

IN THE INCOME TAX APPELLATE TRIBUNAL “B” BENCH, KOLKATA
[Before Shri Sanjay Garg, JM & Shri Rajesh Kumar, AM]

I.T.A. No. 619/Kol/2024
Assessment Year: 2012-13

Sweta Chirimar 4B, Swarnlata Street, Kolkata-700029. (PAN: AEDPC7684R)	Vs.	DCIT, Circle-29(1), Kolkata
Appellant		Respondent

Date of conclusion of Hearing	25.07.2024
Date of Pronouncement	15.10.2024
For the Assessee	Shri Miraj D. Shah, AR
For the Respondent	Shri P. P. Barman, Addl. CIT, Sr. DR

ORDER

Per Shri Rajesh Kumar, AM

This appeal filed by the assessee is against the order of Ld. CIT(A), National Faceless Appeal Centre (NFAC), Delhi dated 22.11.2023 for AY 2012-13.

2. The issue raised by the assessee is against the order of Ld. CIT(A) confirming the penalty of Rs.1,21,470/- as levied by the AO u/s. 271(1)(c) of the Income-tax Act, 1961 (hereinafter referred to as the “Act”).

3. Brief facts are that the return was filed u/s. 139(1) of the Act on 28.03.2013 declaring total income of Rs.1,99,770/- which was processed u/s. 143(1) of the Act on 23.04.2013. Thereafter, the case of the assessee was reopened by issuing notice u/s. 148 of the Act on 30.03.2019 and statutory notices were duly issued and served upon the assessee. During the course of assessment proceeding the assessee filed revised computation of income disclosing total income at Rs.8,69,900/- as against the returned income of Rs.1,99,770/- and finally the assessment was completed u/s. 143(3) r.w.s. 147 of the Act on 17.12.2019 assessing the total income at Rs.9,24,410/-. The assessee has claimed the Long Term Capital Gain (LTCG) on sale of shares of Rs.6,70,139/- as exempt u/s. 10(38) of the Act which was withdrawn during the course of assessment proceedings and consequently, the sale consideration of the shares of Rs.7,20,139/- was treated as unexplained cash credit u/s. 68 of the Act in the assessment framed by the AO. The AO levied penalty on the said addition made u/s. 68 of the Act of Rs.7,24,641/- on the ground that assessee has concealed the particulars of income and thereby levied penalty @ 100% of the tax sought to be evaded

by the assessee of Rs.1,24,470/- u/s. 271(1)(c) of the Act which was also affirmed by the appellate authority.

4. After hearing the rival contentions and perusing the material available on record, we find that the assessee claimed deduction of LTCG on sale of shares of Rs.6,70,139/- u/s. 10(38) of the Act. The assessee has sold the shares for a gross consideration of Rs.7,21,039/-. During the reassessment proceeding the assessee *suo moto* filed a revised computation withdrawing the claim made u/s. 10(38) of the Act and finally the assessment culminated u/s. 143(3) r.w.s. 147 of the Act in which the AO made addition on entire sale consideration of Rs.7,20,139/- u/s. 68 of the Act. Now the issue before us whether the assessee concealed particular of income where the assessee has himself withdrawn the said claim during the assessment proceeding and offered the income to tax. We also note that the AO has not found anything incorrect in the claim u/s. 10(38) of the Act and simply after withdrawing the claim during the assessment proceeding the same was added to the income of the assessee but in place of LTCG the entire sale consideration was added. In our opinion, the said sum is not liable for penalty u/s. 271(1)(c) of the Act. The case of the assessee finds support from the decision of Coordinate bench in the case of Sarika Dugar Vs. ITO, ITA No. 363/Kol/2023 dated 16.11.2023 wherein the Coordinate Bench has held as under:

