

IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE

BEFORE SHRI C.M. GARG, JM & SHRI O.P. MEENA, AM

ITA Nos.376 to 382/Ind/2015
A.Yd. 2003-04 to 2008-09 & 2010-11

M/s. M.P. Rajya Open School, Bhopal
PAN - AAAAM 1067 A :: Appellant

Vs

ACIT-1(2), Bhopal :: Respondent

Assessee by	Shri S.N. Agrawal & Shri Pankaj Mogra, CAs
Respondent by	Shri Lal Chand, CIT
Date of hearing	01.3.2017
Date of pronouncement	14.3.2017

O R D E R

PER BENCH

The above appeals filed by the assessee are against the common & consolidated order of the learned CIT(A)-I, Bhopal, dated 30.3.2015 for the assessment years 2003-04 to 2008-09 & 2010-11 challenging the imposition of penalty u/s.271(1)(c) of the I.T. Act. Both the parties submitted that identical facts are involved in these appeals and the lead case is for the assessment year 2003-04. Hence, in order to avoid repetition and for the sake of brevity, we are deciding all the appeals

through this consolidated order by taking the facts from the assessment year 2003-04 but our findings for the assessment year 2003-04 on similar issues shall prevail in all the present assessment years.

2. Facts, in brief, are that the assessee is a society incorporated under M.P. societies Registration Act on 11.8.1995 to provide alternate education system through Open Schools for Primary, Middle and High School level. The state government had provided Rs.10 lacs as one time seed money to set up the assessee society. The Assessing Officer obtained information that the assessee had generated huge income in the present assessment years but had not furnished any return of income. Therefore, the Assessing Officer issued notices u/s 148 of the I.T. Act. In response to the same, the assessee furnished returns of income for the present assessment years declaring nil income, claiming that the income of the assessee was eligible for exemption u/s 10(23C)(iiiab) of the I.T. Act. However, the Assessing Officer was of the view that the assessee was not eligible for claiming exemption u/s 10(23C)(iiiab) of the I.T. Act. Accordingly, the Assessing Officer completed the assessments for the present assessment years rejecting the claim of the assessee for exemption u/s 10(23C)(iiiab) of the I.T. Act. The Id. CIT(A) also confirmed

the action of the Assessing Officer. The assessee preferred appeals on this issue before the ITAT and ITAT confirmed the action of the Revenue Authorities on this issue holding that the assessee was not eligible for exemption u/s 10(23C)(iiiab) of the I.T. Act. Thereafter, the Assessing Officer imposed penalty u/s 271(1)(c) of the I.T. Act in all the present assessment years. The assessee preferred appeals before Id. CIT(A), who confirmed the imposition of penalty. Aggrieved with the orders of the Revenue Authorities, the assessee is before us.

3. Before us, the learned Counsel for the assessee filed detailed written submission and submitted that the assessee society was formed with the resolution as passed by the Council of Ministers of the State Govt. of the MP on 28.3.1995 and in pursuance of the resolution, the assessee society was formed and duly registered vide certificate of Registration dated 11.8.1995. Learned Counsel for the assessee further submitted claimed that as per objects, the assessee is engaged in establishing open school or imparting education to students and as per the MOU of the assessee, the imparting of education is evidenced and the fact that the assessee is existing for educational purposes was not disputed by the Revenue Authorities. Further, the learned Counsel for the

assessee placed on record the order of Hon'ble jurisdictional High Court of MP in the case of Pr. Commissioner of Income-tax-2, Bhopal vs. M/s. R.K. Gupta Contractors & Engineers P. Ltd., ITA 89/2016 dtd. 11.1.2017, wherein it was held that when the High Court admits substantial question of law on an addition, it becomes apparent that the addition is certainly debatable, under such circumstances, the penalty cannot be levied u/s.271(1)(c) of the Act. Many other decisions of Hon'ble High Courts including CIT vs. Nayan Builders And Developers (2015) 231 Taxman 665 (Bom) and the decisions of coordinate bench in case of ITO-4(2) vs. Shri Gopal Banke, ITA No.174/Ind/2015 (A.Y. 2005-06) dtd. 09.9.2015 were also placed on record, wherein the penalty was deleted on the plea that substantial question of law has been accepted by the Hon'ble High Court.

4. On the other hand, the Id. DR banked upon the orders of the Revenue Authorities.

5. We have heard rival contentions and perused the material available on record. We find that the Tribunal has upheld the quantum additions against which the assessee approached to the High Court and the Hon'ble High Court has admitted following substantial question of law vide order dated 14.3.2016: -

“Arguable questions are raised. Hence, the appeals are admitted on the following two substantial questions of law:-

“A. Whether, the Tribunal is right in law in denying the exemption to the assessee under section 10(23C)(iiiab), (iiac) (vi) of the Income Tax Act.

