

IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT

BEFORE SHRI PAWAN SINGH, JM & DR. A.L.SAINI, AM

आयकर अपील सं./ITA No.704/SRT/2023

(निर्धारणवर्ष / Assessment Year: (2013-14)

(Physical Court Hearing)

Vasimkhan Hamidkhan Pathan O Main Bazar, AT and PO Waghai Tal, Dang-394730	Vs.	Income Tax Officer Ward-5, Navsari, Income Ta Office, Charpool, Awabaug, Navsari-396445
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: BTPP 6081 B		
(अपीलार्थी /Appellant)		(प्रत्यर्थी /Respondent)

निर्धारिती की ओर से /Appellant by : Shri Mehul Shah, C.A

राजस्व की ओर से /Respondent by : Shri Vinod Kumar, Sr-DR

सुनवाईकीतारीख/ **Date of Hearing** : 18/12/2023

घोषणाकीतारीख/**Date of Pronouncement**: 21/12/2023

आदेश / O R D E R

PER DR. A. L. SAINI, ACCOUNTANT MEMBER:

Captioned appeal filed by the assessee, pertaining to assessment year 2013-14, is directed against the order passed by the National Faceless Appeal Centre, New Delhi [for short 'NFAC/Ld.CIT(A)'] dated 17.08.2023, which in turn arises out of a penalty order passed by the Assessing Officer u/s 271(1)(c) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act'), vide order dated 16.04.2019.

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

"1. On the facts and circumstances of the case as well as law on the subject, the learned CIT(A) has erred in confirming the action of Assessing Officer in levying penalty of Rs.17,253/- u/s 271(1)(c) of the I.T. Act, 1961.

2. It is therefore prayed that penalty levied by the assessing officer and confirmed by CIT(A) may please be deleted.

3. Appellant craves leave to add, alter or delete any ground(s) either before or in the course of hearing of the appeal."

3. Brief facts of the issue in dispute are stated as under. Assessee before us is an individual and did not file return of income for the assessment year 2013-14. The assessee's case was re-opened u/s 147/148 of the Act, after recording the reasons. The assessee filed his return of income u/s 148 of the Act, on 23.04.2018, declaring total income of Rs.3,67,500/-. The assessment order was passed u/s 143(3) r.w.s.147 of the Act, on 19.12.2018, determining the total income of Rs.3,67,500/- accepting the income declared in his return of income filed u/s 148 of the Act and penalty proceedings u/s 271(1)(c) were initiated on the income which was disclosed after detecting in the assessment proceedings. A notice 271(1)(c) r.w.s. 274 of the Act, was issued to the assessee on 19.12.2018, along with the assessment order. The assessee did not reply this notice.

4. During the penalty proceedings, the Assessing Officer noted that it is proved beyond doubt that assessee has committed a default of concealment of income. The penalty u/s 271(1)(c) is leviable to the extent of tax on the addition of Rs.3,67,500/-. The concealment has come to notice as a result of scrutiny assessment proceedings only. Had the case not been re-opened u/s 147/148 of the Act, the assessee would have succeeded in tax evasion. Considering the facts and circumstances of the case, Assessing Officer held that assessee had concealed his income by not filing the return of income and not showing his income and paying due taxes thereon and therefore Assessing Officer levied penalty u/s 271(1)(c) of the Act to the tune of Rs.17,253/-.

4. Aggrieved by the order of Assessing Officer, the assessee carried the matter in appeal before NFAC/Ld. CIT(A), who has confirmed the penalty imposed by the Assessing Officer. Aggrieved the assessee is in appeal before us.

5. We have heard both the parties. The only issue here is relating to penalty imposed amounting to Rs.17,253/- u/s 271(1)(c) of the Act. The assessee has furnished the return of income in response to notice u/s 148 for AY 2013-14 on 23.04.2018, declaring total income of Rs.3,67,500/-. The assessment order was passed u/s 143(3) r.w.s. 147 of the Act, on 09.12.2018 determining the total income of Rs.3,67,500/- accepting the income declared in assessee's return of income filed u/s 148 of the Act. The penalty proceedings u/s 271(1)(c) was initiated on the income which was disclosed after detecting in the assessment proceedings. A notice u/s 271(1)(c) r.w.s. 274 of the Act was issued to the assessee on 19.12.2018. The assessee did not reply in response to penalty notice dated 19.12.2018. Further, a fresh opportunity was granted to the assessee vide letter dated 02.04.2019 requesting it to show cause as to why penalty should not be levied in assessee's case. The assessee did not file any reply in response to show cause notice. As per the assessment order, the assessee had voluntarily disclosed income of Rs.3,67,500/- from business and profession in the return of income filed in response to notice u/s 148 of the Act. Hence, it is clear that assessee has *suo-moto* disclosed his income of Rs.3,67,500/- from business and profession. The Assessing Officer held that if he fails to re-open the case, the assessee shall be deemed to have concealed the particulars of income or furnished inaccurate particulars. Hence, the assessing officer held the assessee is liable for penalty u/s 271(1)(c) of the Act.

6. Before us Ld. Counsel for the assessee submitted that assessee has *suo- motu* disclosed his business income and paid tax thereon. The assessee has submitted *bona fide* explanation. The Ld. Counsel took us through paper book page-16 and stated that on the identical facts, the penalty u/s 271(1)(c) of the Act, was deleted by the co-ordinate Bench of ITAT Delhi Benches in

the case of Meeta Gutgutia vs. ACIT in ITA No.327/Del/2014 for A.Y. 2008-09 dated 31.03.2016, *wherein* the co-ordinate Bench of ITAT Delhi held that Assessing Officer had simply accepted the returned income u/s 148 of the Act. Hence, the penalty u/s 271(1)(c) will not be imposable. The Id Counsel also relied on the judgment of Hon`ble Supreme Court in CIT v. Suresh Chandra Mittal [2001] 251 ITR 963 (SC).

