

IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT (SMC) BENCH
BEFORE SHRI DR. A. L. SAINI, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.146/SRT/2023

Assessment Year: (2012-13)

(Virtual Hearing)

Raj Kishore Prasad, 201, 2 nd Floor, Devashish Complex, Nr. Regenta Central Antarim Hotel, Off CG Road, Ahmedabad	Vs.	The ITO, Ward-3, Valsad
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AITPP0535A		
(Assessee)		(Respondent)

Assessee by	Shri Divyang Shah, CA
Respondent by	Shri Vinod Kumar, Sr. DR
Date of Hearing	21/08/2023
Date of Pronouncement	04/09/2023

आदेश / O R D E R

PER DR. A. L. SAINI, AM:

Captioned appeal filed by the assessee, pertaining to Assessment Year (AY) 2012-13, is directed against the order passed by the Learned Commissioner of Income Tax (Appeals), [in short “the ld. CIT(A)”], National Faceless Appeal Centre (in short ‘the NFAC’), Delhi, dated 30.01.2023, which in turn arises out of penalty order passed by Assessing Officer u/s 271(1)(c) of the Income Tax Act, 1961 (hereinafter referred to as “the Act”), dated 15.03.2018.

2. The grounds of appeal raised by the assessee are as follows:

“1. Whether, on facts and in circumstances of the case and in law, Ld. Assessing Officer has erred in levying penalty of Rs.65,050/- u/s 271(1)(c) of the act?”

Further, assessee craves leave to add, amend, alter or withdraw all or any ground of appeal.”

3. Brief facts, as discernible from the orders of lower authorities are that the assessment in the assessee's case was completed u/s 144/147 of the Income Tax Act, 1961 on 27.01.2016 determining total income of Rs.11,40,020/-. The Assessing Officer observed that the assessee, being an employee in the State Bank of India, claimed exemption u/s 10(5) of Rs.2,68,400/- as part of leave Travel to Singapore, Malaysia, Bank of Kolkata, Dibrugarh, Delhi, Mumbai during the period from 02.06.2011 to 16.06.2011 but an amount of Rs.2,10,518/- was disallowed out of Total exemption claimed of Rs.2,68,400/- since this amount pertained to travel out of India and not permissible for exemption as per the provisions u/s 10(5) of the IT. Act, 1961. Therefore, the Assessing Officer initiated penalty proceedings u/s 271(1)(c) for furnishing inaccurate particulars of income to the same extent. The Assessing Officer had issued show cause notice u/s 271(1)(c) r.w.s 274 of the Act to the assessee vide notice dated 13.09.2017 & 01.01.2018. The assessee submitted reply in this regard however, the assessing officer did not find the reply tenable following which minimum penalty of Rs. 65,060/- was levied u/s 271(1)(c) of the Act for furnishing inaccurate particulars of income.

4. Aggrieved by the order of Assessing Officer, the assessee carried the matter in appeal before the Id. CIT(A), who has confirmed the penalty imposed by the Assessing Officer, observing as follows:

“4.4 I have considered the details submitted by the assessee and the perused the penalty order passed by the Assessing Officer and came to the conclusion that it is the duty of every assessee to disclose all facts, in their part and in the present case, the assessee had not furnished the true particulars of income by withholding the information in context of disallowance of LTC reimbursement. This clearly amounts to non-disclosure of relevant particulars. The facts subsequently disclosed by him were pursuant of reopening of his case u/s.147 of the Act. Had the case not reopened, he would have kept quiet, thus, allowing that part of income to remain outside fold of taxation.”

4.5 *In view of the above discussion, the proceedings under section 271(1)(c) of the Act were rightly initiated against the assessee and the penalty was also rightly imposed on him. There is no error in the impugned dated 15.03.2018 passed by the Assessing Officer, accordingly all the grounds of appeal stands dismissed.*

5. In result, the appeal filed by the assessee is dismissed.”

5. Aggrieved by the order of Id. CIT(A), the assessee is in appeal before this Tribunal.

6. I have heard both the parties and carefully gone through the submissions put forth on behalf of the assessee along with the documents furnished and the case laws relied upon, and perused the facts of the case including the findings of the Id. CIT(A) and other material brought on record. Learned Counsel for the assessee submitted that assessee is an individual who is employee of State of Bank of India for assessment year (AY) 2012-13. During the AY. 2012-13, the assessee received Leave Travel Concession (in short ‘LTC’) amounting to Rs.2,10,518/- on payment of such LTC, TDS was not deducted by the State Bank of India (employer) because apparently such LTC in the hands of assessee was exempted under section 10(5) of the Act. Then after Form No.16, (TDS certificate for salary was also issued accordingly by the employer - State Bank of India) wherein LTC amount was shown as exempted. The Ld. Counsel contended that there is no malafide intention on the part of the assessee to conceal any particulars of income or to furnish inaccurate particulars of income, because the assessee is an employee and he has disclosed the entire facts, as per the Form No.16 received from his employer, therefore, assessee should not be treated that he has concealed particulars of his income.

