

आयकर अपीलीय अधिकरण, कोलकाता पीठ 'ए', कोलकाता
IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH: KOLKATA
श्री राजेश कुमार, लेखा सदस्य एवं श्री संजय शर्मा न्यायिक सदस्य के समक्ष
[Before Shri Rajesh Kumar, Accountant Member & Shri Sonjoy Sarma, Judicial Member]

I.T.A. No. 705/Kol/2022
Assessment Year : 2015-16

Chetan Kumar Tekriwal (HUF) (PAN: AABHC 7924 C)	Vs.	ITO, Ward-46(3), Kolkata
Appellant / (अपीलार्थी)		Respondent / (प्रत्यर्थी)

Date of Hearing / सुनवाई की तिथि	19.10.2023
Date of Pronouncement/ आदेश उद्घोषणा की तिथि	30.11.2023
For the Appellant/ निर्धारिती की ओर से	Shri S. K. Pransukha, A.R
For the Respondent/ राजस्व की ओर से	Shri B. K. Singh, JCIT (Sr. D.R)

ORDER / आदेश

Per Rajesh Kumar, AM:

This is the appeal preferred by the assessee against the order of the Ld. Commissioner of Income Tax(Appeals)-NFAC [hereinafter referred to as 'Ld. CIT(A)] dated 28.10.2022 for the assessment year 2015-16.

2. The only issue raised by the assessee in the various grounds of appeal is against the confirmation of penalty of Rs. 16,22,332/- by the Ld. CIT(A) as levied by the AO u/s 271(1)(c) of the Act.

3. Facts in brief are that the assessment was completed u/s 143(3) / 147 of the Act vide order dated 24.08.2018 assessing the total income at Rs. 55,42,070/-. During the course of assessment proceedings it was noted by the AO that a survey operation u/s 133A of the Act was carried out on 18.06.2015 at the business premises of Chetan Kumar Tekriwal , Bhubaneswar, Odisha by the Directorate of Income Tax (Investigation), Bhubaneswar, Odisha and as per survey report received from the Director of Income Tax (Inv.) , Unit-1(1), Bhubaneswar dated 10.06.2016, Shri Chetan Kumar Tekriwal , the Karta of HUF has taken accommodation entry of Long term capital gain under the guise of investing his undisclosed income in buying penny stock of CCL International Ltd. and thereby converting his undisclosed income as long term capital gain. The assessee received Rs. 52,51,973/- as the proceeds of bogus LTCG during the year. During the survey the assessee voluntarily disclosed the amount of Rs. 52,51,973/- as undisclosed income of the Karta of HUF. A penalty notice dated 4.1.2019 was to the assessee on 21.01.2019 and no one appeared that the date fixed for hearing. Finally the AO imposed penalty of Rs. 16,26,990/- on the assessee for willfully furnishing inaccurate particulars of income.

4. The Ld. CIT(A) dismissed the appeal of the assessee on the account of non-appearance of assessee.

5. After hearing the rival contentions and perusing the material on record, we note that in this case the assessee has admitted during the survey conducted at the business premises by DDIT(Inv), Unit-1(1), Bhubaneswar that Rs. 52,51,973/- was received as long term capital gain from the sale of penny stock of CCL International Ltd. The assessee offered sum as income from other source and accordingly assessment was completed in the assessment proceedings. The AO noted that considering these facts Rs. 52,51,973/- was constituted as unexplained cash credit u/s 68 of the Act by ignoring the fact that the assessee has already offered the same for tax suo-motto as admitted during the course of survey. The AO has not discussed anything on merit as to how this constitute filing inaccurate particulars of income and simply imposed penalty for furnishing inaccurate particular of income. In our opinion, the assessment

proceedings are distinct and different from the penalty proceedings. In this case, the AO has only issued show cause notice to the assessee and then proceeded to impose the penalty by ignoring the fact that the assessee has made disclosure of income during survey and has also not contested the issue in appeal. Further we note that AO has passed an order in a very cryptic manner. In our opinion, the addition is only on the basis of admission of the assessee and the AO nowhere demonstrated that the claim of the assessee was either found to be false either during assessment proceedings or during penalty proceedings. The case of the assessee finds support from the decision of Co-ordinate Bench in the case of Robbs Traders & Finance Pvt. Ltd. vs. ITO in ITA NO. 743/Kol/2022 wherein it was held as under:

9. We have duly gone through the facts of the present case. A perusal of the assessment order would reveal that ld. Assessing Officer has nowhere demonstrated as to how the loss claimed by the assessee is bogus. He only issued a show-cause notice and the Assessee withdrew its claim just in order to avoid litigation with Department. But when the Department intended to impose a penalty upon the assessee under section 271(1)(c), the assessee has contested the issue in the penalty proceeding. The ld. Assessing Officer instead of entertaining the arguments on merit summarily rejected it on the ground that all these issues must have been raised during the assessment proceedings and must have been rejected. He observed that this penalty proceeding cannot take the character of assessment and cannot sit in judgment. It is pertinent to observe that the addition is only on the admission of the assessee that it withdrew its claim. Nowhere, it has been demonstrated that the claim of the assessee was false or bogus. Explanation 1 to section 271(1)(c) provides that, if the assessee fails to offer an explanation or offers an explanation which is found by the ld. Assessing Officer to be false, but now in the present case, the assessee has an explanation and it has buttressed this explanation with the following documentary evidence, i.e. (a) Trading of shares was done through broker in a recognized stock exchange. (b) Payment and receipt is through banking channel. (c) Documentary evidence for transactions like contract note, demat statement, and bank statement are enclosed. (d) We offered the loss voluntarily to avoid litigation and requested the Assessing Officer to not initiate penalty proceedings u/s 271(1)(c). (e) We paid the tax due and challan copy is enclosed. (f) No appeal is filed. In addition, the assessee referred to various case laws. These documents have not been held as false either by the ld. Assessing Officer during the assessment proceeding or during penalty proceeding. Therefore, the assessee does not deserve to be visited with penalty.”

In the present case, the assessee has fully disclosed the particulars of the capital gain and claimed the same as exempt u/s 10(38) of the Act and thus fully disclosed all the facts qua the gain on sale of shares. The case of the assessee is also supported by the decision of Hon'ble Apex Court in the case of CIT vs. Reliance Petroproducts (P.) Ltd [2010] 189Taxman322 (SC) in which the Apex Court has held that where the assessee has fully disclosed the particulars in the return of income then it is not liable to

penalty proceedings on the ground that the disclosure made by the assessee are not as per the provision of the Act or not acceptable to the revenue. Accordingly we set aside the order of Ld. CIT(A) and direct the AO to delete the penalty.

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

Order is pronounced in the open court on 30th November, 2023

Sd/-
(Sonjoy Sarma /संजय शर्मा)
Judicial Member/न्यायिक सदस्य

Sd/-
(Rajesh Kumar/राजेश कुमार)
Accountant Member/लेखा सदस्य

Dated: 30th November, 2023

SM, Sr. PS

Copy of the order forwarded to:

1. Appellant- Chetan Kumar Tekriwal (HUF), 11, Rajani Kumar Sen Lane, Bangabasi, Howrah-711101
2. Respondent – ITO, Ward-46(3), Kolkata
3. CIT(A)- NFAC, Delhi
4. Pr. CIT- , Kolkata
5. DR, Kolkata Benches, Kolkata (sent through e-mail)

True Copy

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata