

आयकर अपीलीय अधिकरण "बी" न्यायपीठ पुणे में ।
IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH, PUNE

(Through Virtual Court)

BEFORE SHRI INTURI RAMA RAO, AM
AND SHRI PARTHA SARATHI CHAUDHURY, JM

आयकर अपील सं. / ITA No.725/PUN/2018
निर्धारण वर्ष / Assessment Year : 2011-12

Siddhesh Shripad Mitkar,
1009, Shripad, Model Colony,
Shivajinagar, Pune-411016.

PAN : ABIPM1182E

.....अपीलार्थी / Appellant

बनाम / V/s.

ITO, Ward-8(3),
Pune.

.....प्रत्यर्थी / Respondent

Assessee by : None
Revenue by : Shri Vitthal Bhosale

सुनवाई की तारीख / Date of Hearing : 01.06.2021
घोषणा की तारीख / Date of Pronouncement : 01.06.2021

आदेश / ORDER

PER INTURI RAMA RAO, AM:

This is an appeal filed by the assessee directed against the order of the Learned Commissioner of Income Tax (Appeals)- 6, Pune ('CIT(A)' for short) dated 20.12.2017 for the assessment year 2011-12 in confirming levy of penalty u/s 271(1)(c) of the Income Tax Act, 1961 ('the Act').

2. Brief facts of the case are as under :-

The appellant is an individual engaged in the business of builders and land promoters. The return of income for the assessment year 2011-12 was filed on 31.07.2011 declaring total income of Rs.11,567/-. Against the said return of income, the assessment was completed by the Income Tax Officer, Ward-8(3), Pune ('the Assessing Officer') vide order dated 07.01.2014 passed u/s 143(3) of the Act at a total income of Rs.29,67,390/-. While doing so, the

Assessing Officer made addition of Rs.29,50,000/- being cash deposits in SB Account treating the same as unexplained cash deposits rejecting the explanation of the assessee that the cash deposits were made out of cash withdrawals through ATM on various dates and also based on the admission of the assessee that to offer the same as income in order to buy peace of mind and avoid litigation and penalty proceedings. The Assessing Officer made another addition of Rs.1,472/- being interest from the Savings Bank Accounts.

3. Being aggrieved by the above additions, an appeal was preferred before the Id. CIT(A)-6, Pune, who vide order dated 23.03.2015 while confirming the additions also made further addition of Rs.9,55,000/- on account of unexplained credit, transfer through ATM. Thus, the Id. CIT(A) confirmed the additions made by the Assessing Officer. Subsequently, the Assessing Officer initiated the penalty proceedings by issuing of show-cause notice u/s 274 r.w.s. 271(1)(c) of the Act on 07.01.2014 and further show-cause notice was issued on 08.05.2015 and in response to the same, an explanation filed by the assessee stating that the sources for cash deposits were duly explained and mere fact that the appellant had agreed to the addition does not entail levy of penalty. It was further submitted that mere rejection of the explanation does not result in the levy of penalty placing reliance on the decision of the Hon'ble Apex Court in the case of CIT vs. Reliance Petroproducts Pvt. Ltd., 322 ITR 158 (SC). However, the Assessing Officer had proceeded with the levy of penalty u/s 271(1)(c) of the Act vide order dated 25.02.2016 rejecting the explanation of the assessee on the ground that no documentary evidence was filed in support of the withdrawal of cash through ATM and levied penalty of Rs.9,51,170/-.

4. Being aggrieved, an appeal was preferred before the Id. CIT(A), who vide impugned order confirmed the levy of penalty u/s 271(1)(c) of the Act.

5. Being aggrieved by the order of the Id. CIT(A), the appellant is before us in the present appeal.

6. When the appeal was called on, none appeared on behalf of the assessee despite due service of notice.

7. On the other hand, Id. Sr. DR placed reliance on the orders of the lower authorities.

8. We heard the Id. Sr. DR and perused the material on record. The only issue in the present appeal relates to the levy of penalty u/s 271(1)(c) of the Act. On perusal of the assessment order, it would suggest that disparity between the returned income and assessed income is only on account of following additions made in the assessment :-

- (i) Addition on account of unexplained cash deposits of Rs.29,50,000/-
- (ii) Addition on account of interest on savings bank account.

