

IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "B", PUNE

BEFORE SHRI R. K. PANDA, VICE PRESIDENT
AND
SHRI VINAY BHAMORE, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.1356/PUN/2024
निर्धारण वर्ष / Assessment Year: 2015-16

Rajshree Singh, Row House No.7, Dreams Nandini, Shewalewadi Solapur Road, Manjari Farm, S.O., Pune- 412307. PAN : CLUPS7044F	Vs.	ITO, Ward-14(5), Pune.
Appellant		Respondent

Assessee by : Shri Girish Ladda
Revenue by : Shri Arvind Desai

Date of hearing : 07.10.2024
Date of pronouncement : 26.11.2024

आदेश / ORDER

PER VINAY BHAMORE, JM:

This appeal filed by the assessee is directed against the order dated 16.05.2024 passed by Ld. CIT(A)/NFAC for the assessment year 2015-16.

2. The appellant has raised the following grounds of appeal :-

"1) *The CIT (A) erred in confirming the penalty u/s 271(1)(c) without appreciating fact that, no addition was made in the*

assessment and AO has accepted the returned income as it is, while passing assessment u/s 147 of Income tax Act.

- 2) *The lower authorities erred in levying penalty u/s 271(1)(C) at Rs. 3,62,431 ignoring the specific provisions of Explanation 4 to the said section that penalty is leviable on the amount of tax assessed as reduced by the prepaid taxes i.e. advance tax, TDS and Self Assessment tax already paid before the issue of notice under section 148.*

It is prayed that, penalty, if at all to be levied, should be confined to Rs. 21,659 (Gross Tax assessed Rs 348875 less TDS Rs 156326 and Self Asst Tax Rs 170890 paid on 27/03/2018 before the issue of Notice U/s 148 of IT Act.)

- 3) *The initiation of penalty as well as final penalty order is bad in law as AO failed to invoke Specific Explanation to section 271(1)(C) under which the assessee has committed default attracting penalty u/s 271(1)(C), hence the penalty may please be cancelled.*
- 4) *The lower authorities erred in levying penalty u/s 271(1)(C) Rs 362431 and it may please be deleted/cancelled.*
- 5) *The Appellant seeks leave to add, alter, amend or drop any of grounds taken above.”*

3. Facts of the case, in brief are that the assessee is an individual and has not filed her return of income for the period under consideration. The case was reopened u/s 147 on the basis of specific information that the assessee had purchased an immovable property for a consideration of Rs.64,39,190/-. In response to the notice dated 30-03-2022 issued u/s 148, the assessee filed her income tax return declaring total income of Rs.17,56,251/-. Notices u/s 143(2) and 142(1) were issued to the assessee. In reply

the assessee furnished that the impugned property was purchased by her in assessment year 2014-15 and not in assessment year 2015-16 as alleged by the Assessing Officer. The reply was found to be correct and the returned income was accepted as it is shown by the assessee. Assessing Officer found that the assessee's income was taxable for assessment year 2015-16 and she has not furnished return of income on her own and, therefore concealed the particulars of her income for which penalty proceedings u/s 271(1)(c) of the IT Act were initiated. In reply, the assessee submitted that even 4 years prior to issue of notice u/s 148, she herself has deposited self-assessment tax amounting to Rs.1,70,890/- on 27.03.2018 vide Challan No.29994. Apart from above self-assessment tax, a TDS credit amounting to Rs.1,56,326/- was also appearing in Form 26AS on her PAN. But the Assessing Officer did not find the reply satisfactory and imposed penalty u/s 271(1)(c) of the IT Act of Rs.3,62,431/- being 100% of the tax sought to be evaded.

4. Ld. CIT(A) after considering the replies of the assessee, confirmed the order passed by Assessing Officer imposing penalty

u/s 271(1)(c) of the IT Act and dismissed the appeal of the assessee. It is this order against which the assessee is in appeal before this Tribunal.

5. Ld. AR appearing for the assessee submitted before us that all the grounds raised in this appeal are related to either initiation of penalty proceedings u/s 271(1)(c) or against the imposition of penalty u/s 271(1)(c) of the IT Act. It was submitted before the Bench that the order passed by Ld. CIT(A) is not justified. It was submitted that return of income furnished by the assessee was accepted as it is and no addition was made by the Assessing Officer. Ld. Counsel of the assessee further submitted that the assessee was residing in Gulf countries with her husband, and therefore, could not file her return of income within the prescribed time but due taxes were already deposited by the assessee, four years prior to issue of notice u/s 148 of the IT Act i.e. on 27.03.2018. Ld. AR also filed copy of written submission which was furnished by him before the Assessing Officer. Ld. AR further relied on the decision passed by Co-ordinate Bench of this Tribunal in the cases of (i) Sumit Chatterjee vs. ITO in ITA

No.356/AHD/2022 order dated 06.04.2023 and (ii) Smt. Kavita Sachdev vs. ITO in ITA No.255/Ind/2023 order dated 16.05.2024. On the basis of above contentions, it was requested by Ld. AR to set-aside the order passed by Ld. CIT(A) and further requested to delete the penalty imposed by the Assessing Officer.

