

Income Tax Appeal No. 205 of 2013

Commissioner of Income Tax, Appellant
Aligarh

Versus

M/s Sewak Ice & Cold Storage Respondents.
(P) Ltd.

Hon. Tarun Agarwala, J.

Hon. Dr. Satish Chandra, J.

(Per: Tarun Agarwala, J.)

The present appeal has been filed by the department under Section 260A of the Income Tax Act, 1961 (hereinafter referred to as the Act). The appeal was admitted on the following substantial questions of law:

“1. Whether the ITAT was justified in deleting the penalty imposed u/s 271(1) (C) on the grounds that reasons for imposition of penalty are different when in fact they are one and the same.

2. Whether the ITAT was justified in deleting the penalty imposed u/s 271(1) (C) on technical grounds, ignoring both the orders of assessment and penalty.

3. Whether the ITAT was justified in deleting the penalty imposed u/s 271(1) (C) ignoring the provision/language Section 273(B) which provides for exception to levy of penalty, and apart from the exceptions

provided no other ground can be held to be a valid ground for deletion of penalty.

4. Whether in facts and circumstances of the case the Hon'ble ITAT was correct in setting aside the orders of Revenue authorities and cancelling the direction of Ltd. CIT(A) for levying the penalty being 100% of tax of Rs. 35,03,011/- under Section 271(1) (C) of the Income Tax Act, 1961 by holding that A.O. has levied penalty on different reason than the reason given in assessment order while recording satisfaction and while issuing show cause notice, whereas the A.O. had levied penalty on the same reason given in assessment order while recording satisfaction and while issuing show cause notice.”

The facts leading to the filing of appeal is, that the assessee is a company deriving its income from cold storage for the assessment year 2003-04. The assessee filed his return along with the audited copy of balance sheet and profit and loss account. The assessee was given a notice under Section 142(1) of the Act requiring to file relevant information and evidence such as books of accounts. Since the assessee did not comply with the terms of notice, the Assessing Officer proceeded under Section 144A of the Act and made an ex-parte best judgment assessment. Apart from various additions, the relevant additions made by the Assessment Officer was an amount of Rs. 26,33,328/-, which related to the advance given by the farmers to the assessee and a sum of Rs. 35,03,011/-, which was towards loans given by various persons.

On the addition of Rs. 26,33,328/- the Assessing Officer held:

“From above reply, it is clear that the amount of Rs. 26,33,328/- was the advance rent received from the farmers. It does not change that fact that advances so received are credit appearing in the books as per balance sheet of the assessee. It is well settled law that under section 68, the credits of loans as well as the credits of business transaction are to be proved in the same manner. The assessee has to file documentary evidence or sufficient materials on record to prove the identity creditworthiness and genuineness of transaction in respect of credits of advance rent received from each farmers. In response to notice, the assessee told the theory only. No evidence has been placed on record by the assessee to prove each advance received from farmers as required by notice under section 142(1) as above.”

On the addition of Rs. 35,03,011/- the Assessing Officer held:

“From the bank statements of account no. 01050/040104 maintained with State Bank of India Hathras, it has been transpired that the assessee deposited bank drafts amounting to Rs. 35,03,011/-. No account books were produced to examine the nature and source of these drafts nor the Ld. Addl. Commissioner of Income-tax Range-3, Etah issued the directions under section 144A on this issue, therefore, the amount of drafts amounting to Rs. 35,03,011/- is added in the total income under section 69 of the Income-tax Act, 1961.”

While making the assessment, the Assessing Officer found that the assessee has concealed the particulars of income and filed inaccurate particulars of income, therefore, held that proceedings under Section 27(1)(c) of the Act would be issued separately. The assessee, being aggrieved, filed an appeal and thereafter filed a second appeal before the Tribunal. The Tribunal by an order dated 25.05.2007 deleted the additions of Rs.26,33,328/-. The addition of Rs. 35,03,011/- was confirmed by the Tribunal.

In the meanwhile, the Assessing Officer issued a notice dated 26.04.2005 under Section 271(1)(c) of the Act for the purpose of levying penalty. The relevant extract of the notice is extracted hereunder:

“Whereas in the course of proceedings before me for the assessment year 2003-2004 it appears to me that you have furnished the inaccurate particulars of your income within the meaning of section 271(1)(c) of the Income Tax Act, 1961.”

