

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES : SMC-3 : NEW DELHI

BEFORE SHRI J. SUDHAKAR REDDY, ACCOUNTANT MEMBER

ITA No.477/Del/2015
Assessment Year :2009-10

Adesh Tyagi,
S/o Shri Karan Singh Tyagi,
Village Chappaulla, Near
PNB, Dadri, GB Nagar,
Uttar Pradesh.

Vs. ITO,
Ward-1(1),
Ghaziabad.

PAN: AFFPT8534E

(Appellant)

(Respondent)

Assessee By : Shri Ved Jain, Advocate,
Shri Ashish Chadha, CA &
Shri Ashish Goel, CA
Department By : Shri Anil Sharma, Sr. DR

Date of Hearing : 30.08.2016
Date of Pronouncement : 31.08.2016

ORDER

This appeal filed by the assessee is directed against the order of the
CIT(A) dated 18.9.2014 for the assessment year 2009-10.

2. The assessee is an individual and is in the business of property dealing and trading. He filed his return of income on 28.7.2009 declaring income of Rs.1,49,540/-. As certain cash deposits were found in her savings bank account, the AO called upon the assessee to explain the sources of these cash deposits. The assessee filed detailed explanation before the AO. A copy of the same is furnished before me. At the fag end of the assessment proceedings, the assessee, while reiterating his detailed submissions explaining the sources of deposits made vide letter dated 27.7.2011, surrendered an amount of Rs.20 lac on a condition that the AO shall not levy penalty u/s 271(1)(c) of the Act, as per mutual discussions. It was declared that this offer is made in order to buy peace of mind. Based on this surrender, the ld.AO made addition of Rs.20 lac. He initiated penalty proceedings u/s 271(1)(c). As the AO had not complied with the conditions laid down by the assessee for surrender, an appeal was filed before the ld.CIT(A) challenging the addition made of Rs.20 lac. The ld.CIT(A) upheld the addition on the ground that the assessee had made a surrender. The AO in this case had

also doubted the opening balance claimed by the assessee. The Id.CIT(A) came to a conclusion that the assessee had taken into account the opening balance while surrendering the amount of Rs.20 lac. Aggrieved, the assessee is in appeal before us.

3. After hearing the rival contentions, I find that as far as the opening balance is concerned, the assessment of the earlier assessment year was reopened and the claims of the assessee was accepted. Order was passed u/s 143(3) read with section 148 of the Act on 25.2.2014. Thus, the opening balance cannot be added. Coming to the surrender made by the assessee, I find that this is a conditional surrender. The assessee, in his detailed reply dated 27.12.2011, explained the sources of cash deposit made during the year. It was submitted that the assessee was having sufficient cash in hand at the beginning of the year amounting to Rs.22,36,415/-. As already stated, this opening balance was explained by filing the financial statement as well as the assessment order for the assessment year 2008-09. The assessee, in his detailed explanation, had explained monthwise, the cash deposits made in the savings bank

account along with the corresponding sources. This explanation runs into ten pages. Cash memos with regard to the sales made of MS BARS was also furnished. The AO has not pointed out any defect or discrepancy in these details submitted by the assessee. The entire addition was based on the conditional surrender made by the assessee. The AO did not honour the condition of not levying penalty and went ahead and issued notice for levying penalty u/s 271(1)(c). The AO, in my view, should have entirely rejected the offer of the assessee and gone ahead with his finding based on evidence or, in the alternative, desisted from initiating penalty proceedings. In this case, the AO chose to accept only a part of the statement. This, in my view, is not correct.

4. The Hon'ble Supreme Court in the case of *Narayanan Vs. Gopal AIR 1960 SC 235*, has held that if an admission or surrender made by the assessee is shown to have been impelled by the mistaken belief or misunderstanding, etc., the same cannot act as an estoppel. In the case of *Asit Kumar Ghosh Vs. CIT 24 ITR 576 (Cal)* and in *Mathuraprasad & Sons vs. State of Punjab (1962) 13 STC 280 (SC)*, it is held that an

admission made is only a piece of evidence and cannot by itself be a cause of action and that an amount cannot be assessed merely on admission. The worth of the admission has to be considered along with other material. In the case of CIT vs. Bharat General Insurance Company Ltd., 81 ITR 303 (Del), it is laid down that even if the assessee shows income in his return, the Income-tax Officer cannot assess it merely on that account and has to consider the taxability of the amount *de-hors* the said admission.

5. As the submissions of the assessee vide letter dated 27.12.2011 were not factually controverted by any of the authorities, the addition made merely on the ground of disclosure cannot be sustained. The assessee has explained the source of each deposit with evidence and the AO has not found any fault in the claim made by the assessee. No defects were pointed out. Hence, the addition in question is hereby deleted.

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

The order pronounced in the open court on 31.08.2016.

Sd/-

[J. SUDHAKAR REDDY]
ACCOUNTANT MEMBER

Dated, 31st August, 2016.

dk

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT (A)
5. DR, ITAT

AR, ITAT, NEW DELHI.