9. On mere reading of the assessment order, it is evident that the appellant had offered an explanation in support of the sources for the cash deposits. It is stated by the appellant during the course of assessment proceedings as well as proceedings before the Id. CIT(A) that the cash deposits were made out of the withdrawals made from the bank through ATM. The Assessing Officer as well as the Id. CIT(A) had rejected this explanation by holding that no documentary evidence in support of the explanation was filed. It is not the case of the lower authorities that the assessee had filed a false explanation as result of which additions were made. It is settled position of

law that mere rejection of the explanation does not entail levy of penalty u/s 271(1)(c) of the Act as held by the Hon'ble Supreme Court in the case of CIT vs. Reliance Petroproducts Pvt. Ltd., 322 ITR 158 (SC). The relevant held portion given by the Hon'ble Supreme Court in the said judgment is extracted as under :-

“Held : A glance of provision of section 271(1)(c) would suggest that in order to be covered, there has to be concealment of the particulars of the income of the assessee. Secondly, the assessee must have furnished inaccurate particulars of his income. The instant case was not the case of concealment of the income. That was not the case of the revenue either. It was an admitted position in the instant case that no information given in the return was found to be incorrect or inaccurate. It was not as if any statement made or any detail supplied was found to be factually incorrect. Hence, at least, prima facie, the assessee could not be held guilty of furnishing inaccurate particulars. The revenue argued that submitting an incorrect claim in law for the expenditure on interest would amount to giving inaccurate particulars of such income. Such cannot be the interpretation of the concerned words. The words are plain and simple. In order to expose the assessee to the penalty unless the case is strictly covered by the provision, the penalty provision cannot be invoked. By any stretch of imagination, making an incorrect claim in law cannot tantamount to furnishing of inaccurate particulars. [Para 7]

Therefore, it must be shown that the conditions under section 271(1)(c) exist before the penalty is imposed. There can be no dispute that everything would depend upon the return filed, because that is the only document, where the assessee can furnish the particulars of his income. When such particulars are found to be inaccurate, the liability would arise. [Para 8]

The word 'particulars' must mean the details supplied in the return, which are not accurate, not exact or correct, not according to truth or erroneous. In the instant case, there was no finding that any details supplied by the assessee in its return were found to be incorrect or erroneous or false. Such not being the case, there would be no question of inviting the penalty under section 271(1)(c). A mere making of the claim, which is not sustainable in law by itself will not amount to furnishing of inaccurate particulars regarding the income of the assessee. Such claim made in the return cannot amount to the inaccurate particulars. [Para 9]

The revenue contended that since the assessee had claimed excessive deductions knowing that they were incorrect, it amounted to concealment of income. It was argued that the falsehood in accounts can take either of the two forms: (i) an item of receipt may be suppressed fraudulently; (ii) an item of expenditure may be falsely (or in an exaggerated amount) claimed, and both types attempt to reduce the taxable income and, therefore, both types amount to concealment of particulars of one's income as well as furnishing of inaccurate particulars of income. Such contention could not be accepted as the assessee had furnished all the details of its expenditure as well as income in its return, which details, in themselves, were not found to be inaccurate nor could be viewed as the concealment of income on its part. It was up to the authorities to accept its claim in the return or not. Merely because the assessee had claimed the expenditure, which claim was not accepted or was not acceptable to the revenue, that, by itself, would not attract the penalty under section 271(1)(c). If the contention of the revenue was accepted, then in case of every return where the claim made was not accepted by the Assessing Officer for any reason, the assessee would invite penalty under section 271(1)(c). That is clearly not the intendment of the Legislature. [Para 10]

Therefore, the appeal filed by the revenue had no merits and was to be dismissed.”

10. In the light of the above settled position of law, we are of the considered opinion that it is not a fit case for levy of penalty u/s 271(1)(c) of the Act. Accordingly, we direct the Assessing Officer to delete the penalty of Rs.9,51,170/-.

11. In the result, the appeal of the assessee stands allowed.

Order pronounced on this 01st day of June, 2021.

Sd/-

(PARTHA SARATHI CHAUDHURY)
न्यायिक सदस्य/JUDICIAL MEMBER

Sd/-

(INTURI RAMA RAO)
लेखा सदस्य/ACCOUNTANT MEMBER

पुणे / Pune; दिनांक / Dated : 01st June, 2021.

Sujeet

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A)-6, Pune.
4. The Pr. CIT-5, Pune.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, “बी” बेंच, पुणे / DR, ITAT, “B” Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.