

**IN THE INCOME TAX APPELLATE TRIBUNAL,
'PANAJI' BENCH, PANAJI-GOA**

**BEFORE SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER
AND SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER**

**ITA No.392/PAN/2018
Assessment Year: 2001-02**

GIOVANNI JOHN MANUEL VAZ Karma Plaza, Vasco-da- Gama, Goa - 403701 PAN: ACEPV 5611 J	Vs.	ACIT, Circle-1, Margao
(Appellant)		(Respondent)

Present for:

Appellant by : None
Respondent by : Shri Mayur Kamble, Sr. DR

Date of Hearing : 15.06.2022
Date of Pronouncement : 02.09.2022

ORDER

PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:

This appeal by the assessee is arising out of the order of Ld. CIT(A)-1, Panaji in ITA No.53/MRG/2007-08 dated 02.07.2018 against the order passed by ITO, Ward-5, Margao u/s 271(1)(c) of the Income-tax Act, 1961 (hereinafter referred to as the 'Act') for A.Y. 2001-02.

2. The grounds taken by the assessee in the present appeal are reproduced as under:

- "i. The ld. CIT(A) erred in confirming the concealment penalty of Rs. 2,60,323/- without appreciating the facts of the case.*
- ii. The appellant craves, leaves to add/alter any other grounds at the time of hearing."*

3. Before us, none appeared on behalf of the assessee and Shri Mayur Kamble, Sr. DR represented the department.

4. It is noted that this appeal was listed on earlier occasions wherein also none appeared. Since the appeal is of 2018 relating to A.Y. 2001-02, we are inclined to take up the matter for adjudication, ex-parte qua the assessee with the assistance of ld. Sr. DR.

5. Brief facts as culled out from the records are that the assessee is governed by Portuguese Civil Code and assessed at 50:50 by virtue of section 5A of the Act. Assessee is in the business of hotels, real estates and constructions having eight proprietary concerns for which he maintains separate profit and loss accounts and balance sheets. Return was filed by the assessee on 13.10.2001 reporting a total income of Rs. 2,80,800/-. In the course of assessment u/s 143(3) of the Act, owing to complexity involved in the accounts maintained by the assessee, the case was referred for special audit u/s 142(2A) of the Act based on which assessment was completed at total communion income of Rs. 1,36,79,351/-. The same was apportioned equally among the spouses u/s 5A at Rs. 65,58,875/- each. Penalty proceeding u/s 271(1)(c) were initiated by the ld. AO for furnishing inaccurate particulars of income and concealing the particulars of income.

6. Aggrieved by the additions, assessee went in appeal before the ld. CIT(A) who allowed certain relief on the basis of remand report submitted by the JCIT, Margao Range, Margao. After the effect of order of ld. CIT(A), the share of assessed income came to Rs. 20,93,990/- for which the assessee preferred an appeal before the Co-ordinate Bench of ITAT, Panaji Bench. The Co-ordinate Bench of ITAT, Panaji vide its order dated 17.01.2007 in ITA No. 3/PNJ/06 and ITA No. 5/PNJ/06 allowed certain further relief to the assessee which resulted into share of assessee in the assessed income coming down to Rs. 15,30,115/-. On the additions/disallowances which were sustained after the appeal

effect, penalty u/s 271(1)(c) of the Act was imposed for Rs. 2,60,323/- by the ld. AO.

7. Aggrieved by the penalty so imposed, assessee went in appeal before the ld. CIT(A).

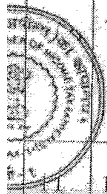
8. Before the ld. CIT(A), assessee made a submission dated 28.06.2018 for each of the addition and the basis on which penalty was levied. ld. CIT(A) analyzed it on merits and gave his findings in a tabulated form which is reproduced as under:

Sr. No.	Proprietorship concern/ Addition/ disallowance	The appellant's submission filed on 28.6.18	Decision on the penalty on this amount
	In Ginza Bar & Restaurant		
1	Royalty income 2,79,465	<i>The Royalty to be received by this concern as per agreement was Rs. 50,000 per months, but the assessee received only the part of it and hence assessee had accounted the income of Royalty actually received. The Special Auditors observed that assessee maintain accounts on mercantile basis full royalty is to be accounted and hence the addition was made of Rs. 3,90,000, which was reduced by CIT(A) to Rs.2,79,465. No further appeal was filed by assessee in order to avoid unwarranted dispute. The business of this unit could not succeed, and the royalty agreement was never renewed, nor the above balance of royalty could be recovered. Actually, all the accounts of assessee have been scrutinized and no receipt of the balance of royalty or cash deposit was found to justify the addition.</i>	The appellant maintains accounts on mercantile basis. However, a part of the receipt is not accounted for and is confirmed in appeals. The explanations offered are not satisfactory. The Penalty levied for concealment of income is justified and is being upheld.
2	Suppression of receipts 79,470	<i>The complimentary room service as well as complimentary food sale were treated as sales on estimate basis.</i>	A part of the receipts is not accounted for. The appellant claimed that it free but could not produce the evidence and addition is confirmed in appeals. The explanations offered are not satisfactory. The Penalty levied for concealment of income is justified and is being upheld.

3	Disallowance of Licence Fees & Professional Fees 24,525	<i>The Liences fees and Professional fees of this amount were disallowed by treating that that they do not relate to business of assessee. The assessee had submitted all materials and supporting.</i>	The appellant being an individual could not have claimed expenses relating to formation of company, payment to registrar of companies etc. The addition is confirmed in appeals. The explanation offered during these proceedings are not satisfactory. The Penalty levied for concealment of income is justified and is being upheld.
	In Karma Construction		
4	Cessation of Liability u/s 41(1) 33,380	<i>This was the outstanding amount of Loan from Anagram Finance and no balance confirmation was received. This amount was added u/s 41(1) which is incorrect because this credit has not arisen on account of any expenditure or deductions claimed in earlier years. This was just a loan balance for which no confirmation is received. the assessee has not disputed this addition to buy peace and avoid unwarranted litigation.</i>	No balance confirmation was received for the Loan from Anagram Finance and the addition is confirmed in appeals. The explanations offered are not satisfactory. The Penalty levied for concealment of income is justified and is being upheld.
5	Cessation of Liability u/s 68 2,70,616	<i>This was a difference in the Bank loan balance, as per books it was Rs.68 lakhs whereas as per balance confirmation it was Rs.65,29,384. This amount is added as cessation of liability or cash credit by assessing officer. This balance is neither a cessation of liability u/s 41(1) nor it is cash credit. This was a clearly a bank loan balance. The mistake was by an accountant and assessee could reconcile the mistake so accepted the addition.</i>	This was a difference in the Bank loan balance and the addition u/s 68 is confirmed in appeals. The explanation offered during these proceedings are not satisfactory. The Penalty levied for concealment of income is justified and is being upheld.
6	Under valuation of WIP 14,03,062	<i>This was a difference in WIP valuation. The assessee had valued WIP at Rs. 12,98,214 and assessing officer recomputed it at Rs.44,85,948 as suggested by Special Auditor and thus addition of Rs. 31,87,734 was done. The assessee explained before CIT(A).</i>	The final difference of 14,03,062 in WIP valuation is confirmed after the appeal. The explanations offered are not satisfactory. The Penalty levied for concealment of income is justified and is being upheld.



		how Special Auditor has miscalculated it. The assessee recomputed correctly the WIP value which was accepted by CIT(A) at Rs. 27,01,276 thereby giving relief of Rs. 17,84,672.	
7	Cessation of Liability u/s 41(1) 1,00,828	This was a total of uncleared cheques for over three years. These uncleared cheques were carried forward in bank reconciliation statement. All details about these cheques were furnished before Assessing Officer, the reversal entries for these stale cheques remained to be made because of mistake on part of accountant.	The final difference of 1,00,828 in bank reconciliation is confirmed after the appeal. The explanations offered are not satisfactory. The Penalty levied for concealment of income is justified and is being upheld.
	Karma Garden		
8	Under valuation of WIP 3,51,148	This was a difference in WIP valuation. The assessing officer has considered the expenditure totalling to Rs. 3,51,148 as direct expenditure towards the project and added it to WIP value. This expenditure was disclosed by assessee in Profit & Loss Account as Indirect cost. This addition has in reality has no effect on profitability of assessee, because it has just a contra effect.	The final difference of 3,51,148 in WIP valuation is confirmed after the appeal. The explanations offered are not satisfactory. The Penalty levied for concealment of income is justified and is being upheld.
9	Unexplained cash deposit 4,120	This was the cash deposited in bank, the source of which was not explained by AR before Assessing Officer, to by peace the assessee accepted this addition.	The cash deposited in bank amounting to 4,120 is confirmed after the appeal. The explanations offered are not satisfactory. The Penalty levied for concealment of income is justified and is being upheld.
10	Unexplained cash credit 7,260	This was the cash deposited in bank, the source of which was not explained by AR before Assessing Officer, to by peace the assessee accepted this addition.	The cash deposited in bank amounting to 7,260 is confirmed after the appeal. The explanations offered are not satisfactory. The Penalty levied for concealment of income is justified and is being upheld.
11	Disallowance of	These are the expenditures relating to	The appellant maintains



	earlier year's expenditure 14,475	<i>financial year 1999-2000, Considering the meagreness of amount, to buy peace and avoid unwarranted litigation, the assessee accepted the addition.</i>	accounts on mercantile basis. However, a part of the expenditure of earlier year is accounted for in the current year which is not correct and is confirmed in appeals. The explanations offered are not satisfactory. The Penalty levied for concealment of income is justified and is being upheld.
	In Karma Developers		
12	Cessation of Liability u/s 41(1) 11,000	<i>This was the outstanding amount of Loan from Anagram Finance and no balance confirmation was received. This amount was added u/s 41(1) which is incorrect because this credit has not arisen on account of any expenditure or deductions claimed in earlier years. This was just a loan balance for which no confirmation is received. the assessee has not disputed this addition to buy peace and avoid unwarranted litigation.</i>	No balance confirmation was received for the Loan from Anagram Finance and the addition is confirmed in appeals. The explanations offered are not satisfactory. The Penalty levied for concealment of income is justified and is being upheld.
	In Karma Foods		
13	Disallowance of earlier year's expenditure 1,46,572	<i>This was the aggregate of several vouchers for expenses pertaining to financial year 1999-2000. The bills for these expenses were received in current financial year and the payments were also made in current year but considering the meagreness of amounts of each voucher, to buy peace and avoid unwarranted litigation, the assessee accepted the addition.</i>	The appellant maintains accounts on mercantile basis. However, a part of the expenditure of earlier year is accounted for in the current year which is not correct and is confirmed in appeals. The explanations offered are not satisfactory. The Penalty levied for concealment of income is justified and is being upheld.

8.1. On perusal of the above table and the observations made by the ld. AO in his assessment order while dealing with each of the items of the additions on which penalty has been levied, we note that except for item at serial no. 7 for Rs. 1,00,828/-, at serial no. 9 for Rs. 4,120/-, at serial no. 10 for Rs. 7,260/- and at serial no. 11 for Rs. 14,475/-, no further appeal has been filed by the assessee against the order of ld. CIT(A) on the respective items. For these four items also, the amount of addition are very small amounts which were sustained after the appellate proceedings.

8.2. Further, we note that the ld. CIT(A) has objectively dealt with the contentions of the assessee in respect of issue of complexity of accounts raised by the assessee to substantiate his claim that mistakes were committed by him in maintaining correct accounts. On this aspect, the ld. CIT(A) has noted that assessee was assisted by statutory auditor, authorized representative and accountants and thus he had all the resources available to explain his case and comply with the requirements of the law.

8.3. Ld. CIT(A) also noted that after the appellate proceeding, the quantum addition remained in the hands of the assessee was of Rs. 15,30,115/- as against originally assessed at Rs. 65,58,875/- by the ld. AO. Thus, he noted that ld. AO has levied penalties on the final amounts only which remained as confirmed/sustained in the hands of the assessee and not on the initial additions which were made in the assessment. Accordingly, the penalty so imposed is on all those amounts for which either the Co-ordinate Bench of ITAT in the assessment has confirmed the additions or the assessee himself has not preferred any appeal against the order of ld. CIT(A) in respect of the additions.

8.4. Ld. CIT(A) thus placing reliance on the decision of Hon'ble Supreme Court in the case of K.P. Madhusudhanan vs CIT (2001) 118 Taxman 324 (SC) and the Hon'ble Jurisdictional High Court of Bombay in the case of Shanti Ramanand Sagar vs CIT (2017) 88 taxmann.com 72 (Bombay) and in the case of Palkhi Investments & Trading Co. (P) Ltd. vs ITO (2016) 71 taxmann.com 322 (Bombay), confirmed the penalty imposed by the ld. AO and dismissed the appeal of the assessee

9. Considering the detailed, meritorious and fact based findings given by the ld. CIT(A) after analyzing the submission filed by the

assessee, more particularly where the assessee himself has not preferred any appeal against the order of ld. CIT(A) on certain additions which were confirmed at the First Appellate Stage, we do not find any reason for the interference in the findings so given by the ld. CIT(A) in confirming the penalty of Rs. 2,60,323/- levied by the ld. AO u/s 271(1)(c) of the Act. Accordingly, the ground of appeal by the assessee is dismissed.

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

Order pronounced under Rule 34(4) of the IT(AT) rules, 1963 on 02.09.2022.

Sd/-
(CHANDRA MOHAN GARG)
JUDICIAL MEMBER

Sd/-
(GIRISH AGRAWAL)
ACCOUNTANT MEMBER

Dated: 02.09.2022.
Biswajit, Sr. P.S.

Copy to:

1. The Appellant: Giovanni John Manuel Vaz.
2. The Respondent: ACIT, Circle-1, Goa.
3. The CIT, Concerned,
4. The CIT (A) Concerned,
5. The DR Concerned Bench

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By Order

Sr. Private Secretary