,000/-. The balance of Rs. 15,83,283/- in any case would have been incurred out of the contract receipt even if we exclude the net profit as estimated @8%. Therefore, we set aside the order of CIT(A) on this issue and delete the addition so made.”

6. Thus, it is clear that before the CIT(A), the assessee surrendered this income and it was not even challenged before the Tribunal in the quantum appeal. Once the income was surrendered by the assessee being not offered to tax in the return of income or disclosed during the course of assessment proceedings then the assessee is guilty of concealment of particulars of income to the extent of Rs. 3,11,649/-. The CIT(A) has confirmed the levy of penalty under section 271(1)(c) in para 13 of the impugned order as under:-

“13. As regards, the appellant contention that since the appellant has himself disclosed the concealment as confirmed by the ITAT, during the course of appellate proceedings before the CIT(A) and, accordingly, no penalty should be imposed. The

disclosure of additional income by the appellant is not voluntary. The same has not been disclosed either in the return or during the course of assessment proceedings. It was only during the course of appellate proceedings when the appellant was not able to prove the source of deposit in the Union Bank of India, the appellant was forced to disclose the bank account maintained with State Bank of India, Ballia and on the basis of transactions recorded in this bank account, the enhancement to the income was made by the CIT(A) which was confirmed by the ITAT as discussed above. In the case of MAK DATA PVT. LTD reported in (2013) 38 taxman.com 448 Hon'ble Supreme Court have held that the statute does not recognize defenses line "voluntary disclosure, buy peace", avoid litigation", amicable settlement etc, thus even the voluntary surrender of income will not always necessarily rescue the assessee from the penalty proceedings which are in the nature of remedy for loss of revenue. In the present case, it has been clearly brought on record that the disclosure made by the appellant before the first appellate stage is not voluntary at all and accordingly, penalty proceedings u/s 271(1)(c) are clearly applicable. Thus I hold that the A.O. was legally right in imposing the penalty u/s 271(1)(c) in the facts of the case. However, since the additions made to the extent of Rs. 3,11,649/- only has been confirmed at the stage of ITAT on account of concealment of income and other additions made by the A.O. / enhanced by the CIT(A) has been deleted by the ITAT vide order no. 267/Alld/2015 the A.O. is directed to recompute the penalty u/s 271(1)(c) of the I.T. Act on the concealed income of Rs. 3,11,649/- only."

7. We concur with the finding of the CIT(A) by considering the fact that the surrender of income by the assessee during the proceedings before the CIT(A) does not amount disclosure of the income to provide immunity to the assessee from levy of penalty under section 271(1)(c). Accordingly, we do not find any error or illegality in the impugned order of the CIT(A), the same is upheld.

8. In the result, the appeal of the assessee is dismissed.

Order pronounced on 22.07.2022 at Allahabad, U.P. in accordance with Rule 34(4) of Income Tax (Appellate Tribunal) Rules, 1963.

Sd/-
[RAMIT KOCHAR]
ACCOUNTANT MEMBER

DATED: 22/07/2022
Varanasi/Allahabad
Sh

Sd/-
[VIJAY PAL RAO]
JUDICIAL MEMBER

Copy forwarded to:

1. Appellant- Sh. Dilip Kumar Singh
2. Respondent-ITO, Ward-2(3) Ballia
3. CIT(A), Varanasi
4. CIT
5. DR

By order
Sr. P.S.