



IN THE INCOME TAX APPELLATE TRIBUNAL,
CUTTACK BENCH, CUTTACK

BEFORE SHRI GEORGE MATHAN, JUDICIAL MEMBER
AND
MANISH AGARWAL, ACCOUNTANT MEMBER

ITA No.218/CTK/2023
Assessment Year : 2014-15

Smt. Poonam Pujari, B-41, Ananta Vihar, Phase-II, Bhubaneswar	Vs.	Pr. CIT, Sambalpur
PAN/GIR No.ALRPP 1409 N		
(Appellant)	..	(Respondent)

Assessee by : Shri B.R.Panda, Adv
Revenue by : Shri Sanjay Kumar, CIT DR

Date of Hearing : 23/10/2024
Date of Pronouncement : 23/10/2024

ORDER

IMPARTIAL, EASY AND
SPEEDY JUSTICE

Per Bench

This is an appeal filed by the assessee against the order of the Id Pr.CIT, Sambalpur dated 3.3.2023 in Appeal No. ITBA/PNL/F/271(1)(c).2022-23/1050393233(1) for the assessment year 2014-15

2. Shri B.R.Panda, Id AR appeared for the assessee and Shri Sanjay Kumar, Id CIT DR appeared for the revenue.

3. Ld AR has filed an adjournment letter, which reads as under:

10/10/24
le
noted

**IN THE HON'BLE INCOME TAX APPELLATE TRIBUNAL,
CUTTACK BENCH, CUTTACK**

ITA No.218/CTK/2023

In the matter of: Smt. Poonam Pujari,
At present B-41 Ananta Vihar, Phase -II,
Bhubaneswar-751020
PAN: ALRPP1409N. ... Appellant.

INCOME TAX
APPELLATE TRIBUNAL
CUTTACK BENCH
CUTTACK
No. 728
Date 21/10/24

And

In the matter of: An application for adjournment of Appeal hearing posted to
23.10.2024.

Most Respectfully Sheweth:

1. That, the above matter is posted for hearing to 23.10.2024.
2. That, the present Appeal is related to the order passed U/s.271(1)(c) of the IT Act by the Pr. CIT, Sambalpur vide dtd.03.03.2023 for the A/Y.2014-15
3. That, the Appellant above named had filed the Appeal before this Hon'ble Forum vide ITA No.272/CTK/2019 challenging the order passed U/s.263 of the IT Act for the A/Y.2014-15, however the same was disposed of in exparte by this Hon'ble Forum vide order dtd.12.08.2024 inspite of adjournment petition filed on 09.08.2024 due to illness of the Accountant of the Appellant. Therefore a Misc. Application was filed for recall and modification of said order dtd.12.08.2024 vide MA No.16/CTK/2024.
4. That, this Hon'ble Forum vide dtd.27.09.2024 was pleased to pass the order and rejected the said Misc. Application No.16/CTK/2024, thus being aggrieved, the Appellant above named has filed a Writ Petition vide WP(C) No.25636/2024 before the Hon'ble High Court of Orissa and the same is now pending for hearing and due to Durga Puja vacation the matter was mentioned for hearing in advance before the Hon'ble High Court, but the department sought for instruction in the matter.

5. That, as the order passed by this Hon'ble Forum in main Appeal is now pending for adjudication by the Hon'ble High Court of Orissa, hence, the above ITA No.218/CTK/2023 may please be adjourned and grant of some more time for hearing of the said Appeal may be allowed to minimize and avoid the multiple litigations in the same issue.

PRAYER

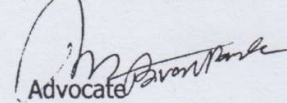
It is therefore prayed that, considering the facts and difficulties, the Appeal fixed for hearing on 23.10.2024 may please be adjourned and may kindly be taken up after hearing and disposal of the WP(C) No.25636/2024 by the Hon'ble Court.

