

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "SMC": NEW DELHI
BEFORE Shri C.M. Garg, Judicial Member**

ITA No. 6250/Del/2018
(Assessment Year: 2013-14)

Neelam Garg, Hem Chand Jain, H. No. 2, HUDA Staff Owarter, No. 1, Sector-13, Extn, Karnal, Haryana (Appellant) PAN: AINPG2119D	Vs. ITO, Ward No. 3, Karnal (Respondent)
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Assessee by :	Shri Rajeev Sachdeva, CA
Revenue by:	Shri Sumesh Swani, Sr. DR

Date of Hearing	03/04/2023
Date of pronouncement	22/06/2023

ORDER

1. This is an appeal filed by the assessee against the order of the Id CIT(A), Karnal dated 27.10.2016 for AY 2013-14.

2. The assessee has raised the following grounds of appeal:-

"1. On facts and in law and circumstances of the case, the Ld. Commissioner of Income Tax (Appeals) and Ld. AO is not justified in levying penalty of Rs. 99,760/- u/s 271(1)(c) of the Act since there is no concealment of income."

3. The Id counsel of the assessee submitted that the Id CIT(A) has erred and was not justified under the facts and circumstances in upholding the penalty of Rs. 99,760/- u/s 271(1)(c) of the Income Tax Act, 1961 (for short 'the Act') as there was no concealment of income by the assessee. The Id counsel drawing our attention towards various orders of coordinate bench of the Tribunal including order of ITAT Bangalore Bench in the case of ITO Vs. M Narayanswami order dated 09.02.2010 in ITA No. 723/Bang/2010 for AY 2002-03 submitted that the quantum order of the Tribunal was decided in favour of the revenue was based on interpretation of provision of section 54F of the Act after considering the various judicial pronouncements and particularly

assessee's own case and therefore, it is a case where the assessee is making a claim which was not sustainable in law by itself, will not amounting to furnishing of inaccurate particulars of income of the assessee therefore, no penalty is leviable on the assessee. Ld counsel submitted that in the present case, the AO denied excess claim of exemption u/s 54 of the Act which lead to confirmation of addition and impugned penalty order. Ld counsel submitted that the penalty levied by the AO and sustained by the Id CIT(A) cannot be held as valid and sustainable as the AO in the assessment order alleged that the assessee concealed the particulars of income whereas in the penalty order the AO noted that the penalty levied on concealment of particulars of income and furnishing of inaccurate of income both and the penalty order and thus penalty order cannot be held as valid and sustainable only on this count.

4. Replying to the above Id Sr. DR strongly supported the orders of the authorities below and submitted that the assessee has no explanation regarding concealment of income by way of making false claim u/s 54 of the Act during the course of assessment proceeding and willfully furnishing the inaccurate particulars of income therefore, the AO was correct and justified in levying penalty u/s 271(1)(c) of the Act.

5. On careful consideration of the above submission, first of all from the order of coordinate bench of ITAT Bangalore in the case of ITO Vs. M Narayanswami (supra), under identical facts and circumstances held as follows:-

"5. We have heard rival submissions and perused material on record. So far as the material particulars are concerned on the question of exemption, it was nowhere held by the Tribunal that the assessee had concealed any particulars of income. Eventually the order of the Tribunal, which was decided in favour of the department, was based on interpretation of the provisions of Section 54F after considering the various judgments and in particular its own decision in the case of D Ananda Basappa (91 ITD 53).

5.1 The assessee has furnished all particulars on facts and in law. Nowhere has the AO said that the particulars furnished by the assessee are inaccurate or in correct. He levied penalty only because judicial decisions are against the assessee. It is not the case of the revenue that the capital gain was suppressed or concealed. The particulars furnished were not faulted or found inadequate

and incorrect. The taxable capital gain is shown in the return of income and non-taxable capital gain claimed according to the assessee, which is explained elaborately above was detailed in the computation sheet that accompanied the return of income.

5.2 Even assuming the assessee's claim is wrong; the Tribunal order with regard to the quantum assessment would show there is plethora of decisions for and against the assessee and the issue can be considered as debatable. In this context, it is relevant to quote the judgment of the Hon'ble Supreme Court in the in the case of CIT Vs. Reliance Petroproducts Pvt Ltd [2010] 322 ITR 158 which reads as follows:

" A mere making of a claim, which is not sustainable in law, by itself, will not amount to furnishing inaccurate particulars regarding the income of the assessee. Such a claim made in the return cannot be amount to furnishing inaccurate particulars."

