

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ, चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL, CHANDIGARH
BENCH 'A' CHANDIGARH

BEFORE: SMT. DIVA SINGH, JUDICIAL MEMBER &
SHRI VIKRAM SINGH YADAV, ACCOUNTANT MEMBER

आयकर अपील सं./ ITA Nos. 608 & 609/CHD/2022
Assessment Year : 2015-16

Shri Kuldeep Singh S/o Shri Ajmer Singh, C/o Dhiman Bansal & Associates, 68, Shiv Shakti Colony, Pinjore.	बनाम VS	The ITO, Ward - 1, Panchkula.
स्थायी लेखा सं./PAN /TAN No: FVUPS3218E		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/Assessee by : Smt. Neelam Dhiman, C.A.
राजस्व की ओर से/ Revenue by : Smt. Amanpreet Kaur, Sr. DR

तारीख/Date of Hearing : 21.11.2022
उद्घोषणा की तारीख/Date of Pronouncement : 08.12.2022

आदेश/ORDER

PER DIVA SINGH

Both these appeals have been filed by the same assessee wherein the correctness of the separate orders dated 20.07.2022 of NFAC, Delhi sitting as First Appellate Authority pertaining to 2015-16 assessment year is challenged.

2. As the facts and arguments are identical in both the appeals, therefore, these were heard together and are being decided by a common order for the sake of convenience and brevity.

3. In **ITA 608/CHD/2022**, the assessee has raised the following grounds :

1. *That the order of Ld.. CIT (A) is against the law and facts of the case.*
2. *The learned CIT(A) erred in dismissing appeal that there quantum order is not challenged by the appellant. Assessee had not challenged the quantum order to avoid the pains of further litigations, cost of numerous hearings and mental tensions borne in it but that does not follow to the conclusion that the amount added was concealed income. Even jurisdictional AO asked the assessee that if he deposit the tax, he will not take penal actions against him and he got transferred shortly thereafter.*
3. *That the ld. CIT (A) failed to appreciate that the issue as to whether interest u/s 28 of Enhanced Compensation is revenue or of capital nature was highly debatable issue and penalty u/s 271 (l)(c) could not be levied on such debatable issue. Interest u/s 28 on enhanced compensation is not income as per Ghanshyam Dass HUF Case 2009. This Tribunal has recently allowed the claim of assessee on same issue in ITA/CHD/264/2021 and deleted additions in these cases. The appellant prays that the order of the National Faceless Assessment Centre and sustained by National Faceless CIT(A) on the above grounds be set aside.*
4. *The appellant craves leave to amend, or alter any grounds or add a new ground, which may be necessary.*

4. In the present appeal, the penalty imposed u/s 271(1)(c) of the Income Tax Act by the AO is confirmed by the ld. CIT(A). The ld. AR has invited attention to the impugned order wherein the assessee has raised the following arguments by way of grounds before the First Appellate Authority :

i. "Penalty should be imposed if assessee has not deposited tax before notice. If assessee has deposited all tax before assessment then it cannot be said that there was concealment or under reporting. So penalty should be deleted.

ii. Assessee recd. Letter from National Faceless Assessment Center Delhi vide DIN INSIGHT/VER/02/Service_Letter/2014-15/51141002233700001 dated 15th September 2021 to file reply within 7days but Order is issued in 14.09.2021 which is in violation of principles of natural justice. Opportunity of being heard is not provided to assessee."

(emphasis supplied)

4.1 A perusal of the impugned order shows that the entire penalty order has been reproduced by the First Appellate

Authority (NFAC) initially wherein the following arguments assailing the order on facts advanced on behalf of the assessee were subsequently extracted. These are reproduced hereunder for completeness :

“At the time of giving enhanced compensation payer told that there is no tax payable on it. Assessee being not so educated believed but when notice was served he duly replied the notice of AO on receipt of notice. Even he deposited tax to file return. This can be verified from his 26 AS which is attached. An mail was sent to jurisdictional officer to upload the notice in his PAN. But orders were passed without considering his request. There was no option to file return unless notice is reflected in PAN. He further deposited the balance tax on receipt of orders as assessed by the AO. If assessee intention was to conceal income he had not deposited a single penny but as he was law abiding person he duly deposited the tax. Further income added by AO is disputed. There -are contradictory decisions. In a similar case Jurisdictional Tribunal in ITA/Chd/264/2021 deleted the additions made by AO and sustained by Faceless Appeal Centre. In these circumstances it is prayed that penalty imposed by Faceless Penalty Department be deleted.”

(emphasis supplied)

4.2 A perusal of the finding of the ld. First Appellate Authority shows that it has been noticed that the tax has been deposited before the passing of the assessment order. It has also been noticed that the assessee has also relied upon some letter dated 15.09.2021 before the AO pleading lack of opportunity. However, the penalty imposed was confirmed.

5. The ld. AR appearing on behalf of the assessee submitted that the assessee is semi-educated and is working as daily worker, thus, the only small piece of agricultural land on which he was engaged was compulsorily acquired by the

Government. The assessee as per the advice available to the assessee was under the belief that no tax thereon was required to be paid. As soon as he was made aware of the fact by way of receipt of notice that 50% of the enhanced compensation was taxable, the assessee paid due taxes promptly. It was her submission that the issue is debatable. Accordingly, penalty imposed to the tune of Rs.8747/- may be quashed.