For this act of kindness the Appellant shall ever pray.

Cuttack.

Date: 21.10.2024

By the Appellant through


Advocate

Enclosed Cause List Item No.33 of the Hon'ble Court.

4. The appeal is time barred by 36 days. The assessee has filed condonation petition dated 5.6.2023 supported by medical certified by the treating doctor stating that due to her illness, the appeal could not be filed within the due date and, therefore, there was delay of 36 days. It is stated that the delay may be condoned and appeal be heard on merits. We are satisfied that the reasons given in the petition has not been found to be false. Accordingly, we condone the delay of 36 days and admit the appeal for adjudication.

5. As it is noticed that as the issue pending before the Hon'ble High Court of Orissa in regard to Miscellaneous application against the dismissal of the Miscellaneous application filed by the assessee before the Tribunal has no bearing on the appeal before us, therefore, we reject the adjournment application and the appeal filed by the assessee is being disposed off on merits.

6. A perusal of the facts in the present case clearly shows that the penalty order has been passed by the Pr. CIT, Sambalpur as a consequence of the order passed u/s.263 of the Act by the Pr. CIT, which has resulted invocation of section 40(a)(ia) of the Act in respect of transport contract payments made allegedly on which TDS has not been deducted.

7. In the order passed by Pr. CIT u/s.263 of the Act, vide para 22 of the order, Id Pr. CIT has initiated penalty proceedings u/s.271(1)(c) of the Act for furnishing inaccurate particulars of income. Thereafter, when the ITAT Cuttack Bench has dismissed the appeal of the assessee vide its order dated 12.10.2022 due to non-representation of the case, Pr. CIT has proceeded with the pending penalty proceedings and vide the impugned order dated 3.3.2023 has levied penalty u/s.271(1)(c) of the Act at Rs.1,87,03045/- on the amount of Rs.5,49,70,718/- being the amount disallowed u/s.40(a)(ia) of the Act for non-deduction of tax at source u/s.194C of the Act. Against the said penalty order, the assessee is in appeal before us taking the following grounds of appeal:

"1. For that the exparte order of the forum below was unjust, improper and illegal as well as excessive which cannot be sustained when the original order appealed is heard exparte without service of notice giving opportunity of hearing. Hence, the order passed has to be quashed.

2. For that no order passed got properly made within the scope of the statute and there being no valid order passed without opportunity then all the proceedings and the levy of demand etc have to be quashed and deleted.

3. For that nothing was confronted about the concealment or got no notice served on the appellant and the exparte order passed has to be quashed in toto.

4. For that no show cause or unexplained nature or any proper concealment of any amount or suppression of any nature neither was issued nor sent but levy of penalty of concealment on estimated case has to be quashed and deleted.

5. For that the main order since is in dispute and the penalty levied on relying the same without proper service has to be quashed in toto."

8. Brief facts of the case are that the assessment was originally completed u/s.143(3) of the Act vide order dated 29.12.2016 at a total income of Rs.11,65,300/-. Thereafter, the Ld Pr.CIT has invoked the provisions of section 263 of the Act and vide his order dated 29.3.2019 has held that the assessment order passed was erroneous inasmuch as prejudicial to the interest of the revenue on the ground that the assessee has failed to deduct tax at source u/s.194C of the Act on the payments of Rs.5,49,70,718/- made to various parties as transportation charges. In the said order in page 6 to 9, details of transportation charges paid in excess to parties, which is reproduced, to whom payments were made without

making TDS u/s.194C of the Act. In the order passed by Pr. CIT u/s.263 of the Act, Ld. Pr. CIT has directed to modify the order by making disallowance of Rs.5,49,70,718/- u/s.40(a)(ia) of the Act and thereafter upon dismissal of the appeal against the said order, penalty was imposed u/s.271(1)(c) of the Act.

