

IN THE INCOME TAX APPELLATE TRIBUNAL "C" BENCH KOLKATA

**Shri Sonjoy Sarma, Judicial Member
Shri Sanjay Awasthi, Accountant Member**

**I.T.A. No. 22/Kol/2024
Assessment Year: 2012-13**

**Jitendra Kumar Jain (HUF),
1st Floor, 444, Rabindra Sarani,
B.K. Paul Avenue, Kolkata - 700005
[PAN: AADHJ2698N] Appellant**

vs.

**Income Tax Officer
Ward 43(1), Kolkata,
3, Government Place West,
Kolkata - 700001 Respondent**

Appearances by:

Assessee represented by : Shri Manish Tiwari, FCA
Department represented by : Shri Prabhakar Prakash Ranjan,
Addl. CIT, Sr. DR

Date of concluding the hearing : July 22, 2024

Date of pronouncing the order : July 24, 2024

ORDER

Per Sonjoy Sarma, Judicial Member:

This appeal filed by the assessee pertaining to the Assessment Year (in short 'AY') 2012-13 is directed against the order passed u/s 250 of the Income Tax Act, 1961 (in short the 'Act') by the National Faceless Appeal Centre (NFAC), Delhi, dated 06.11.2023 arising out of Penalty Order dated 06.09.2021, passed under Section 271(1)(c) of the Act.

2. The Assessee has raised the following grounds of appeal:

"1.) That on the facts and in the circumstances of the case, the Ld. CIT(A) is erred in confirming the order u/s 271(1)(c) dated 06.09.2021 of AO imposing penalty of Rs. 3,42,614/-.

2) The appellant craves the leave to make an addition, alteration modification of the grounds either before the start of the appellate proceedings or in course of appellate proceedings."

3. Brief facts of the case are that the assessee filed its return of income for AY 2012-13 declaring total income of Rs. 4,66,837/-. The return of the assessee was duly processed under Section 143(1) of the Act. Subsequently, information from the Investigation Wing of the Department was received relating to misuse of stock exchange platform where the assessee's name had been listed one of the beneficiary of accommodation entry in the garb of long term capital gains on manipulation of penny stock company. The case of the assessee was reopened under Section 147 of the Act. In response to show cause notice assessee surrendered claim of exempt income and accepted the proposed addition of Rs. 12,30,896/- as income from other sources by paying tax of Rs. 6,69,530/- thereon. Accordingly, assessment was completed under Section 143(3) read with Section 147 of the Act by adding Rs. 12,30,896/- to the return income as undisclosed income. In addition to the above a separate penalty proceedings was also initiated under Section 271(1)(c) of the Act whereby the Ld. AO imposed penalty of Rs 3,42,614/- on the assessee for wilfully furnishing inaccurate particulars of income.

4. Aggrieved by the above order, assessee went in appeal before the Ld. CIT(A), where the Ld. CIT(A) did not bring any relief to the assessee. Dissatisfied with the above order, assessee is in appeal before this Tribunal raising multiple grounds. However, the main grievance of the assessee is that confirmation of penalty of Rs. 3,42,614/- by the Ld. CIT(A) as levied by AO under Section 271(1)(c) of the Act is not correct and liable to be deleted. On this context, the Ld. AR stated that the Ld. AO nowhere demonstrate as to

how the long term capital gain claimed by the assessee is a bogus. He stated that the Ld. AO issued show cause notice and assessee withdraw its claim which is in order to avoid further litigation with the department. He stated that the instant addition is only on the admission of the assessee that it withdrew its claim. Nowhere it has been demonstrated that claim of the assessee was false or bogus or that the explanation offered by the assessee was found by AO to be false. The Ld. AO has not discussed anything on merits as to how the penalty was imposable within the terms of section 271(1)(c) of the Act. Ld. AR further submitted that the assessment proceeding is distinct and different from the penalty proceeding, in present case the Ld. AO has only issued show cause notice to the assessee and thus proceeded to imposed the penalty by ignoring the fact that the assessee has made disclosure of income during the reassessment proceedings in the present case. Therefore, the addition is only on the basis of admission made by the assessee during the reassessment proceedings and the AO nowhere demonstrate that claim of the assessee was false or bogus either during the assessment proceedings or during the penalty proceedings. The case of the assessee finds support from the decision of the coordinate 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 Id. 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 Id. Assessing Officer during the assessment proceeding or during penalty proceeding. Therefore, the assessee does not deserve to be visited with penalty."

5. We after considering facts of the present case and considering the judgment rendered by the assessee we find that 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.

Kolkata, the 24th July, 2024.

Sd/-
[Sanjay Awasthi]
Accountant Member

Sd/-
[Sonjoy Sarma]
Judicial Member

Dated: 24.07.2024.
AK, PS

Copy of the order forwarded to:

- 1 Jitendra Kumar Jain (HUF),
2. Income Tax Officer, Ward 43(1), Kolkata
3. CIT(A)-
4. CIT- ,
5. CIT(DR),

//True copy//

By order

Assistant Registrar, Kolkata Benches