“7. We have heard rival contentions and perused the record placed before us. Penalty u/s 271(1)(c) of the Act at Rs.1,50,000/- is in challenge before us. The ld. Counsel for the assessee, firstly has taken a legal ground contending that the penalty order u/s 271(1)(c) of the Act is barred by limitation. He took us through the provisions of Section 275 of the Act which deals with the bar on imposing of penalties and referring to Section 275(1)(c) of the Act it was stated that the penalty order was required to be framed either after the expiry of the financial year in which the proceedings, in the course of which action for the imposition of penalty has been initiated are completed, or six months from the end of the month in which action for imposition of penalty is initiated, whichever period expires later. The assessment order u/s 143(3)/147 of the Act was framed on 03/12/2019 and in the very same assessment order, penalty proceedings were initiated but finally the order was framed on 17/01/2022. Though, the period referred in Section 275(1)(c) of the Act expired before the framing of penalty order on 17/01/2022, we, however considering the fact that from March, 2021 onwards the country passed through Covid-19 Pandemic and various restrictions were made and period of limitation has been extended by the Hon’ble Supreme Court in the case of suo moto Writ Petition (C) No. 3 of 2020 dated 10.01.2022 by which the period from 15.03.2020 to 28.02.2022 has been directed to be excluded for the purpose of limitation and in addition a further period of 90 days has also been granted for providing the limitation from 01.03.2022. The ld. D/R also placed copy of Notification No. 74/2021, dt. 25/06/2021, stating that the limitation period has been extended.”

8. Under these given facts, we find that the penalty order u/s 271B of the Act is not barred by limitation and thus, is a legally sustainable order. We, thus fail to find any merit in the legal ground raised by the assessee and the same is dismissed.

9. As far as the merits are concerned, the assessee in the original return filed on 23/03/2014, has undisputedly disclosed the transactions of earning long term capital gain from sale of equity share from Quest Financial Services Ltd.. The details of the said transactions forms part of the original return of income and, therefore, so far as the particulars of income are concerned, they have been accurately furnished and, therefore, cannot be said to be inaccurate filing of particulars of income. However, when the case was reopened on the basis of certain information, the assessee has suo-moto offered it to tax during the course of reassessment proceedings itself and had paid the taxes and not challenged the addition before the appellate authorities. Now so far as the alleged transactions of long term capital gains in concerned, the assessee has carried out through banking channel and shares were transferred through DMAT account and security transaction tax was duly paid and, therefore, so far as the conditions provided u/s 10(38) of the Act was concerned, the same were duly complied based on which the assessee furnished the ITR and claimed the said exemption. Now, post filing of income tax return, there were certain information available with the Income tax department through its investigation wing along with information received through SEBI about few companies which were indulged in providing accommodation entries and were said to be penny stock companies. Such type of transactions have been carried out by various assesseees across the country and the matters have been travelling at the higher appellate authorities and some matters have even reached to the levels of Hon'ble High Courts of various States and in some cases the assesseees have got relief also. So it is an admitted fact that this issue of claiming long term capital gain from the alleged penny stock companies have been accepted to be a question of law before the Hon'ble High Courts and both the views have been taken. The assessee though claiming exemption in the income tax return but thereafter during the course of reassessment proceedings accepted the said sum as income, even though nothing specific has been found against the assessee.

10. We, therefore, are of the considered view that under these given facts and circumstances are inclined to hold that the assessee should not be visited with the penalty u/s 271(1)(c) of the Act and accordingly, delete the impugned penalty and allow the grounds raised on merits of the case.”

5. We, therefore, respectfully following the decision of the Coordinate Bench set aside the order of Ld. CIT(A) and direct the AO to delete the penalty as the same does not constitute any concealment of particulars of income by the assessee. Therefore, the appeal of the assessee is allowed.

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

Order is pronounced in the open court on 15th October, 2024

Sd/-
(Sanjay Garg)
Judicial Member

Sd/-
(Rajesh Kumar)
Accountant Member

Dated: 15th October, 2024

JD, Sr. PS

Copy of the order forwarded to:

1. Appellant–
2. Respondent .
3. CIT(A), NFAC Delhi
4. CIT,
5. DR, ITAT, Kolkata,
True Copy

By Order

Assistant Registrar
ITAT, Kolkata Bench, Kolkata