7. Learned Counsel, further stated that in the penalty proceedings of State Bank of India (employer), the penalty levied on the State Bank of India under section 271C, for failure to deduct tax at source (TDS), has been deleted by the Tribunal, in respect of ITA Nos. 1661/Ahd/2017, 1662/Ahd/2017, 1664/Ahd/2017 and 2113/Ahd/2013. Since the penalty levied on State Bank of India (employer) in respect of the same LTC has been deleted by the Tribunal, therefore in the hands of the assessee, the penalty under section 271(1)(c) of the Act may also be deleted.

8. The Ld. Counsel also submitted that Assessing Officer vide assessment order para no.7.2, has initiated the penalty on account of furnishing inaccurate particulars of income. The relevant para 7.2 of assessment order reads as follows:

“7.2 As mentioned above, the assessee was reimbursement total sum of Rs.2,68,400/- out of which the sum of Rs.2,10,518/- was pertained to his travel out of India, which is not permissible as per provisions of section 10(5) of the I.T. Act. Accordingly the sum of Rs.2,40,518/- is disallowed and added to the total income of the assessee. I am satisfied that assessee has furnished inaccurate particulars of his income and therefore penal proceedings are initiated u/s 271(1)(c) of the I.T. Act separately.”

9. The ld Counsel pointed out that during the penalty proceedings, under section 271(1)(c) of the Act, the assessing officer has levied the penalty on both the limbs, that is, (i) concealment of income as well as (ii) furnishing of inaccurate particulars of income. Therefore, ld Counsel contended that there is an inconsistency in the charge levied in the assessment order as well as charge levied in the penalty order. Therefore the penalty should not be levied.

10. On the other hand, Learned Departmental Representative (ld.DR) for the Revenue submitted that there is no inconsistency so far levy of penalty is concerned, the Assessing Officer has levied the penalty on

account of 'furnishing inaccurate particulars of income' and in the penalty order also, the Assessing Officer levied the penalty on account of 'furnishing inaccurate particulars of income'.

11. The ld. DR further argued that since the penalty imposed on the State Bank of India (employer) under section 271C has been deleted by the Tribunal, does not mean that the penalty should be deleted in the hands of the assessee. Therefore, Ld. DR prays the Bench that the penalty confirmed by the ld. CIT(A) may be upheld.

12. I note that assessee is an employee of the State Bank of India and in case of assessee, there was a quantum addition for AY.2012-13, the said quantum addition on account of LTC of Rs.2,10,518/- has been deleted by the Tribunal in assessee's own case *vide* ITA No. 1689/Ahd/2017, dated 04.10.2019, wherein the Tribunal held as follows:

"ISSUE No. 2

7. We have heard the argument advanced by the Ld. Representative of the parties and perused the record. Under this issue the assessee has claimed the TDS credit which has been deducted by revenue from employer of the Assessee i.e. State Bank of India by virtue of order dated 05.01.2015. Copy of order dated 05.01.2015 is on the file which speaks that the employer paid the TDS along with the interest total in sum of Rs.92530/-. Since the employer has paid the TDS, therefore, no doubt the credit is liable to be given to the assessee in accordance with law. Accordingly, we allowed the claim of the assessee and direct the assessing officer to give the credit to the assessee of the TDS amount of Rs.207970/-. Accordingly, this issue is decided in favour of the assessee against the revenue."

13. I note that addition on account of TDS credit deposited by employer-State bank of India on payment of leave travel concession of Rs. 2,20,518/- has been deleted by the Tribunal, therefore the penalty imposed by the assessing officer under section 271(1) (c) of the Act, in respect of Rs. 2,20,518/-, does not have any leg to stand, hence penalty under section 271(1) (c) of the Act of Rs. 65,060/- should be deleted.

14. I note that for AY.2012-13 to 2014-15 in ITA No.1660 to 1666/Ahd/2017 for AYs.2012-13 to 2014-15, in case of State Bank of India vs ITO (TDS), the penalty under section 271C, on account of non-deduction of tax from the amount reimbursed in respect of foreign compensation of LFC/LTC, has been deleted by this Tribunal, observing as follows:

“10. The assessee has filed four appeal vide ITA 1661/A/2017, 1662/A/2017, 1664/Ahd/2017 and 2113/Ahd/2013 against the decision of Id. CIT(A) in sustaining the penalty levied by the assessing officer for treating the assessee in default for not deducting the tax as per order passed u/s. 201(1) & 201(1 A) of the act. As the facts in all these cases are similar as discussed supra in this order therefore for the sake of convenience these four appeals are adjudicated by taking ITA No 1164/Ahd as the lead case and its finding will be applicable to the other three cases. The Joint CIT has passed order u/s. 271C of the act on 28th Sep, 2015 stating that assessee has committed default by not deducting tax on the amount reimbursed for LTC/LFC of Rs.5,94,324/- for travelled outside India. He has stated that order u/s. 201(1) and 201(1A) of the act in the case of the assessee was passed by ITO TDS Valsad on 13th Jan, 2015 treating the assessee in default for non-deduction of tax from the payment made for LTC/LFC on visiting abroad. During the course of penalty proceedings the joint CIT has stated that assessee has failed to furnish any satisfactory reason/explanation for not deducting tax, therefore, he has levied penalty of Rs.1,70,220/- u/s. 271C of the act.