That apart, the Hon'ble Supreme Court in the case of Dilip N. Shroff Vs. Joint Commissioner of Income Tax and Another [2007] 291 ITR 519 has held as under: "Clause (c) of section 271(1) of the Income-tax Act, 1961, categorically states that penalty would be leviable if the assessee conceals particulars of his income or furnishes inaccurate particulars thereof. But by reason of such concealment or furnishing of inaccurate particulars alone, the assessee does not ipso facto become liable for penalty. Imposition of penalty is not automatic. Not only is the levy of penalty discretionary in nature but the discretion is also required to be exercised on the part of the Assessing Officer keeping the relevant factors in mind. Some of those factors, apart from being inherent in the nature of penalty proceedings, inhere on the face of the statutory provisions. Penalty proceedings are not to be initiated merely to harass the assessee. The approach of the Assessing Officer in this behalf must be fair and objective."

5.3 Taking into account the facts and circumstances of case, since the assessee had disclosed fully the capital gains transaction in the return of income, it cannot be said that the assessee has concealed income. Making a claim, which is not sustainable in law, by itself, will not amount to furnishing inaccurate particulars regarding the income of the assessee. In the instant case, as stated earlier, the assessee has relied on several judgments which interpreted provisions of section 54 and 54F as being available to more than one house, based on the definition of "a" which could mean many or more than one as held by the Hon'ble Jurisdictional High Court in the case of Ananda Basappa (supra).

5.4 The decision relied on by the learned departmental representative is not applicable to the facts of the present case. In the case of Sree Valliappa Textiles (supra) the Hon'ble jurisdictional High Court was considering a case where the assessee had made false claim of depreciation, extra shift allowance and investment allowance in respect of a machinery which had not even reached its premises before the end of the relevant accounting year. It was noticed by the Hon'ble High Court that the machinery was received only

on 13-7-1984 much after the close of the accounting year and the claim of depreciation, extra-shift allowance and investment allowance in respect of said machinery is false and not bona fide. But in the instant case, as stated earlier, the claim of deduction centres around interpretation of a provision based on various judgments of the Hon'ble High Court and the orders of the Tribunal.

5.5 In light of the above, we are of the view that the CIT(A) is justified in deleting the penalty and we see no reason to interfere with the same."

6. In view of the above, when I evaluate the facts and circumstances of the present case then I find that the AO in quantum proceedings dismissed excess claim of assessee amounting to Rs. 4,84,284/- u/s 54 of the Act and the assessee did not carried the matter further and accept the orders of the tax authorities below. However, the AO proceeded to initiate the penalty proceedings u/s 271(1)(c) of the Act and imposed penalty by holding that the assessee has no explanation regarding concealed income as held during the course of assessment proceedings and willfully furnishing the inaccurate particulars of income to the said explanation, therefore, she is liable to pay penalty u/s 271(1)(c) of the Act. therefore, I find identical facts and circumstances of the case quite similar and identical to the case of ITO Vs. M. Narayanswami (supra) wherein, the tribunal held that the assessee has furnished all particulars regarding sale of immovable property and claimed exemption u/s 54 of the Act which was partly denied by the AO. In such a situation the claim of deduction u/s 54 of the Act centres around interpretation of a provision based on various judgment of Hon'ble High Court and orders of the Tribunal. The identical situation is clearly discernable from two of the assessment orders wherein, the AO by relying and referring to certain judgments and factual matrix of the case recalculated the long term capital gain and allowed ½ share to the assessee u/s 54 of the Act and remaining ½ part was disallowed making addition in the hands of the assessee. Therefore, in my humble understanding in such a situation penalty u/s 271(1)(c) of the Act cannot be lead on the assessment by alleging that the assessee had concealed particulars of income and also furnished inaccurate particulars of income particularly when the AO himself has in the assessment

order at page 3 only alleged that the assessee had deliberately or without any reasonable cause concealed the particulars of income without making further allegations. Heavily reliance has also been placed by the Id counsel of the assessee on the judgment by Hon'ble Supreme Court in the case of CIT Vs. Reliance Petro Products Pvt. Ltd dated 17.03.2010 in Civil Appeal No. 2463/2010 wherein, their lordship categorically held that merely because the claim of assessee was not accepted or not found to be acceptable by the revenue authorities does not entitle the AO to impose penalty u/s 271(1)(c) of the Act. Therefore, respectfully following the same I allow the sole grievance of the assessee and directed the AO to delete the penalty impose u/s 271(1)(c) of the Act.

7. In the result the appeal of the assessee is allowed.

Order pronounced in the open court on 22/06/2023.

-Sd/-
(C. M. GARG)
JUDICIAL MEMBER

Dated: 22/06/2023

A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi