

आयकर अपीलीय अधिकरण
दिल्ली पीठ "एसएमसी", दिल्ली
श्री विकास अवस्थी, न्यायिक सदस्य

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "SMC", DELHI
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER

आअसं.2779/दिल्ली/2024 (नि.व. 2013-14)

ITA No.2779/DEL/2024 (A.Y.2013-14)

Ashok Goyal

H.No. 228/48, Ward No. 11,

Devi Nagar (115), Tehsil Paonta Sahib,

Sirmaur, Himachal Pradesh 173025

PAN: ABEPG-4250-F

..... अपीलार्थी/Appellant

बनाम Vs.

Deputy Commissioner of Income Tax,

Central Circle-2, Noida, Uttar Pradesh 201307

..... प्रतिवादी/Respondent

अपीलार्थी द्वारा/ Appellant by : Ms. Tanya, Advocate

प्रतिवादीद्वारा/ Respondent by : Ms. Shivani Bansal, Sr. DR

सुनवाई की तिथि/ Date of hearing : 12/09/2024

घोषणा की तिथि/ Date of pronouncement: 12/09/2024

आदेश/ORDER

PER VIKAS AWASTHY, JM:

This appeal by the assessee is directed against the order of Commissioner of Income Tax (Appeals)-3 Noida (hereinafter referred to as 'the CIT(A)') dated 02.04.2024, for assessment year 2013-14 confirming levy of penalty u/s. 271(1)(c) of the Income Tax Act, 1961(hereinafter referred to as 'the Act').

2. Ms. Tanya, appearing on behalf of the assessee narrating facts of the case stated that a search & seizure action was conducted on 'Tirupati Sunworld Group of Companies' on 11/11/2014. The assessee being director of the group companies was also covered under the search. Assessment u/s. 153A r.w.s 143(3) of the Act was completed in the case of assessee accepting total income of Rs. 15,55,048/- vide assessment order dated 31.12.2016. During the course of search, some documents were seized. Based on the seized documents, initially, addition of Rs. 7,11,373/- was made in the hands of assessee in assessment year 2014-15. The assessee carried the issue in appeal before the CIT(A). The CIT(A) held that the amount of Rs. 7,11,373/- represents unexplained expenditure belonging to AY 2013-14. The CIT(A) directed the AO to execute appropriate action under provisions of the Act to assess the said income in accordance with provisions of the Act. Consequent to aforesaid directions of the CIT(A), assessment for AY 2013-14 was reopened. Notice u/s. 148 of the Act was issued to the assessee on 14.01.2022. In response to said notice the assessee filed his return of income on the same date declaring total income of Rs. 22,66,420/-. In the said return of income, the assessee offered to tax unexplained expenditure of Rs. 7,11,373/- and paid tax on the said amount. The return filed by the assessee in response to notice u/s. 148 of the Act was accepted vide assessment order dated 22.03.2022 passed u/s. 147 r.w.s 143(3) of the Act. No fresh addition was made. However, the AO initiated penalty proceedings u/s. 271(1)(c) of the Act for concealment of income in respect of unexplained expenditure amounting to Rs. 7,11,373/-. The Id. Counsel for the assessee submits that once return of income is accepted and no addition is made in assessment proceeding, no penalty u/s. 271(1)(c) of the Act can be levied. The

penalty under aforesaid section can be levied only when there is some addition or disallowance. In support of her submissions she placed reliance on the following decisions:-

(i) CIT vs. SAS Pharmaceuticals, 335 ITR 259 (Del); and

(ii) Armoury International vs. ACIT in ITA No. 3299 of 2017 decided on 01.01.2019

2. Ms. Shivani Bansal, representing the department vehemently defended the impugned order and prayed for dismissing appeal of the assessee. The Id. DR submitted that but for search operation, the assessee would not have offered unexplained expenditure to tax and the said income would have escaped tax net. The assessee had concealed the income, therefore penalty proceedings u/s. 271(1)(c) of the Act have been rightly initiated and accordingly penalty has been levied.

3. Both sides heard, orders of authorities below examined. A search & seizure operation u/s. 132 of the Act was carried in the premises of Tirupati Sunworld Group of Companies. The assessee was also covered under the said search being one of the directors of the group company. During the course of search a document Annexure-E was seized. Based on the said document an addition of Rs. 7,11,373/- was made in the hands of the assessee in AY 2014-15. In First Appellate proceedings for AY 2014-15, the CIT(A) held that the aforesaid seized document belongs to AY 2013-14 and deleted the addition in AY 2014-15. However, the CIT(A) directed the AO to execute appropriate action under the provisions of the Act to assess/reassess aforesaid amount. Sequitur, to the observations of CIT(A), assessment proceedings u/s. 148 of the Act for AY 2013-14 were initiated against

the assessee for AY 2013-14. In response to notices u/s. 148 of the Act for AY 2013-14, the assessee filed return of income and offered Rs. 7,11,373/- to tax. The return of income filed by the assessee was accepted by the AO without any addition vide order dated 22.03.2022 passed u/s. 147 r.w.s. 143(3) of the Act. However, the AO initiated penalty proceedings u/s. 271(1)(c) of the Act for concealment of income. The AO vide order dated 23.09.2022 levied penalty u/s. 271(1)(c) of the Act, accordingly.

