

IN THE INCOME TAX APPELLATE TRIBUNAL
COCHIN BENCH, COCHIN
BEFORE S/SHRI ABRAHAM P. GEORGE, AM & GEORGE GEORGE K., JM

I.T.A. No.323/Coch/2016
Assessment Year : 1996-97

M/s. Joseph George & Co., Sayanna Tourist Home, Pathanapuram [PAN: AABPJ 9965G]	Vs.	The Income Tax Officer, Ward-2, Kollam.
(Assessee-Appellant)		(Revenue-Respondent)

Assessee by	Shri T.V. Hariharan, CA
Revenue by	Shri A. Dhanaraj, Sr. DR

Date of hearing	18/05/2017
Date of pronouncement	19 th /05/2017

ORDER

Per GEORGE GEORGE K., JUDICIAL MEMBER:

This appeal at the instance of the assessee is directed against the order of the CIT(A), Trivandrum dated 12/05/2016. The relevant assessment year is 1996-97.

2. The solitary issue that arises for our consideration is whether the CIT(A) is justified in confirming the penalty levied u/s. 271(1)(c) of the I.T. Act amounting to Rs. 2,34,304/-.

3. The brief facts of the case are as follows:

The assessee is a firm engaged in the business of running a Lodge. It also derives rental income from letting out of building to Federal Bank and National Trading Co. For the assessment year 1996-97, the assessee did not file return of income voluntarily. Pursuant to the issue of notice u/s. 148 of the Act the assessee filed return of income declaring a loss of Rs.1,26,800/-. The assessee, during the year under consideration, had sold 7.5 cents of land and three shops. In the return of income filed pursuant to the notice issued u/s. 148 of the Act, the assessee had not offered any capital gains. The assessment u/s. 143(3) read with section 147 of the Act was completed by the Assessing Officer vide order dated 11/01/2001 wherein the Assessing Officer had calculated short term capital gains of Rs.6,43,779/- on sale of shops. The calculation of short term capital gains is as follows:

The sold shop building Rs.10,10,000/- (sale consideration)
Rs. 366,221 (WDV)
Rs. 643,779/-

3.1 The Assessing Officer has also brought to tax sale of 7.5 cents of land as long term capital gains amounting to Rs.3,58,800/-. The details of calculation of long term capital gains on sale of 7.5 cents of land are as follows:

Sale consideration	Rs.4,15,000/-
Indexed cost of acquisition	<u>Rs. 56,200/-</u>
	<u>Rs.3,58,800/-</u>

3.2 The additions made in the quantum assessment with reference to short term and long term capital gains were confirmed by the CIT(A) and the ITAT.

4. Pursuant to the confirmation of the long term and short term capital gains by the ITAT, the Assessing Officer levied minimum penalty u/s. 271(1)(c) of the Act amounting to Rs.2,34,304/-. The relevant observation of the Assessing Officer levying the penalty u/s. 271(1)(c) of the Act reads as follows:

"I have considered the above explanation in detail. As mentioned above, the assessment was completed after making addition account of capital gains of Rs.10,02,579/-. During the year, the assessee had sold 71/2 cents of land and 3 shop rooms in Sayanna Lodge premises for an aggregate consideration of Rs.14,25,000/-. This consists of Rs.10,10,000/- for the building and Rs.4,15,000/- for the land. In its return of income, the assessee has not computed any capital gains. Sale of the land with building has not been shown in the profit and loss account also. Though the assessee had received the sale consideration, it was accounted as land sale advance and shown as a liability in the balance sheet as at 31.3.1996. It was on examination of the books of account and on investigation that followed, the fact of the actual sale of the property came to light. Accordingly the Assessing Officer had

computed the capital gains and brought the same to tax as detailed below:

<i>Short term capital gains on sale of building on which depreciation was claimed and allowed</i>	<i>643,779</i>
<i>Long term capital gains on sale of land</i>	<i>358,800</i>

In appeal these additions were reduced to Rs.4,20,413/- and Rs.3,30,700/- respectively. It was on this concealment that the penalty proceedings u/s. 271(1)(c) were initiated. This fact was also mentioned in the assessment order. Further penalty notice was also sent along with the assessment order. I find from the records that it was only after forming an opinion and satisfied himself about the concealment of the particulars of income that the then Assessing Officer had ordered the initiation of penalty proceedings u/s. 271(1)(c) in this case. The case laws relied on by the assessee is not similar to the facts of this case and is distinguishable. The Hon. Madras High Court in the case of M. Sajjan Raj Nahar vs. CIT (280 ITR 230) have held that indication in the assessment order regarding initiation of penalty is sufficient. Further the Hon. Kerala High Court have also held in the case of CIT vs. P.M. Celine reported in 236 ITR 989 that it is not necessary to record the satisfaction in the assessment order itself. In view of the above, I reject the objection raised by the assessee against the levy of penalty u/s. 271(1)(c)."

