

ORDER SHEET

IN THE HIGH COURT AT CALCUTTA

Special Jurisdiction  
[Income Tax]

ORIGINAL SIDE

GA 2541 of 2015  
ITAT 104 of 2015

PRINCIPAL COMMISSIONER OF INCOME  
TAX, KOLKATA – 11, KOL.

VERSUS

H. V. WILLIAMS & COMPANY

BEFORE:

The Hon'ble JUSTICE SOUMITRA PAL

The Hon'ble JUSTICE MIR DARA SHEKO

Date : 2<sup>nd</sup> December, 2015.

*Mr. D. Chowdhury, Adv.*

*Mr. R. Bharadwaj, Adv.*

The Court : This income tax appeal pertaining to A.Y. 2007-08 has been preferred by the Department against the order passed by the Income Tax Appellate Tribunal "A" Bench, Kolkata in ITA No.1281/Kol/2011, whereby the Tribunal had upheld the order of the CIT(A) in deleting the penalty so levied by the Assessing Officer and had dismissed the appeal filed by the Department.

Heard Mr. Chowdhury, learned advocate for the appellant and Mr. Bharadwaj, learned advocate for the respondent.

It appears that while passing the assessment order the Assessing Officer had initiated penalty proceedings under Section 271(1)© of the Income Tax Act, 1961 and had passed an order.

Aggrieved, the assessee preferred an appeal before the CIT(A). The CIT(A) while deleting the imposition of penalty had held as under :

*“4. I have considered the submission of the appellant and perused the assessment order as well as the penalty order. I have also gone through the assessment record and judicial pronouncements relied upon by the appellant. It is observed that the appellant, a firm which is engaged in the profession of attorney, had filed its return of income for A.Y. 2007-08 declaring income of Rs.12,23,550/-. In the assessment order completed u/s. 143(3) of the Act, the AO made an addition of Rs.34,66,017/- being the professional income included in the income from mutual funds. The AO has made disallowance of Rs.2,76,893/- on account of partners remuneration debited to the P/L account. On both the above-mentioned additions/disallowances, the AO also initiated penalty proceedings u/s. 271(1)(c) of the Act. It is observed that in the P/L account, the appellant had credited sum of Rs.50,29,581/- under the head ‘income from mutual fund’. However, in the said income, sum of Rs.34,66,017/- was included which was actually the professional income. Hence, the said income was added by the AO as income from professional and accordingly the income from mutual fund was reduced. During the course of assessment proceedings as well as the penalty proceedings. It is submitted before the AO that the mistake in classification of income has been committed by the appellant’s*

accountant. However, while passing the order u/s. 271 (1)(c) of the Act, the contention of the appellant was not accepted by the AO and he imposed the penalty on aforesaid addition of Rs.34,66,017/-. The AO also imposed penalty on disallowance of partners remuneration. On careful consideration of the facts, I am of the opinion that the AO was not justified in imposing the penalty u/s. 271(1)(c) of the Act. On perusal of assessment record and assessment order, it is observed that the AO had made the addition of Rs.34,66,017/- as business income under the heading "Mis-classed Income". It is also observed that nowhere it is mentioned that the mistake of inclusion of some professional income with the income from mutual funds was detected by the AO and it is fact on record that with regard to the said income no explanation etc. was sought for by the A.O. Hence, the contention of the appellant that the aforesaid mistake was detected by the appellant itself while submitting the details cannot be ignored and in the assessment order the AO himself has mentioned in point no.3 that the A.R. of the appellant admitted the error in representation and submitted the ledger accounts. At the time of penalty proceedings the appellant reiterated its submission that the mistake of including certain account of professional income in the ledger account of income from mutual fund was due to mistake of the Accountant and that the said mistake was a bona fide mistake and not an intentional one. I am of the opinion that merely for the reason that certain additions/disallowances has been made in the assessment order, it cannot lead to conclude that the assessee has concealed its income or has filed inaccurate particulars of his income. The

*explanation offered before the AO was not found to be false or not bonafide.*

*XXXX XXXX XXXX XXXX XXXX XXXX XXXX*

*In the case of appellant, the AO has made the addition on account of professional income and made the disallowance for partners salary. It was explained before the AO that the mistakes were committed by the Accountant while writing the books. The said mistake was also detected by the appellant and disclosed to the AO. while filing the details at the time of assessment proceedings. The explanation offered by the appellant was not found to be false or not bona fide. In view of above facts and the principles laid down in the various judicial pronouncements, it is to be held that the AO was not justified in imposing the penalty u/s. sec 271 (1)(c) at Rs.12,59,860/-. The AO is directed to delete the penalty imposed by him.*

*In the result, the appeal is allowed.”*

The Department, being aggrieved by the order of the CIT(A), preferred an appeal before the Tribunal. The Tribunal, as noted, while dismissing the appeal, had held as under:

*“10. We have considered the rival submission and carefully gone through the material available on record. In the present case, it is an admitted fact that during the course of assessment proceedings the assessee itself came to know that is accountant has committed a mistake and considered the ‘Professional income of Rs.34,66,107/- under the head ‘income from mutual funds’. Which was claimed as exempt. Accordingly, the AO disallowed*

*and added back the sum of Rs.34,66,017/- to the income of the assessee. The explanation of the assessee was that the such mistake was attributable being an error of the accountant and it was not malafide. The said explanation was not rebutted.*

12. *In the present case also the mistake was committed by the accountant of the assessee. Even it was not noticed by the AO, and the assessee itself during the course of assessment proceedings while preparing the details from its ledge accounts came to know the said mistake had been committed by the accountant and proposed for addition. Therefore, through a bonafide and inadvertent error the assessee claimed the income as exempt and wrongly provided for partners' salary. But the submissions of the assessee was that the error occurred by a mistake of its accountant, who treated the said professional income as income from Mutual funds' and the salary was claimed on the basis of the clause mentioned in the original partnership deed was not found to be false. We, therefore, keeping in view of the ratio laid down by the Hon'ble Supreme Court in the case of Price Waterhouse Coopers Pvt Ltd [Supra] are of the view that the Id. CIT(A) was justified in deleting the penalty so levied by the AO. Accordingly, we uphold the order of the Id. CIT(A) on this issue.*
13. *In the result, the appeal of the department is dismissed."*

Since we find that the assessee explained that the mistake was due to the error of the accountant and it was not mala fide and was not rebutted by the

Assessing Officer in his order, which was duly noted by the CIT(A) and the Tribunal in their respective orders, we are of the opinion that the Tribunal was justified in dismissing the appeal.

Therefore, the application is dismissed. The appeal is not admitted.

[ SOUMITRA PAL, J. ]

[ MIR DARA SHEKO, J. ]

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