

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'G' NEW DELHI**

**BEFORE SHRI ANIL CHATURVEDI, ACCOUNTANT MEMBER
AND
SHRI N.K. CHOUDHRY, JUDICIAL MEMBER**

**ITA No. 1432/Del/2020
Assessment Year : 2011-12**

Sahdev Jewellers, 2481/9,
2nd Floor, Gurudwara Road,
Karol Bagh, New Delhi.

PAN: AALFS0015Q
(Appellant)

Versus ACIT, Circle 51 (1),
New Delhi.

(Respondent)

Assessee by : Sh. Rajiv Saxena, Ld. Adv.
Sh. Shyam Sunder, Ld. Adv.
Sh. Dishant Sethi, Ld. Adv.

Revenue by : Ms. Meenakshi Dohre, Ld. Sr. DR

Date of hearing : 25.01.2023
Date of order : 31.01.2023

ORDER

PER N.K. CHOUDHRY, J.M.

This appeal has been preferred by the Assessee against the order dated 06.03.2020, impugned herein, passed by the learned Commissioner of Income-tax (Appeals)-42, New Delhi (in short "Ld. Commissioner"), u/s. 250 of the Income-tax Act, 1961 (in short 'the Act') for the Assessment Year 2011-12.

2. In the instant case, the Assessing Officer vide assessment order dated 30.01.2014 passed u/s. 143(3) of the Act, made the following additions :

- (i). Addition of Rs.6,44,788/- on account of interest @ 12% per annum accrued to the Assessee qua loan/advances of Rs.53,53,234/- giving to S.R. Forging Ltd.
- (ii). Addition of Rs.1,00,70,712/- G.P. rate @ 3% on account of rejection of books of accounts and trading results declared by the Assessee u/s. 145(3) of the Act.
- (iii). Addition of Rs.2,95,848/- on account of car repair expenses.

3. The Assessing Officer vide assessment order dated 30.01.2014 also initiated penalty proceedings u/s. 271(1)(c) of the Act.

4. The Assessee challenged the said additions before the then Ld. CIT (A), who vide order dated 15.01.2015 affirmed the said additions of Rs.6,44,788/- and Rs. Rs.1,00,70,712/- , however, deleted the addition of Rs.2,95,848/- on account of car repair expenses.

5. The Assessee being aggrieved challenged the said affirmation of the additions, referred to above before the Tribunal, however remained unsuccessful as Tribunal vide order dated 26.04.2018 dismissed the appeal of the Assessee.

6. Subsequently, the Assessing Officer issued various show cause notices for imposition of penalty u/s 271(1)(c) of the Act, in response to which, the Assessee by flailing its reply dated 22.11.2018 claimed as under :

- That the Assessee firm is partnership firm engaged in the business of manufacturing and export of gold jewellery from SEZ Noida since 2002.

- Assessee firm availed deduction u/s 10 A i.e. 90% of the net profit for first ten years.
- Assessee firm has assessed continuously u/s 143(3) of the Act since start of the business and assessed continuously u/s 143(3) of the Act, since start of the business and assessed at income after disallowance of expenditure of routine nature.
- Assessment for the assessment year was assessed and assessing officer rejected books of accounts arbitrarily and made an addition of G. P. ratio which was against the facts of the case and bad in law.
- Assessee firm filed an appeal and unfortunately appeal was decided ex-parte. Further assessee firm filed appeal with IT AT New Delhi but assessee firm did not receive any order.
- During the assessment proceeding assessee disclosed full particulars of the case but assessing officer rejected books of accounts which was against the facts of the case.

- Assessee firm has been assessed u/s 143(3) of the Act for assessment year 2012- 13, 2013-14, 2014-15 and 2015-16 at income with an disallowance of expenditure of routine nature.
- Further, that due to financial problem Assessee firm shut down business and all the properties of Assessee firm has attached by the financial institutions for auction.”

