

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH : F : NEW DELHI

BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER
AND
SHRI AMIT SHUKLA, JUDICIAL MEMBER

ITA No.2059/Del/2018
Assessment Year: 2013-14

V.B. Builders,
C/o Praveen Aggarwal & Co.,CAs,
23, Bhai Veer Singh Marg,
Gole Market,
New Delhi.

Vs DCIT,
Circle-2,
Ghaziabad.

PAN: AAGFV0254P

(Appellant)

(Respondent)

Assessee by : Shri KVSR Krishnan, CA
Revenue by : Shri N.K. Bansal, Sr. DR
Date of Hearing : 19.07.2021
Date of Pronouncement : 27.07.2021

ORDER

PER R.K. PANDA, AM:

This appeal filed by the assessee is directed against the order dated 31st January, 2018 of the CIT(A), Ghaziabad, relating to assessment year 2013-14.

2. Levy of penalty of Rs.6,63,960/- by the AO u/s 271(1)(c) of the IT Act, 1961 which has been upheld by the CIT(A) is the only issue raised by the assessee in the grounds of appeal.

3. Facts of the case, in brief, are that the assessee is a partnership firm engaged in the business of real estate. It filed its return of income on 29th October, 2013 declaring total income at Rs.1,78,80,820/-. The AO completed the assessment u/s 143(3) of the IT Act, 1961 on 30th December, 2015 determining the total income of the assessee at Rs.2,00,28,920/- wherein he made an addition of Rs.21,48,102/- by estimating the profit at 14.5% as agreed by the assessee for such estimation. Subsequently, the AO initiated penalty proceedings u/s 271(1)(c) of the Act. Rejecting the various explanations given by the assessee and distinguishing the various decisions cited before him, the AO levied penalty of Rs.6,63,763/- being 100% of tax sought to be evaded.

4. In appeal, the Id.CIT(A) sustained the penalty levied by the AO.

5. Aggrieved with such order of the CIT(A), the assessee is in appeal before the Tribunal.

6. The Id. counsel for the assessee, referring to the following decisions, submitted that penalty u/s 271(1)(c) of the Act is not sustainable where the AO has rejected book results and adopted higher profit ratio on estimate basis than that declared by the assessee:-

1. CIT Vs. Aero Traders Pvt. Ltd. (2010) 323 ITR 316 (Del.);

2. Shri Radhey Shyam Vs. ITO in ITA No.5268/Del/2015 A.Y. 2009-10 dated 31/10/2017.

3. CIT Vs. Prem Prakash [SLP (CIVIL) Nos. 9492-9494 of 1981 : (1984) 146 ITR fSt.) 3 (SC)];
4. CIT Vs. Kalicharan Agarwalla & Co. [(1984) 146 ITR 634 (Cal.)];
5. CIT Vs. M.M. Rice Mills (2002) 253 ITR 17 (Punj);
6. CIT Vs. Devandas Perumal & Co. [(1983) 140 ITR 943 (Bom.)];
7. CIT, Poona vs. B.D. Ramchandra (Bom.)150 ITR 242;
8. CIT Vs. Subhash Trading Company 221 ITR 110 (HC) (Bom.);
9. CIT Vs. Vijay Kumar Jain [2010] 325 ITR 378 (Chhattisgarh); &
- 10.CIT Vs. Sangrur Vanaspati Mills Ltd. [2008] 303 ITR 53 (P & H).

7. The ld. DR, on the other hand, submitted that the ld.CIT(A) has given justifiable reasons as to why penalty is leviable under the facts and circumstances of the case. He submitted that the AO has given a finding that the books of account of the assessee were not reliable for which the profit was estimated after confronting the assessee and the assessee agreed for the addition to an extent of Rs.21,48,102/-. Further, the addition was on account of difference in sales during the year after revision of sales in the immediately preceding year. Therefore, merely because the profit was estimated by rejecting the book results cannot be a ground to delete the penalty levied by the AO u/s 271(1)(c) of the IT Act.

8. We have considered the rival arguments made by both the sides, perused the orders of the authorities below and the paper book filed on behalf of the

assessee. We have also considered the various decisions cited before us. We find, the AO, in the instant case, made addition of Rs.21,48,102/- to the total income of the assessee by estimating the profit on sale of Rs.11,82,69,105/- @ 14.5% and after deducting the business income already shown by the assessee had made addition of the same. We find, the assessee accepted the above addition made by the AO during the course of assessment proceedings for which it did not prefer any appeal before the CIT(A) on the quantum addition. We find, the AO initiated penalty proceedings u/s 271(1)(c) of the Act and levied penalty of Rs.6,63,763/- which has been upheld by the CIT(A). It is the submission of the Id. Counsel that since the book result was rejected and the profit was estimated by the AO by adopting higher profit than the profit declared by the assessee, therefore, penalty is not leviable. It is also his submission that the profit declared by the assessee is already on the higher side as compared to assessee placed in similar situation.

9. We find force in the above argument of the Id. Counsel. We find, before the AO, the assessee had apart from other things pleaded that the profit declared by any builder never exceeded 6-7% whereas the assessee has already declared the profit @ 12.36%. Merely because the AO has estimated the profit at 14.5% which is higher than the profit declared by the assessee, the same, in our opinion, should not be the basis for automatic levy of penalty u/s 271(1)(c) of the IT Act. The Hon'ble Bombay High Court in the case of CIT vs. Devandas Perumal & Co. (supra) has held that the presumption contemplated by the Explanation to section

271(1)(c) stood rebutted by the fact that there was no suppression of any sales or inflation of any purchases. The mere fact that the Income-tax Officer proceeded to estimate the net profit at a figure higher than that what was disclosed by the assessee, would not lead to the conclusion that there was a failure to return the correct income arising out of fraud or any gross or willful neglect on the part of the assessee. The Honøble Delhi High Court in the case of Aero Traders Pvt. Ltd. (supra) has dismissed the appeal filed by the Revenue against the order of the Tribunal, which, in turn, has upheld the order of the CIT(A) deleting the penalty on the ground that addition made by the AO on the basis of estimated profit could not be a subject matter of penalty for concealment of income. The various other decisions relied on by the Id. Counsel to the proposition that penalty could not be levied where the AO has rejected the book results and adopted higher profit ratio than declared by the assessee on estimate basis. Since, in the instant case, the profit of the assessee has been estimated at a rate of 14.5% as against the profit declared at 12.37% and the assessee has given the instances of 6-7% profit declared by other assessees engaged in the same line of business, therefore, we are of the considered opinion that it is not a fit case for levy of penalty u/s 271(1)(c) of the IT Act. We, therefore, set aside the order of the CIT(A) on this issue and the ground raised by the assessee is allowed.

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

Pronounced in the open court on 27.07.2021.

Sd/-

(AMIT SHUKLA)
JUDICIAL MEMBER

Sd/-

(R.K. PANDA)
ACCOUNTANT MEMBER

Dated: 27th July, 2021

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Copy forwarded to :

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

Asstt. Registrar, ITAT, New Delhi