5. Aggrieved by the order of the Assessing Officer levying penalty u/s. 271(1)(c) of the Act, the assessee preferred an appeal to the first appellate authority. The CIT(A) confirmed the imposition of penalty and dismissed the appeal filed by the assessee. The relevant finding of the CIT(A) reads as follows:

"4. I carefully examined the facts of the case and considered the rival contentions. The appellant's explanation that the amount received towards sale of land and building was wrongly treated as advance by the

Accountant cannot be accepted since nothing was brought into the record so as to prove that it was not the sale consideration which was actually received but only the advance against the sale to be made had actually been received. Had the advance really been received and shown in the balance sheet as liability then the appellant should have explained, how much was the additional amount towards sale consideration had subsequently been received, when that additional amount was brought to tax and when the sale deed was executed. None of these had been explained by the appellant at any point of given time. Another argument that he was a heart patient and had to go to hospital often and thereby entrusted the work of account keeping to a part time account, who in turn wrongly treated the amount received as advance against sale, is factually incorrect since the appellant had not been diagnosed during the year under consideration but in October, 1994 at Institute of Cardio-Vascular Diseases, Madras, in September, 1996 at Madras Medical Mission and again at Madras Medical Mission in January, 1998. This apart, it is not the appellant who voluntarily disclosed the incidence of sale to the Assessing Officer but it was on examination of books of account and on investigation that followed, the fact of the actual sale of the property came to light. Considering the fact that the sale of land and building took place during the year under consideration and the sale consideration received had not been credited in the profit & loss account instead shown in the balance sheet as liability, it can be said that the appellant had intention not only to hide the incidence of sale but also to conceal the income/capital gain earned warranting the penalty to be levied u/s. 271(1)(c). It is not the case of the appellant that the process of sale had not completed during the year under consideration but advance was taken for the future sale. It is also not the case of the appellant that the written down value against the land and building which were sold got reduced to the extent the alleged advance was received and depreciation was claimed to a lower amount while treating the assets sold as part of block of assets. Just by showing the amount received against the sale of land and building as advance received, it has been proved beyond doubt that the appellant not only had concealed the capital gain earned but also filed inaccurate particulars of such income. Hence, I find no infirmity in the penalty order passed u/s. 271(1)(c). In view of all the above, the Hon'ble Delhi High Court decisions relied on by the appellant are totally misplaced since concealment of income has been established beyond doubt and the Assessing Officer has rightly mentioned in the assessment order that the penalty proceedings u/s. 271(1)(c) have been initiated separately for concealment of income. Thus, the penalty levied is hereby confirmed."

6. The assessee being aggrieved, has filed the present appeal before the Tribunal. The Ld. Counsel for the assessee reiterated the submissions made before the Income Tax authorities. In furtherance, it was contended that the assessee treated the land and shop building as business assets in accounts and only due to change in interpretation of classification assets, assessment of capital gain has been made. It was submitted that lack of knowledge of part time accountant engaged for writing the accounts and lack of communication by Managing Director due to illness was the reason for not offering capital gains.

6.1 The Ld. DR on the other hand supported the orders of the Assessing Officer and the CIT(A).

7. We have heard the rival submissions and perused the material on record. Admittedly, in this case, the assessee has not filed its return of income voluntarily. The Assessing Officer issued notice u/s. 148 of the Act and pursuant to the notice u/s. 148 of the Act, the assessee had filed loss return of Rs.1,26,800/-. Even in the return filed pursuant to the issue of notice u/s. 148 of the Act, the assessee had not disclosed the fact of sale of 7.5 cents of land and three shops. The sale of 7.5 cents of land and three shops is not an ignorable business transaction and the same had resulted in long term capital gains in respect of land and short term capital gains in respect of shops. The Assessing Officer, after examination of the books of account and investigating the above

transactions came to light that the assessee had sold 7.5 cents of land and three shops. Had there been no proper examination by the Assessing Officer, the income chargeable to tax on long term capital gains and short term capital gains would have escaped assessment. As mentioned earlier, no return of income was filed voluntarily and even in the return of income filed pursuant to the 148 notice, the assessee did not disclose any long term capital gains or short term capital gains. Therefore the assessee had furnished inaccurate particulars of income and there is a deliberate intent to conceal income. In the facts and circumstance of the case, we are of the view that the penalty levied u/s. 271(1)(c) of the Act is justified. In taking the above view, we rely on the judgment of the Hon'ble Apex Court in the case of Union of India vs. Dharmendra Textiles Processors (306 ITR 277) and the judgment of the Hon'ble Calcutta High Court in the case of CIT vs. Smt. Sova Bajoria (232 ITR 202).

8. In the result, the appeal filed by the assessee is dismissed.

Pronounced in the open court on 19th-05-2017.

sd/-
(ABRAHAM P. GEORGE)
ACCOUNTANT MEMBER

sd/-
(GEORGE GEORGE K.)
JUDICIAL MEMBER

Place: Kochi

Dated: 19th May, 2017

GJ

Copy to:

1. M/s. Joseph George & Co., Sayanna Tourist Home, Pathanapuram.

2. The Income Tax Officer, Ward-2, Kollam Assistant Commissioner of Income-tax, Circle-1,
3. The Commissioner of Income-tax(Appeals), Trivandrum.
4. The Pr.Commissioner of Income-tax, Trivandrum.
5. D.R., I.T.A.T., Cochin Bench, Cochin.
6. Guard File.

By Order

(ASSISTANT REGISTRAR)
I.T.A.T., Cochin