11. Aggrieved assessee has filed appeal before the Id. CIT(A). The Id. CIT(A) has sustained the penalty levied by the Joint CIT on the ground that section 10(5) r.w.s. 2(b) no way provides that assessee is at liberty to claim exemption out of his total package spent on overseas travel and part of journey within India.

12. We have heard the rival contention and perused the material on record carefully. The assessing officer has levied the aforesaid penalty for non-deducting of tax on foreign component of LFC/LTC which was not exempt u/s. 10(5) of the act. During the course of penalty proceedings, the assessee has failed to file any explanation regarding non-deduction of tax from the amount reimbursed in respect of foreign compensation of LFC/LTC. However, during the course of appellate proceedings before Id. CIT(A) the assessee filed detailed submission that the bank was under bona fide belief that where the journey undertaken by an employee involved foreign but the destination is in India the employee is entitled to exemption u/s 10(5) of the Act. The assessee has referred to the administrative and operating guideline issued by the Indian Bank's Association i.e. IBA letter Nos. PLI/Set/25 dated 18th Sep, 1982 and CIR/HR & R/2012-13/665/F/6264 dated 12th July, 2012. The assessee has retreated the similar submission as submitted before the

assessing officer and related to the proceedings u/s. 201(1) and 201(1A). After perusal of the above facts and material on record we observe provision of section 201(1) and 201(1 A) were rightly envisaged as the assessee was in default in not deducting tax as exemption u/s. 10(5) are not available on reimbursement of expenditure on LTC/LFC as if the employees travel to foreign country. We consider that penalty leviable u/s. 271C can be waived off in case the assessee or the person, as the case may be, proves the reasonable cause for example the reason for failure to apply with the requisite provision under which he was liable to deduct at source. Further, we have noticed that section 201 and 271C are two independent and separate proceedings at the time of imposing penalty it is required to examine the assessee's explanation with regard to reasonable cause for failure to deduct tax at source as elaborate above, we observe that there was a reasonable cause as under the circumstances cited above it becomes debatable issue for the assessee to deduct tax or not to deduct tax. We consider that there was a bona fide cause for not deducting tax at source under the above circumstances, therefore, levying of penalty u/s 271C is not justified. Therefore, we delete the penalty u/s 271C in the case of the assessee in respect of ITA No.1661/Ahd/2017, 1662/Ahd/2017, 1664/Ahd/2017 and 2113/Ahd/2013.”

15. Therefore, I note that the penalty levied under section 271C of the Act, on the employer bank has been deleted, therefore, the penalty imposed on the employee should also be deleted. I note that since assessee is an employee and he has received Form No.16 from the employer (State Bank of India) and the details mentioned in Form No.16 has been disclosed by the assessee in the return of income, therefore, there should not be any concealment on the part of the assessee, and there should not be any inaccurate furnishing particulars of income, on the part of the assessee. I also note that Penalty order did not specify the particular limb under which penalty u/s 271(1)(c) is levied. The para 4 of the penalty order dated 15/03/2018 wherein the Assessing Officer has mentioned as under.

*“4. Considering the facts and circumstances and in view of the above discussion, I am satisfied to hold that the assessee **has concealed his income by furnishing inaccurate particulars of income** and therefore I am satisfied that this is a fit case for levy of penalty u/s.271(1)(c) of the Act. The minimum penalty leviable comes to Rs.65,050/- as against maximum penalty leviable of Rs. 1,95,150/-.”*

16. Thus, perusal from the above stated para, it is very much clear that assessing officer has not specified that penalty is either levied for furnishing inaccurate particulars of income or for concealing the income. The assessing officer himself is not clear that penalty is either levied for concealment of income or for furnishing inaccurate particulars then in such scenario, the assessing officer himself is not clear that for which limb he is levying a penalty and so such penalty need to be quashed. The reliance can be placed on the following judicial pronouncements:

- i) *CIT v. Whiteford India Ltd. [2013] 38 taxmann.com 15 (Guj.)*
- ii) *New Sorathin Engg. Co. v. CIT [2006] 155 taxman 513 (Guj.)*
- iii) *CIT v. Jyoti Ltd. [2013] 34 taxmann.com 65 (Guj.)*

17. Considering the above facts and circumstances, I delete the penalty sustained by Id CIT(A) under section 271(1) (c) of the Act of Rs. 65,050/-.

18. In the result, appeal filed by the assessee is allowed.

Order is pronounced on 04/09/2023 in the open court.

Sd/-
(Dr. A.L. SAINI)
ACCOUNTANT MEMBER

सूरत /Surat

दिनांक/ Date: 04/09/2023

SAMANTA

Copy of the Order forwarded to

1. The Assessee
2. The Respondent
3. The CIT(A)
4. CIT
5. DR/AR, ITAT, Surat
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By Order

Assistant Registrar/Sr. PS/PS
ITAT, Surat