6. The ld. Sr.DR relies upon the impugned order.

7. We have heard the rival submissions and perused the material available on record. On facts we find that the submissions of the assessee that the assessee was "not so educated" is not in dispute. The taxes due as per the submissions of the assessee itself were paid promptly. This fact also is not in dispute. It is a matter of fact that the issue whether enhanced compensation was taxable or not has remained to be a debatable issue. The assessee also pleads that it was treated as non-taxable income on the basis of some information made available. An order of the ITAT was cited in support of the prayer. Looking at the educational and social background of the assessee and considering the position of fact and law on the issue, we find that the bonafide belief of the assessee that the amount was not taxable, looking at the conduct of the assessee which is

also not in dispute, can be accepted. Accordingly, the penalty imposed u/s 271(1)(c) of the Act is directed to be quashed and the appeal of the assessee is allowed.

8. In **ITA 609/CHD/2022**, the assessee challenges the order of the NFAC, Delhi sitting as First Appellate Authority wherein penalty imposed u/s 271F of the Act has been confirmed in appeal by the First Appellate Authority.

8.1 In the facts of the present case also, the assessee pleads inability to file the return as the notice issued by the AO was not reflected in his PAN. As a result, the system did not permit filing of return. However, it is claimed that the tax on the enhanced compensation was promptly paid. As in the earlier appeal, it is also pleaded that the assessee received notice from NFAC letter dated 15th September, 2021 requiring a reply within 7 days. However, the penalty order itself was issued on 14th Sept., 2021 that is even before the time for reply was exhausted. Hence, natural justice is also pleaded.

8.2 For ready reference, grounds extracted in page 2 of the impugned order are extracted hereunder :

i. "Penalty should be imposed if assessee was not ready to file return. He has deposited tax before orders. If assessee has deposited all tax before assessment then it cannot be said that he failed to file the return due to his mistake. If he could not file the only reason is that Notice was not reflecting in his PAN. System did not allow to file return without notice

reflecting in Pan. When he was prevented to file return with sufficient cause penalty should not be levied. Please delete the penalty imposed.

ii. Assessee reed. Letter from National Faceless Assessment Center Delhi vide DIN INSIGHTA/ER/02/Service_Letter/2014-15/51141002233700001 dated 15th September 2021 to file reply within 7 days but Order is issued in 14.09.2021 which is in violation of principles of natural justice. Opportunity of being heard is not provided to assessee."

8.3 Perusal of the record shows that the First Appellate Authority has reproduced the entire assessment order again initially and thereafter the submissions of the assessee are found extracted. For ready reference, these submissions available on record are extracted hereunder :

"At the time of giving enhanced compensation payer told that there is no tax payable on it. Assessee being not so educated believed but when notice was served he deposited tax to file return. This can be verified from his 26 AS which is attached. An mail was sent to jurisdictional officer to upload the notice in his PAN. But orders were passed without considering his request. There was no option to file return unless notice is reflected in PAN. He further deposited the balance tax on receipt of orders assessed by the AO. There was no mala fide intention to not to file return. Further income added by AO is disputed. There are contradictory decisions. In a similar case Jurisdictional Tribunal in ITA /264/2021 deleted the additions made by AO and sustained by Faceless Appeal Centre. In these circumstances it is prayed that penalty imposed by Faceless Penalty Department be deleted."

8.4 However, the said explanation was dismissed by the First Appellate Authority holding that no reasonable cause was put forth by the appellant for non filing of return u/s 139(1) of the Act. Aggrieved the assessee is in appeal before the Tribunal.

9. The ld. AR reiterated the submissions as advanced in the earlier appeal stating that as per information available

with the assessee, no tax was required to be paid. Further, the assessee is not so educated and believed that when notice was served, he was required to deposit tax which had been done promptly. It was argued that the assessee was unable to file return and hence had requested the AO that the notice be uploaded on his PAN. As without this, he could not comply by filing the return. This request available on record has remained unaddressed. Accordingly, it was her prayer that penalty may be quashed.

10. The ld. Sr.DR relied upon the order.

11. We have heard the rival submissions and perused the material available on record. Considering the consistent explanation available on record advanced on behalf of the assessee, we find that the bonafide explanation deserves to be accepted. In the face of the inability of the assessee to comply with the directions and violation of principle of natural justice patently evident on the face of the record itself and considering the conduct of the assessee and the exception carved out by Section 273B of the Act, we find that there was a reasonable cause for the assessee which has been consistently pleaded. We find no good reason available on record to hold why it should not be accepted. Accepting the explanation as bonafide and true, we direct

the quashing of the penalty order. The penalty is directed to be quashed.

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

13. In the result, both the appeals stand allowed.

Order pronounced in the Open Court on 08 December, 2022.

Sd/-

(VIKRAM SINGH YADAV)

लेखा सदस्य/ Accountant Member

“Poonam”

आदेश की प्रतिलिपि अग्रेषित/ Copy of the order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्ड फाईल/ Guard File

Sd/-

(DIVA SINGH)

न्यायिक सदस्य/ Judicial Member

आदेशानुसार/ By order,
सहायक पंजीकार/ Assistant Registrar