

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ "बी", चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL, CHANDIGARH BENCH "B", CHANDIGARH

HEARING THROUGH: HYBRID MODE

श्री आकाश दीप जैन, उपाध्यक्ष एवं श्री विक्रम सिंह यादव, लेखा सदस्य
BEFORE: SHRI. AAKASH DEEP JAIN, VP & SHRI. VIKRAM SINGH YADAV, AM

आयकर अपील सं. / ITA NO. 422/Chd/2023
निर्धारण वर्ष / Assessment Year : 2012-13

Vasdev S/o Shri Mukand Singh Vasdev Ward No. 7, Near Old Tehsil, Moonak (Sangrur)	बनाम	The ITO Sunam H.O. Sangrur
स्थायी लेखा सं./PAN NO: AGBPV5346B		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारित की ओर से/Assessee by : Shri Ritesh Anand, Advocate and
Shri Deepak Anand, Advocate
राजस्व की ओर से/ Revenue by : Shri Dharam Vir, JCIT, Sr. DR for
Shri Sarabjeet Singh, CIT,DR

सुनवाई की तारीख/Date of Hearing : 26/02/2024
उद्घोषणा की तारीख/Date of Pronouncement : 28/02/2024

आदेश/Order

PER VIKRAM SINGH YADAV, A.M. :

This is an appeal filed by the Assessee against the order of the Ld. CIT(A), NFAC, Delhi dt. 09/06/2023 pertaining to Assessment Year 2012-13, wherein the assessee has challenged the sustenance of penalty of Rs. 12,386/- under Section 271(1)(C) of the Act.

2. Briefly the facts of the case are that the assessee did not file any original return of income within the time prescribed under section 139(1) of the Act. Thereafter, basis information that the assessee had made certain payments amounting to Rs. 65,56,809/- to various parties and after conducting enquiries under section 133(6), reasons were recorded by the Assessing officer for

escapement of income and notice under section 148 was issued to the assessee on 29/03/2019. Thereafter, in response to the notice under section 148, no return of income was filed by the assessee. Thereafter, the AO issued notice under section 142(1) on 05/07/2019 wherein the assessee was asked to prepare a true and correct return of income. Again, there was no compliance on the part of the assessee. Thereafter, notice under section 142(1) alongwith questionnaire were issued on 11/10/2019 and in response to that, the assessee filed his submissions which were taken into consideration but not found acceptable by the AO. As per the AO, it is not possible to ascertain the correct business result due to non maintenance of books of account and related documents and taking into consideration the material available on the record wherein the assessee had made total payment of Rs. 65,56,809/- to various parties for purchase of liquor and amount of Rs. 51,30,000/- was paid to Excise Department, the AO went ahead and applied net profit rate of 2.60% on Rs. 1,16,86,809/- and the assessed income was accordingly determined at Rs. 3,03,857/- in terms of order passed u/s 144 r/w 147 of the Act. Separately, while passing the assessment order, the AO also recorded his satisfaction that the assessee has willfully concealed particulars of his income and therefore penalty proceedings under section 271(1)(c) were separately initiated and notice under section 274 r.w.s 271(1)(c) dt. 28/12/2019 was issued and served on the assessee. Thereafter, the case of the assessee was transferred to the NFAC and a fresh notice dt. 24/05/2021 was issued and in response, the assessee filed his

submission dt. 25/05/2021 which was taken into consideration but not found acceptable to the AO.

2.1 As per the AO, during the course of penalty proceedings nothing has been brought on record to substantiate that there was no concealment of income on the part of the assessee and therefore the AO recorded his finding that the assessee has concealed the particulars of income within the meaning of Section 271(1)(C) of the Act and income in respect of which the assessee has concealed particulars of his income for which tax has been sought to be evaded was determined at Rs. 3,03,857/- and penalty @ 100% of tax sought to be evaded amounting to Rs. 12,386/- was imposed on the assessee.

3. Being aggrieved, the assessee carried the matter in appeal before the Ld. CIT(A), NFAC , Delhi. As per the Ld. CIT(A), the submission of the assessee against the levy of penalty was ambiguous and baseless as the assessee has accepted the addition of Rs. 3,03,855/- notwithstanding the fact that the same was estimated and no further appeal against the said addition has been filed by the assessee. It was further held that no evidence has been furnished in support of the claim that there was no concealment of income on the part of the assessee. Accordingly the findings of the AO in terms of levy of penalty amounting to Rs. 12,386/- under section 271(1)(C) were confirmed.

4. Against the said findings and the direction of the Ld. CIT(A), the assessee is in appeal before us.

5. During the course of hearing, the Ld. AR submitted that the said addition has been made on the basis of estimation and there was no finding that there was any concealment of income on the part of the assessee. It was submitted that there are various Courts and Tribunal decisions wherein the penalty levied on the basis of estimated addition have been deleted and drawing support from the same, it was submitted that the penalty was levied on the estimation of income should be directed to be deleted. It was further submitted that in the preceding assessment year 2011-12, under similar facts and circumstances of the case wherein the income was estimated by the AO and penalty was initiated under section 271(1)(C) of the Act, the AO himself has dropped the penalty proceedings. It was accordingly submitted that following the principle of consistency, the assessee be allowed the necessary relief for the impugned assessment year and the penalty be directed to be deleted.