6. Ld. DR appearing for the Revenue relied on the order passed by the subordinate authorities and requested to confirm the same.

7. We have heard Ld. Counsels from both the sides and perused the material available on record. We find that the assessee was residing in Gulf countries with her husband and was only having income from rent and income from other sources. It is also evident that proper tax was already deducted on interest income which was already appearing in Form 26AS of the assessee. Secondly, the self-assessment tax was also deposited by the assessee on 27.03.2018 i.e. prior to 4 years from the date (30-03-2022) of issue of notice u/s 148 of the IT Act. It was also proved with the help of copy of passport etc that the assessee was residing in Gulf countries with her husband at the relevant period of time and due to this reason alone could not furnish her return of income within

prescribed time limit. But as soon as she came to India she deposited balance of income tax after adjusting the income tax already deposited in the shape of TDS. Under the above facts and circumstances of the case, we find force in the argument of the counsel of the assessee that there is no mala-fide intention in not furnishing the return of income since due income tax was already deposited by the assessee prior to detection by the Department that the return of income has not been furnished by the assessee. Ld. Counsel of the assessee relied on the decision passed by Co-ordinate Bench of this Tribunal in the case of Smt. Kavita Sachdev (supra) wherein the Tribunal deleted the penalty u/s 271(1)(c) of the IT Act by relying on the various judgements of the Hon'ble High Court of Rajasthan, Madhya Pradesh and Gujarat by observing as under :-

“9. We have carefully considered the rival submissions as well as the material placed on record. Though the assessee did not file a valid return u/s 139, however, the self-assessment tax was paid by the assessee of Rs. 2,16,470/- vide challan dated 29.07.2011, placed at page no.17 of the paper book. Thereafter, the assessee has paid tax of Rs. 8,310/- vide challan dated 19.06.2017. The AO has acknowledged the self-assessment tax paid by the assessee in computation of income and calculation of tax of Rs. 2,16,470/-, which is placed at page no. 8 of the paper book. This fact is also reflected in Form No. 26AS placed at page no.18 of the paper book. Therefore, there is no dispute that the assessee paid selfassessment tax amounting to Rs. 2,16,470/- prior to the notice issued u/s 148 and, therefore, as per Explanation 4 to

Section 271(1)(c), the amount of tax sought to be evaded shall be determined in accordance with the formula provided in clause (a) to (c) of the said Explanation. For ready reference, clause (c) of Explanation 4 to Section 271(1)(c) of the Act are reproduced as under :-

“(c) where 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.”

10. Thus, the amount of tax sought to be evaded shall be determined by taking into consideration the amount of tax on the total income assessed as reduced by the amount of advance tax, tax deducted at source, tax collected at source and selfassessment tax paid before the issue of notice u/s 148. The case of the assessee is covered by this clause (c) of Explanation 4 to Section 271(1)(c) and, hence, when the AO has determined the total tax on the income assessed at Rs. 2,08,142/- whereas the self-assessment tax paid by the assessee before the notice u/s 148 was issued is Rs.2,16,470/-, then balance would be nil and ,consequently, there would be nil amount of tax sought to be evaded for the purpose of levy of penalty u/s 271(1)(c) of the Income-tax Act, 1961. Accordingly, when the amount of tax to be evaded is nil in the case of the assessee, then question of levy of levy of penalty u/s 271(1)(c) does not arise and hence, the penalty levied by the AO u/s 271(1)(c) ,of Rs. 2,10,000/- is not justified and the same is deleted. Though the Ld. Authorized Representative of the assessee has advanced various contentions against the levy of penalty, however, the penalty found to be not justified and liable to be deleted, on the ground of no amount of tax sought to be evaded, then other pleas raised by the Ld. Authorized Representative of the assessee becomes academic in nature and we do not propose to decide each and every argument advanced by the assessee .

11. In the result, the appeal of the assessee is allowed.”

8. Accordingly, respectfully following the above Co-ordinate Bench decisions, we set-aside the order passed by Ld. CIT(A) and direct the Assessing Officer to delete the penalty u/s 271(1)(c) of

the IT Act amounting to Rs.3,62,431/-. Thus, the grounds of appeal raised by the assessee in this appeal are allowed.

9. In the result, the appeal filed by the assessee is allowed.

Order pronounced on this 26th day of November, 2024.

Sd/-
(R. K. PANDA)
VICE PRESIDENT

Sd/-
(VINAY BHAMORE)
JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 26th November, 2024.

Sujeet

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The Pr. CIT concerned.
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "B" बेंच,
पुणे / DR, ITAT, "B" Bench, Pune.
5. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.