9. Before us, Id CIT DR vehemently supported the order of Pr. CIT in imposing the penalty and submitted that assessee's case is covered under Explanation -1 to Section 271(1)(c) of the Act as the assessee has furnished inaccurate particulars of income to the extent of expenditures claimed under the head "transportation charges" and since no TDS was deducted u/s.194C of the Act on the payments which are made in excess of the limits provided u/s.194C of the Act by making TDS. This is a willful default done by the assessee by not disallowing the same as provided u/s.40(a)(ia) of the Act, the assessee has furnished inaccurate particulars of its income and, therefore, the Ld. Pr. CIT has rightly levied penalty u/s.271(1)(c) of the Act for such default. He prayed accordingly.

10. We have considered the submissions of Id CIT DR and perused the materials available on record. In this case, the assessee has failed to deduct TDS on the payments made to various parties u/s.194C of the Act and no plausible explanation was tendered with regard to the same. However, it is seen that the expenses were claimed by the assessee in profit and loss account and they were neither held as unreasonable nor excessive

nor bogus by the Pr. CIT. Merely for the reason that the assessee has not complied with the provisions of section 194C of the Act , the disallowance was made u/s.40(a)(ia) of the Act. The case of the assessee is not of the guilty by furnishing of any inaccurate particulars nor with an attempt to deliberately concealing the particulars of income. At the most, it is a technical default thereby nothing to indicate any concealment of income and furnishing of inaccurate particulars. The default committed by the assessee at the most can be termed as technical or venial breach of law for which rigors penalty provisions cannot be invoked. The Hon'ble Supreme Court in the case of Price Waterhouse Coopers Pvt. Ltd vs. CIT reported in 348 ITR 306 (SC) held that penalty provisions u/s.271(1)(c) of the Act cannot be levied for concealment/furnishing inaccurate particulars of income in case of bonafide/inadvertent/human error. The assessee has furnished all the relevant details with respect to the claim by it towards transportation expenditures in the return of income filed and also during the assessment proceedings. Pr. CIT based on such details only, concluded that the assessee has failed to comply with the provisions of section 194C of the Act. Thus, no fact was concealed nor any inaccurate particulars of income were filed. The Hon'ble Supreme Court in the case of CIT vs. Reliance Petrochemicals Ltd., 322 ITR 158 (SC) has held that a mere making of the claim, which is not sustainable in law, by itself, will not amount to furnishing inaccurate particulars regarding the income of the

assessee. In the instant case, admittedly, as discussed above, the assessee made a claim, which was not found disallowable on account of genuineness of such claim nor was held as bogus nor fabricated but in view of the provisions of law that the assessee did not deduct TDS on such payments, the disallowance was made after invoking the provisions of section 40(a)(ia) of the Act. In these circumstances, we are of the considered view that the ratio laid down by the Hon'ble Supreme Court in the case of Reliance Petrochemicals Ltd (supra) is squarely applicable to the facts of the instant case and, therefore, levy of penalty u/s.271(1)(c) of the Act is not justified. Various Hon'ble High Courts and Benches of the Tribunal are taking consistent view that where a disallowance is made by invoking the provisions of section 40(a)(ia) of the act for default for non-deduction of TDS, it cannot be held that the assessee has made a willful default of furnishing inaccurate particulars of income. Thus, by respectfully following the judicial pronouncements, penalty levied of Rs.1,87,03,045/- is hereby deleted.

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

Order dictated and pronounced in the open court on 23/10/2024.\

SD/-
(George Mathan)
JUDICIAL MEMBER

SD/-
(Manish Agarwal)
ACCOUNTANT MEMBER

Cuttack; Dated 23/10/2024

B.K.Parida, SPS (OS)

Copy of the Order forwarded to :

1. The appellant; Smt. Poonam Pujari, B-41, Ananta Vihar, Phase-II, Bhubaneswar
2. The Respondent: Pr. CIT, Sambalpur
3. DR, ITAT,
4. Guard file.
//True Copy//

