

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'G': NEW DELHI

BEFORE SHRI G.D. AGRAWAL, VICE PRESIDENT AND
SHRI KULDIP SINGH, JUDICIAL MEMBER

ITA No.5834/Del/2012
Assessment Year : 2009-10

Shri Sanjay Sawhney,
C-83, Phase-1,
Ashok Vihar,
New Delhi.
PAN : ABNPS4554P.
(Appellant)

Vs. Assistant Commissioner of
Income Tax,
Central Circle-11,
New Delhi.
(Respondent)

ITA No.5959/Del/2012
Assessment Year : 2009-10

Income Tax Officer,
Ward-20(4),
New Delhi.
(Appellant)

Vs. Shri Sanjay Sawhney,
C-83, Phase-1,
Ashok Vihar,
New Delhi.
PAN : ABNPS4554P.
(Respondent)

Assessee by : Shri Sachin Jain and
Shri Rajnish Sharma, Advocates.
Revenue by : Shri N.K. Bansal, CIT-DR.

Date of hearing : 24.10.2016
Date of pronouncement : 27.10.2016

ORDER

PER G.D. AGRAWAL, VP :-

These cross-appeals for the assessment year 2009-10 are directed against the order of learned CIT(A)-XXXI, New Delhi dated 31st August, 2012.

2. Both the sides have challenged the levy of penalty under Section 140A(3) of the Income-tax Act, 1961 which is partly sustained by the learned CIT(A). The Assessing Officer had levied the penalty of ₹1,25,29,942/- being 100% of the tax liability. Learned CIT(A) sustained the penalty at 25% of the admitted tax i.e., ₹31,32,450/-. The Revenue is in appeal against the relief allowed while the assessee is in appeal against the penalty sustained.

3. The admitted facts are that for the year under consideration, the assessee filed the return of income on 27th August, 2010 declaring total income at ₹5,54,45,421/-. The tax payable on the returned income was ₹1,25,29,942/-. The assessee did not make the payment of admitted tax liability u/s 140A before filing of the return. Subsequently, the assessee made the payment of ₹1,25,29,942/- as under:-

Date of payment	Mode	Amount	Bank details
14-09-2010	Cheque	1500000	PNB, Daryaganj, Delhi
14-10-2010	Cheque	1500000	PNB, Daryaganj, Delhi
25-01-2011	Cheque	6800000	PSB, RoshanAra Road, Delhi
25-01-2012	Cheque	2779942	PSB, RoshanAra Road, Delhi

4. However, the Assessing Officer levied penalty u/s 140A(3) on the ground that the assessee did not make the payment of admitted tax liability before the filing of the return. Learned CIT(A), in principle, upheld the levy of penalty but reduced the amount of penalty to 25% of the admitted tax liability. Aggrieved with the order of learned CIT(A), both the parties are in appeal before us.

5. We have heard the arguments of both the sides and perused the material placed before us. Section 140A(3) of the Act, under which the penalty has been levied by the Assessing Officer, reads as under :-

“[(3) If any assessee fails to pay the whole or any part of such tax or interest or both in accordance with the provisions of sub-section (1), he shall, without prejudice to any other consequences which he may incur, be deemed to be an assessee in default in respect of the tax or interest or both remaining unpaid, and all the provisions of this Act shall apply accordingly.]”

6. From the above, it is evident that if the assessee fails to pay the tax on the returned income, he shall be deemed to be an assessee in default in respect of such tax or interest which remains unpaid. Thus, as per this Section, the assessee can be treated to be in default in respect of tax liability as per return of income furnished by the assessee. However, the Section does not empower the Assessing Officer to levy the penalty. As per this Section, the assessee would be treated in default but this Section does not provide any consequence of the assessee being in default. There are other provisions under the Income-tax Act like Section 221 which empower the Assessing Officer to recover the tax as well as levy the penalty when the assessee is in default. Therefore, if in the opinion of the Assessing Officer, the assessee was in default for non-payment of admitted tax under Section 140A(1), he could have taken the action under the relevant Section which authorizes the Assessing Officer to recover the amount or to levy the penalty. However, Section 140A(3) does not authorize the Income Tax Officer to levy any penalty due to the default of the assessee in making the payment of admitted tax u/s 140A(1). Therefore, in our opinion, the penalty levied u/s 140A(3) cannot be sustained.

7. At the time of hearing before us, learned DR tried to defend the order u/s 140A(3) on the ground that the assessee has not disputed the power of the Assessing Officer to levy the penalty u/s 140A(3) either before the Assessing Officer or before the CIT(A). In our opinion, whether the assessee has disputed the power of the Assessing Officer or not, we have to see whether the Assessing Officer is empowered u/s 140A(3) to levy the penalty. If he is not empowered, the levy the penalty u/s 140A(3) is not legally sustainable. In our considered opinion, the Assessing Officer is not empowered to levy the penalty u/s 140A(3) and, therefore, the penalty levied and partly sustained by the learned CIT(A) is unsustainable. The same is cancelled.

8. In the result, the appeal of the assessee is allowed and the appeal of the Revenue is dismissed.

Decision pronounced in the open Court on 27.10.2016.

Sd/-
(KULDIP SINGH)
JUDICIAL MEMBER

Sd/-
(G.D. AGRAWAL)
VICE PRESIDENT

VK.

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1. Assessee : **Shri Sanjay Sawhney, C-83, Phase-1,
Ashok Vihar, New Delhi.**
2. Revenue : **Income Tax Officer, Ward-20(4), New Delhi.**
3. CIT
4. CIT(A)
5. DR, ITAT

Assistant Registrar