7. Though the Assessing Officer considered the reply of the Assessee, however, not found the same acceptable and considering the peculiar facts that the aforesaid additions have been confirmed by the Id. Commissioner and Hon’ble ITAT as well and the Assessee did not file any appeal before the Hon’ble High Court against the order passed by Hon’ble ITAT, consequently, levied penalty to the tune of Rs.33,11,090/- @ 100% of tax sought to be evaded, for concealing the particulars of income or furnishing inaccurate particulars of such income.

8. The Assessee, being aggrieved against the levy of penalty, preferred first appeal before the Id. Commissioner,

who vide impugned order, affirmed the levy of penalty by dismissing the appeal of the Assessee. The Assessee being aggrieved is in appeal before us.

9. Having heard the parties and perusing the material available on record, we observe that in the assessment order dated 30.01.2014 vide para 3.3 & 4.5, the Assessing Officer made additions of Rs.6,44,788/- and 1,00,70,712/- and also recorded satisfaction, which for brevity and clarity, we are reproducing below :

“I am satisfied that assessee has concealed particulars/submitted inaccurate particulars of his income and penalty proceedings u/s. 271(1)(c) is being initiated separately in this regard.”

9.1 We further observe from the satisfaction recorded by the Assessing Officer, as it clearly appears that the Assessing Officer used the slash in between concealment of particulars and submission of inaccurate particulars of income. Further vide para No. 15 of the penalty order dated 27.11.2018, the Assessing Officer held that the Assessee has furnished inaccurate particulars of income and in this

way also concealed the income. The Id. Commissioner vide impugned order found the Assessee guilty for concealing the income as well as for filing inaccurate particulars of income.

9.2 We have given thoughtful consideration to the conclusions drawn by the authorities below and all the three orders i.e. Assessment order, Penalty order and the Impugned order under are not in sync with each other qua satisfaction for initiation of penalty proceedings, initiation of penalty proceedings and levy of penalty and affirmation thereof by the Ld. Commissioner. We observe specifically from the satisfaction recorded by the Assessing Officer in para No. 3.3 and 4.5 of the assessment order, wherein the Assessing Officer recorded the satisfaction for concealment of particulars/submission of inaccurate particulars of income that goes to show that the mind of the Assessing Officer for initiating penalty proceedings and recording the satisfaction was not clear, under which limb he wanted to initiate the penalty proceedings and on which limb he made himself satisfied.

We also observe that the Assessing Officer vide penalty order dated 27.11.2018 levying the penalty has taken into

consideration mainly the amount of Rs.1,07,15,500/- allegedly sought to be evaded from tax liability. However the Hon'ble coordinate Bench of the Tribunal in Assessee's own case (quantum appeal), i.e., ITA No. 2435/Del/2015 vide order dated 28.12.2022 unsettled the said GP rate and directed the Assessing Officer to apply the GP rate @ 2.5% instead of 3% as applied by the Assessing Officer and therefore, considering the peculiar facts and circumstances, as various courts held that the provisions of section 271(1)(c) of the Act are not attracted where the income of the Assessee is assessed on estimation basis. Further, where the income is assessed on estimated basis after rejecting the book results, the penalty u/s. 271(1)(c) of the Act is not warranted by mere application of Explanation thereof until and unless there is any cogent evidence to conclude a positive finding that the Assessee has concealed its income or filed inaccurate particular of income, which is instant neither attracted nor available. Consequently, considering the peculiar facts and circumstances in totality, we are unable to uphold the affirmation of penalty imposed by the Assessing Officer and thus inclined to delete the penalty under consideration.

10. In the result, the appeal filed by the Assessee stands allowed.

Order pronounced in the open court on 31/01/2023.

Sd/-

(ANIL CHATURVEDI)
ACCOUNTANT MEMBER

Sd/-

(N.K. CHOUDHRY)
JUDICIAL MEMBER

*aks/-