7. On the other hand, the Ld. DR for the Revenue has primarily reiterated the stand taken by the Assessing Officer and submitted that Assessing Officer has imposed the penalty because assessee did not file return of income. Had the assessee's case not been re-opened by the Department u/s 147 of the Act the assessee would not have paid the tax on the income concealed by him. Therefore, penalty imposed by the Assessing Officer should be confirmed.

8. We have considered the rival submissions and perused the relevant finding given in the order Id NFAC/Ld.CIT(A). We note that Assessing Officer initiated the penalty proceedings on account of concealment of particulars of income to the tune of Rs.3,67,500/-. However, in penalty proceeding, also the Assessing Officer levied the penalty on account of concealment of income. We note that Ld. Counsel submitted that assessee did not conceal the income and was in the *bona fide* believe that the said income, which was taxed u/s 147 of the Act, was not assessable under the Act. We note that there is no finding of the Assessing Officer in the assessment order that assessee has concealed his income; rather Assessing Officer has accepted the returned income filed by assessee, as it is, (in response to notice u/s 147 of the Act). We note that Hon`ble Madras High Court in the case of CIT v. K.R. Chinni Krishna Chetty [2000] 246 ITR 121 has held that under section 271(1)(c) of the Act the authority is given the

discretion to levy a penalty if there is concealment of particulars of income and even as regards the quantum of the penalty there is a discretion. Of greater importance is the necessity for a definite finding that there is concealment, as without such a finding of concealment, there can be no question of imposing any penalty. In the assessee's case, the AO has not given any finding in assessment order that the assessee had concealed any income or furnished inaccurate particulars of such income. He had simply accepted the returned income u/s 148 of the Act. Hence, assessee's case is covered by the decisions referred to above and penalty u/s 271(1)(c) will not be imposable.

9. We also note that the Co-ordinate Bench of ITAT Delhi, in the case of Meeta Gutgutia (supra), on the same identical facts, deleted the penalty under section 271(1)(C) of the Act, observing as follows:

“6. We have heard the rival submissions and perused the material on record. It is an undisputed fact that the returned income has been accepted, there is no satisfaction recorded by the assessing officer that assessee had concealed income with reference to return of income filed by him in response to notice u/s 148. Hon'ble Supreme Court in Varkey Chacko v. CIT [1993] 203 ITR 885 has held that a penalty for concealment of particulars of income or for furnishing inaccurate particulars of income can be imposed only when the assessing authority is satisfied that there has been such concealment or furnishing of inaccurate particulars. A penalty proceeding, therefore, can be initiated only after an assessment order has been made which finds such concealment or furnishing of inaccurate particulars. The penalty was permissible under the law on the date on which the offence of concealment of income was committed, that is to say, on the date of the offending return. Hon'ble Madras High Court in the case of CIT v. K.R. Chinni Krishna Chetty [2000] 246 ITR 121 has held that under section 271(1)(c) of the Act the authority is given the discretion to levy a penalty if there is concealment of particulars of income and even as regards the quantum of the penalty there is a discretion. Of greater importance is the necessity for a definite finding that there is concealment, as without such a finding of concealment, there can be no question of imposing any penalty. In the assessee's case, the AO has not given any finding in assessment order that the assessee had concealed any income or furnished inaccurate particulars of such income. He had simply accepted the returned income u/s 148. Hence assessee's case is covered by the decisions referred to above and penalty u/s 271(1)(c) will not be imposable. In CIT v. Suresh Chandra Mittal [2001] 251 ITR 963 (SC) the assessee filed revised returns showing higher income after search and notice for reopening of assessment, to purchase peace and avoid litigation and Department

simply rested its conclusion on the act of voluntary surrender done by the assessee in good faith, High Court was justified in holding that no penalty could be levied. The assessee's case is on more strong footing as that of Suresh Chand Mittal (supra) decided by Hon'ble Supreme Court. As held in earlier paragraphs there should be variation in assessed and returned income and such variation should be as a result of concealment. It is not the case of assessing officer that penalty u/s 271(1)(c) has been imposed on certain additions made to the returned income. Hon'ble Delhi High Court in the case of M/S S.A.S. Pharmaceuticals (supra) while deciding the issue levy of penalty u/s 271(1)(c) in paragraph 15 has held as under:

“15. It necessarily follows that concealment of particulars of income or furnishing of inaccurate particulars of income by the assessee has to be in the income tax return filed by it. There is sufficient indication of this Court in the judgment in the case of Commissioner of Income Tax, Delhi-I Vs Mohan Das Hassa Nand 141 ITR 203 and in Reliance Petro products Pvt. Ltd (supra), the Supreme court has clinched this aspect, viz., the assessee can furnish the particulars of income in his return and everything would depend upon the income tax return filed by the assessee.”

*7. Therefore, in view of the facts of the case we are of the opinion that no penalty was imposable u/s 271(1)(c) of the Act and we accordingly direct the AO to **delete the penalty.**”*

10. Therefore, based on the facts and circumstances, as narrated above, and respectfully following the precedent applicable to the assessee's facts, we delete the penalty imposed by the Assessing Officer. This ground of assessee's appeal is allowed.

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

Order is pronounced on 21/12/2023 in the open court.

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

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

सूक्त Surat/दिनांक/ Date: 21/12/2023

Dkp Outsourcing Sr.P.S.

Copy of the Order forwarded to

1. The Assessee
2. The Respondent
3. The CIT(A)
4. Pr.CIT
5. DR/AR, ITAT, Surat
6. Guard File

By Order

// True Copy //

Assistant Registrar/Sr. PS/PS
ITAT, Surat