4. The short contention of the assessee is that there is no addition or disallowance in the return of income therefore, penalty u/s. 271(1)(c) of the Act cannot be levied. Before proceeding further it would be relevant to refer Explanations 1 of section 271(1) of the Act:-

Explanation 1.-Where in respect of any facts material to the computation of the total income of any person under this Act,—

(A) such person fails to offer an explanation or offers an explanation which is found by the Assessing Officer or the Joint Commissioner (Appeals) or the Commissioner (Appeals) or the Principal Commissioner or Commissioner to be false, or

(B) such person offers an explanation which he is not able to substantiate and fails to prove that such explanation is bona fide and that all the facts relating to the same and material to the computation of his total income have been disclosed by him,

then, the amount added or disallowed in computing the total income of such person as a result thereof shall, for the purposes of clause (c) of this sub-section, be deemed to represent the income in respect of which particulars have been concealed

5. A bare perusal of Explanation 1 to section 271(1) of the Act would show that penalty can be levied only where any amount is added or disallowed in computing total income. Where no addition has been made or no amount is disallowed in

computing total income, the machinery provision for levy of penalty u/s. 271(1)(c) of the Act would not get ignited. Hence, where the returned income and assessed income are same, penalty u/s. 271(1)(c) of the Act is not leviable.

6. The Hon'ble Jurisdictional High Court in the case of CIT vs SSA Pharmaceuticals (supra) has held that for imposing penalty u/s. 271(1)(c) of the Act, concealment of particulars of income or furnishing of inaccurate particulars of income by the assessee has to be in the return of income filed by it. For the sake of completeness relevant extract of the observations made by the Hon'ble High Court, are reproduced herein under:-

13. It is not the case of furnishing inaccurate particular of income, as in the income-tax return, particulars of income have been duly furnished and the surrendered amount of income was duly reflected in the income-tax return. The question is whether the particulars of income were concealed by the assessee or not. It would depend upon the issue as to whether this concealment has reference to the income-tax return filed by the assessee, viz., whether concealment is to be found in the income-tax return.

14. We may, first of all, reject the contention of the learned counsel for the revenue relying upon the expression 'in the course of any proceedings under this Act' occurring in sub-section (1) of section 271 of the Act and contending that even during survey when it was found that the assessee had concealed the particular of his income, it would amount concealment in the course of 'any proceedings'. The words 'in the course of any proceedings under this Act' are prefaced by the satisfaction of the Assessing Officer or the Commissioner of Income-tax (Appeals). When the survey is conducted by a survey team, the question of satisfaction of Assessing Officer or the Commissioner (Appeals) or the Commissioner does not arise. We have to keep in mind that it is the Assessing Officer who initiated the penalty proceedings and directed the payment of penalty. He had not recorded any satisfaction during the course of survey. Decision to initiate penalty proceedings was taken while making assessment order. It is, thus, obvious that the expression 'in the course of any proceedings under this Act' cannot have the reference to survey proceedings, in this case.

15. It necessarily follows that concealment of particulars of income or furnishing of inaccurate particular of income by the assessee has to be in the income-tax return filed by it. There is sufficient indication of this in the judgment of this Court in the case of CIT v. Mohan Das Hassa Nand [1983] 141 ITR 203 / 13 Taxman 328 and in Reliance Petroproducts (P.) 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. This

view gets supported by Explanation 4 as well as Explanations 5 and 5A to section 271 of the Act as contended by the learned counsel for the respondent.

16. No doubt, the discrepancies were found during the survey. This has yielded income from the assessee in the form of amount surrendered by the assessee. Presently, we are not concerned with the assessment of income, but the moot question is to whether this would attract penalty upon the assessee under the provisions of section 271(1)(c) of the Act. Obviously, no penalty can be imposed unless the conditions stipulated in the said provisions are duly and unambiguously satisfied. Since the assessee was exposed during survey, may be, it would have not disclosed the income but for the said survey. However, there cannot be any penalty only on surmises, conjectures and possibilities. Section 271(1)(c) of the Act has to be construed strictly. Unless it is found that there is actually a concealment or non-disclosure of the particulars of income, penalty cannot be imposed. There is no such concealment or non-disclosure as the assessee had made a complete disclosure in the income-tax return and offered the surrendered amount for the purposes of tax.

[Emphasized]

7. Similar, view has been expressed by Division Bench of Tribunal in the case of Armoury International vs. ACIT (supra) following the decision in the case of SAS Pharmaceuticals (supra).

8. Thus, in light of facts of the case and decisions cited above, the AO is directed to delete the penalty.

9. In the result, impugned order is set aside and appeal of the assessee is allowed.

Order pronounced in the open court on Thursday the 12th day of September, 2024.

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य/JUDICIAL MEMBER

दिल्ली/Delhi, दिनांक/Dated 12/09/2024

NV/-

प्रतिलिपि अग्रेषित Copy of the Order forwarded to :

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. The PCIT
4. विभागीय प्रतिनिधि, आय.अपी.अधि., दिल्ली /DR, ITAT, दिल्ली
5. गार्ड फाइल/Guard file.

BY ORDER,

//True Copy//

(Dy./Asstt. Registrar) ITAT, DELHI