6. Per contra, the Ld. DR submitted that it is a case where the assessee has failed to furnish the return of income as prescribed under section 139(1) of the Act and even in respect of notice under section 148, no return of income has been furnished by the assessee. It was submitted that the AO thereafter left with no option had proceeded and passed the best judgment order under section 144 r.w.s 147 of the Act wherein based on the payment and the purchase made

by the assessee which are not in dispute, the AO had determined the net profit and total income in hands of the assessee. It was accordingly submitted that the estimation of income has to be read in the context of the facts and circumstances of the present case wherein the assessee has failed to even file the return of income and therefore it is a clear case of concealment of income on the part of the assessee. He accordingly supported the order and the findings of the lower authorities.

7. We have heard the rival contentions and perused the material available on the record. From the perusal of the records, it is manifestly clear that the assessee has not filed any original return of income within the time prescribed under section 139(1) of the Act. Thereafter, basis information that certain payment have been made by the assessee, the AO recorded reasons for escapement of income and notice under section 148 was issued on 29/03/2019. Thereafter, the assessment proceedings have been concluded under section 144 r.w.s 147 of the Act wherein the AO has determined total income at Rs. 3,03,855/-. We therefore agree with the contention of the Ld. DR that it is a case where there is a complete failure on the part of the assessee in disclosing his income and therefore it is a clear case of concealment of income. In such fact pattern, we find that basis material on record which is again not disputed by the assessee, where the AO has subsequently estimated the income, factum of concealment of income is not diluted and continue to exist.

8. In this regard, necessary reference can be drawn to the Explanation 3 of Section 271(1)(c) of the Act which provide that where any person fails without reasonable cause to furnish within the time prescribed under section 139, a return of his income which he is required to furnish under section 139 in respect of any assessment year and until the expiry of the period specified therein, no notice has been issued to him under section 142 or under section 148 and the AO is satisfied that in respect of such assessment year, such person has taxable income then such person shall for the purpose of clause (c) of sub section of Section 271 be deemed to have concealed the particulars of his income in respect of such assessment year notwithstanding such person furnishes the return of income at any time after expiry of the period specified in pursuance of notice under section 148 of the Act.

9. In the instant case, no return of income has been filed within time prescribed u/s 139(1) and there is no explanation as to the reasons for such non-filing and after the prescribed period of filing of the return of income as so prescribed, the AO has recorded his satisfaction regarding escapement of income and the notice u/s 148 has been issued on 29/03/2019, we therefore find that it is a clear case of concealment of income and therefore the finding of the AO as well as that of the Ld. CIT(A) are hereby confirmed.

10. At the same time, for the purpose of quantifying the amount of penalty, what needs to be determined is amount of tax sought to be evaded by the

assessee and for the purpose, necessary reference can be drawn to Clause (c) of Explanation – 4 which provides that “wherein in any case to which Explanation 3 applies, the amount of tax sought to be evaded shall be the tax on the total income assessed as reduced by the amount of advance tax, tax deducted at source, tax collected at source and self-assessment tax paid before the issue of notice under section 148 of the Act.”

11. In the instant case, on perusal of record and in particular, reference can be drawn to the submission of the assessee which were filed during the course of assessment proceedings and which find mention in para 2 of the assessment order wherein the assessee has stated that “the total purchases during the year under question are Rs. 32,78,405.00 against which total tax collected at source under section 206CA amounting to Rs. 32,788/- which duly reflected in Form No. 26AS which was downloaded online.” We therefore find that in the instant case there is a TCS amounting to Rs. 32,788/- collected well before the issuance of notice u/s 148 which is mentioned in Form 26AS and which is not in dispute and for the purpose of tax sought to be evaded, the assessee deserves the necessary credit in terms of the TCS so collected. Where the credit of TCS of Rs 32,788/- is given to the assessee against Rs 12,386/-, there won't be any tax sought to be evaded and therefore on account of the same, we find that there is no tax sought to be evaded and therefore no question of consequent levy of

penalty on the assessee. In view of the same, the levy of penalty amounting to Rs. 12,386/- is hereby directed to be deleted.

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

Order pronounced in the open Court on 28/02/2024

Sd/-

आकाश दीप जैन
(AAKASH DEEP JAIN)
उपाध्यक्ष / VICE PRESIDENT

Sd/-

विक्रम सिंह यादव
(VIKRAM SINGH YADAV)
लेखा सदस्य/ ACCOUNTANT MEMBER

AG

Date: 28/02/2024

आदेश की प्रतिलिपि अग्रेषित/ Copy of the order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. आयकर आयुक्त (अपील) / The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्ड फाईल/ Guard File

आदेशानुसार/ By order,
सहायक पंजीकार/ Assistant Registrar