IN THE INCOME TAX APPELLATE TRIBUNAL
DEHRADUN BENCH : DEHRADUN
(Through Virtual Hearing)

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

ITA No.1949/Del/2019
Assessment Year: 2014-15

Shri Deshpal Singh Kohli, 46, Saharanpur Road, Dehradun.	Vs	DCIT, Dehradun.

PAN: ACGPK1599Q

(Appellant) (Respondent)

Assessee by	:	Shri Kanwal Juneja, Advocate
Revenue by	:	Shri Vinay Singh Rawat, Sr. DR
Date of Hearing	:	26.03.2021
Date of Pronouncement	:	18.05.2021

ORDER

PER R.K. PANDA, AM:

This appeal filed by the assessee is directed against the order dated 28th January, 2019 of the CIT(A)-4, Kanpur, relating to the A.Y. 2014-15.

2. Levy of penalty of Rs.1,44,200/- by the AO u/s 271(1)(c) and confirmed 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 an individual and derives income from truck plying. He filed his return of income on 31st March, 2015

declaring the total income at Rs.38,08,660/-. The AO completed the assessment u/s 143(3) on 11.11.2016 determining the total income of the assessee at Rs.42,75,320/- wherein he made an addition of Rs.4,66,660/- on account of additional income from short-term capital gain offered by the assessee during the assessment proceedings. The AO, thereafter initiated penalty proceedings u/s 271(1)(c) of the Act. Rejecting the various explanations given by the assessee, the AO held that the assessee has concealed the particulars of income and has furnished inaccurate particulars of income and, therefore, he has rendered himself liable for penalty u/s 271(1)(c) of the IT Act. He accordingly levied penalty of Rs.1,44,200/- being 100% of the tax sought to be evaded.

4. In appeal, the ld.CIT(A) confirmed the penalty so levied by the AO.

5. The ld. counsel for the assessee made two-fold arguments. So far as the merit of the case is concerned, he submitted that during the year under consideration, the assessee had sold one property bearing No.A129, Defence Colony, New Delhi and the amount received during the year was shown, but, the amount which was received much earlier amounting to Rs.4,66,666/- on 13th December, 2011 by cheque in A.Y. 2012-13 was left to be shown while computing the income. During the scrutiny proceedings, the assessee realized the mistake and himself voluntarily offered the said amount of Rs.4,66,666/- to be added to the income after payment of tax of Rs.1,63,350/- on 20.10.2016. Referring to the notice issued u/s 142(1) dated 28th April, 2016 and 19th September, 2016, he

submitted that nothing has been mentioned with regard to this property and the assessee has voluntarily disclosed the income during the assessment proceedings. Referring to the decision of the Delhi Bench of the Tribunal in the case of Harish Kumar, HUF, vide ITA No.1469/Del/2019, order dated 19th August, 2019, he submitted that the Tribunal in the said decision has held that penalty is not leviable on voluntary surrender of income on account of bona fide mistake of Accountant. He submitted that merely because the addition has been sustained by the AO it does not make the assessee liable for penalty u/s 271(1)(c) of the Act and the assessee can always make new plea. Referring to the decision of the Hon'ble Supreme Court in the case of PricewaterhouseCoopers (P) Ltd. vs. CIT, reported in 348 ITR 306 (SC), he submitted that the Hon'ble Supreme Court has deleted the penalty on account of bona fide mistake committed. He accordingly submitted that on merit the penalty is not leviable.

6. In his second plank of argument, the ld. counsel, referring to the copy of the notice issued by the AO, submitted that the inappropriate words in the penalty notice has not been struck off and the notice does not specify as to under which limb of the provisions the penalty u/s 271(1)(c)has been initiated. Therefore, the penalty so levied by the AO and sustained by the CIT(A) is not in accordance with the law. For the above proposition, he relied on the decision of the Hon'ble Supreme Court in the case of CIT vs. SSA's Emerald Meadows, 73 taxman.com 248, CIT vs. Manjunatha Cotton and Ginning Factory, 359 ITR 565 and the

decision of the Hon'ble Delhi High Court in the case of PCIT vs. Sahara India Life Insurance Co., vide ITA No.475/2019, dated 2nd August, 2019. He accordingly submitted that the penalty levied by the AO and sustained by the CIT(A) has to be deleted on this legal ground also.

7. The ld. DR, on the other hand, heavily relied on the order of the AO and the CIT(A). He submitted that but for the scrutiny notice, the assessee would not have surrendered the income and, therefore, the AO has validly levied the penalty u/s 271(1)(c) of the Act. So far as the limb is concerned, the ld. DR submitted that the assessee is fully aware that he has concealed his particulars of income and furnished inaccurate particulars and, therefore, the assesseee cannot take advantage of technicalities.

8. We have considered the rival arguments made by both the sides and perused the orders of the AO and the CIT(A) and the paper book filed on behalf of the assesseee. We have also considered the various decisions cited before us. We find, the assessee, in the instant case, during the course of assessment proceedings had surrendered an income of Rs.4,66,666/- for the computation of short-term capital gain which amount was received by him on 13th December, 2011 by cheque and which relates to A.Y. 2012-13. The assessee had paid tax on the above amount. It is further to be noted that the assessee had surrendered the above income before it was detected by the Department although only statutory notices had been issued. The Hon'ble Supreme Court in the case of PricewaterhouseCoopers, reported in

348 ITR 306, while deleting the penalty upheld by the Tribunal and the High Court at para 19 of the order has observed as under:-

> ñ19. The contents of the Tax Audit Report suggest that there is no question of the assessee concealing its income. There is also no question of the assessee furnishing any inaccurate particulars. It appears to us that all that has happened in the present case is that through a bona fide and inadvertent error, the assessee while submitting its return, failed to add the provision for gratuity to its total income. This can only be described as a human error which we are all prone to make. The calibre and expertise of the assessee has little or nothing to do with the inadvertent error. That the assessee should have been careful cannot be doubted, but the absence of due care, in a case such as the present, does not mean that the assessee is guilty of either furnishing inaccurate particulars or attempting to conceal its income.
>
> 20. We are of the opinion, given the peculiar facts of this case, that the imposition of penalty on the assessee is not justified. We are satisfied that the assessee had committed an inadvertent and bona fide error and had not intended to or attempted to either conceal its income or furnish inaccurate particulars.
>
> 21. Under these circumstances, the appeal is allowed and the order passed by the Calcutta High Court is set aside. No costs.ò

9. We find, the assessee in the instant case had received an amount of Rs.4,66,666/- on 13th December, 2011 which relates to A.Y. 2012-13 and, therefore, we find merit in the argument of the ld. counsel for the assessee that non-inclusion of the same while computing the income for A.Y. 2014-15 is only an inadvertent and bona fide error which the assesseee came to know later on and had voluntarily offered the income and paid tax.

10. Even otherwise also, a perusal of the notice issued u/s 274 r.w.s. 271 of the IT Act, copy of which is placed at page 12 of the paper book, shows that the inappropriate words in the said notice have not been struck off. The coordinate

Benches of the Tribunal following the decisions cited by the ld. Counsel for the assessee (supra) are consistently taking the view that where the inappropriate words in the penalty notice has not been struck off and notice does not specify as to under which limb of the provisions the penalty u/s 271(1)(c) has been initiated, then, levy of penalty u/s 271(1)(c) of the Act is not sustainable and has to be deleted. In this view of the matter, we are of the considered opinion that both factually and legally the penalty so levied by the AO and sustained by the CIT(A) is not justified. Accordingly, we set aside the order of the CIT(A) and direct the AO to cancel the penalty.

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

The decision was pronounced in the open court on 18.05.2021.

Sd/-	Sd/-
(AMIT SHUKLA) JUDICIAL MEMBER	(R.K. PANDA) ACCOUNTANT MEMBER

Dated: 18th May, 2021.

dk

Copy forwarded to :

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

Asstt. Registrar, ITAT, New Delhi