B. Whether, the order of the Tribunal is perverse, arbitrary and unreasonable in denying the exemption to the assessee as an educational institution for regulating and development of school education in the State.”

Sd/-

(A.M. Khanwilker)
Chief Justice

Sd/-

(Sanjay Yadav)
Judge

”

6. We find that recently, the Hon’ble jurisdictional High Court of MP vide order dated 11.1.2017 in case of Pr. CIT vs. R.K. Gupta contractors & Engineers P. Ltd in ITA 9/2016 has dismissed the appeals of the Revenue and confirmed the view of the Tribunal that when an appeal involving a substantial question of law was pending consideration before the High Court, the addition became a debatable one and when the addition was debatable and subjudice before the Appellate Authority, the penalty u/s 271(1)(c) of the I.T. Act could not be levied as the admission of appeal and the substantial question of law framed credence to the bona fide of the assessee to say that there was no deliberate concealment. For ready

reference, the relevant portion of the order of the Hon'ble MP High Court is reproduced hereunder:

"3. The order passed by the Assessing Officer was interfered with by the Commissioner, Appeals and challenging the order of Commissioner, (Appeal), the appeal was filed before the Tribunal by the Revenue. With reference to assessment year 2005-2006 to 2008-2009, various assessment orders were passed and deduction claimed under Section 80(1)(a)(4) of the Income Tax Act was disallowed by the Assessing Officer, the Appellate Authorities and the Tribunal. Challenging the disallowance, appeals were filed by respondent assessee under Section 260-A of the Income Tax Act in the High Court. Substantial questions of law were framed and the appeals after admission were pending consideration before the Appellate forum. In the meanwhile, as proceedings for imposing penalty were initiated under the provisions of Section 271(1)(c) and ultimately when penalty were imposed by the Assessing Officer at the instance of respondent -assessee, matter traveled to the Commissioner, Appeal and the same having been allowed at the instance of Revenue, matter was agitated with Tribunal and the Tribunal after taking note of various aspects of the matter, came to the conclusion that penalty could not be imposed when the appeal under Section 260A has been admitted in the matter of addition made or deduction permissible under Section 80(1)(a)(4) and after taking note of certain judgments of the Tribunal and the Bombay High Court in the case of Nayan Builders and Developers Pvt. Ltd. Vs. The Taxing Authorities, concurrent findings are recorded by the Commissioner (Appeal) and the Tribunal, they came to the conclusion that when an appeal involving a substantial question of law was pending consideration before the High Court, the addition became a debatable one and when the addition was debatable and subjudice before the Appellate Authority, penalty under Section 271(1)(c) of the Income Tax Act could not be levied as the admission of appeal and the substantial question of law framed credence to the bonafide of the assessee to say that there was no deliberate

concealment. Accordingly, following the judgment of the Bombay High Court and consistent orders of the Appellate Tribunal in this regard, the appeals filed by the Revenue were dismissed and the orders passed by the Commissioner, Income Tax Appeal, Bhopal, was upheld.

4. The findings recorded by the Commissioner, Income Tax Appeal was to the extent that as the question of deduction was pending consideration in the appellate forum, therefore, penalty imposed should be canceled.

5. We find that the aforesaid view taken by the Tribunal, to say that till decision on the appeal by the High Court the bonofide of the assessee in claiming the deduction cannot be disputed, the Commissioner, Income Tax Appeals and the Tribunal have not committed any error and in dismissing the appeal of revenue on such consideration, no error has been committed nor any substantial question of law arises warranting consideration. 6. Accordingly, finding no ground to interfere into the matter, all these appeals stand dismissed.”

7. Respectfully following the proposition of law laid down by the Hon'ble jurisdictional High Court (supra), we hold that when the High Court admits substantial question of law on an addition, it becomes apparent that addition is debatable. In such circumstances penalty cannot be levied u/s 271(1)(c). The ratio laid down in the following case-laws further support our view:

- i) Bombay High Court in the case of Nayan Builders & Developers, 231 Taxman 0665.
- ii) Hon'ble Delhi High Court in the case of Liquid Investment and Trading Co. Ltd. ITA No.240/2009 dated 05.10.2010.

iii) ITAT, Indore in the case of Gopal Banke (ITA No.174/Ind/2015, order dated 09.9.2015).

8. In view of the above, we reverse the orders of the Revenue Authorities and delete the penalty in all the present assessment years.

9. In the result, all the appeals filed by the assessee are allowed.

Order was pronounced in the open Court on 14.3.2017.

Sd/-
(C.M. Garg)
JUDICIAL MEMBER

Sd/-
(O.P. MEENA)
ACCOUNTANT MEMBER

Dated: 14.3.2017

Ivyas!

Copy to :

Appellant / Respondent / concerned CIT / concerned CIT(A) /DR, Indore

By order,

Assistant Registrar