A perusal of the aforesaid notice indicates that penalty notice was with regard to inaccurate particulars of income within the meaning of Section 271(1)(c) of the Act and was not with regard to concealment of income. The assessee submitted his reply asserting that there was no *mens rea* and the return was filed without concealing any income. The Assistant Commissioner of Income Tax after considering the matter held that the assessee could not prove the identity and

credit worthiness in respect of the amount of Rs. 26,33,328/-, claimed to have been taken as advance from the farmers and further the source could not be proved in respect of Rs. 35,03,011/-, which was found to be deposited in the Bank. The authority, consequently, held that the assessee had intentionally concealed the income and furnished inaccurate particulars of income and imposed a minimum penalty of Rs. 22,55,104/- under Section 271(1)(c) of the Act for furnishing inaccurate particulars of his income in the return of income filed for the Assessment Year 2003-04.

The assessee, being aggrieved, filed an appeal, which was partly allowed. The appellate authority held that since the Tribunal had deleted the addition of Rs. 26,33,328/-, the question of imposing penalty of this amount does not survive. The appellate authority, however, affirmed the imposition of penalty in respect of addition of Rs.35,03,011/-. The appellate authority directed the Assessing Officer to work out 100% of tax thereon, which would be the amount of penalty.

The assessee, being aggrieved, filed a second appeal before the Tribunal, which was allowed and the penalty was set aside. The department, being aggrieved, filed the present appeal.

In this background, we have heard Sri Dhananjay Awasthi, the learned counsel for the Department and Sri Rahul Agrawal, the learned counsel for the assessee at length.

Section 271(1) (c) of the Act reads as under:

“(c) has concealed the particulars of his income or furnished inaccurate particulars of such income.”

Section 271(1) (c) of the Act is in two parts. The first part relates to concealment of income and the second part relates to the furnishing of inaccurate income.

In the instant case, the penalty notice has been issued for furnishing inaccurate particulars of income, namely, the second part of Section 271(1)(c).

In **Dilip N.Shroff Vs. Joint Commissioner of Income Tax, Mumbai and another, (2007) 291 ITR 519 (S.C.)**, the expression “concealment” and “furnishing inaccurate particulars” has been explained by the Supreme Court, namely:

“The expression “conceal” is of great importance. According to Law Lexicon, the word “conceal” means:

“To hide or keep secret.

The word 'conceal' is derived from the latin *concelare* which implies *con+celare* to hide. It means 'to hide or withdraw from observation; to cover or keep from sight; to prevent the discovery of; to withhold knowledge of'. The offence of concealment is thus a direct attempt to hide an item of income or a portion thereof from the knowledge of the Income Tax Authorities.”

In Webster's Dictionary, “inaccurate” has been defined as:

“not accurate, not exact or correct; not according to truth; erroneous; as an inaccurate statement, copy or transcript”.

It signifies a deliberate act or omission on the part of the assessee. Such deliberate act must be either for the purpose of concealment of income or furnishing of inaccurate particulars.”

In view of the penalty notice, the inaccurate details was with regard to non-furnishing of the correct address of the farmers, which was in relation to the advance taken from the farmers to the tune of Rs. 26,33,328/-. No inaccurate details was furnished by the assessee with regard to the addition of amount of Rs. 35,03,011/- as is clear from paragraph 21 of the assessment order, which has already been extracted aforesaid. Insofar as inaccurate furnishing of details for the amount of Rs. 26,33,328/- is concerned, the said amount was deleted by the Income Tax Appellate Tribunal and, therefore, the question of imposing any penalty on this amount no longer survives. With regard to penalty on the amount of Rs. 35,03,011/-, the Assessing Officer had added this amount as unexplained investment since the assessee could not produce any books of account. The penalty notice was with regard to furnishing of inaccurate particulars of income, which relates to furnishing of incorrect address. The penalty notice was not issued with regard to concealment of income.

In New Sorathia Engineering Co. Vs. Commissioner of Income Tax, (2006) 282 ITR 642, the Gujrat High Court held

that the order of penalty must clearly state whether it is for concealment or for furnishing of inaccurate particulars.

The Rajasthan High Court in **Commissioner of Income Tax Vs. Kejriwal Iron Stores, 168 ITR 715** held that the Assessing Officer could not impose penalty on income on a different grounds where penalty proceedings commenced on a particular ground.

In **CIT Vs. Usha Marketing (P) Ltd., 319 ITR 9**, the Supreme Court held that every addition made by the assessing authority would not result in penalty being imposed under section 271(1)(c) unless the parameters of Explanation 1 to the section were satisfied.

Similarly, in **CIT Vs. Reliance Petroproducts Pvt. Ltd., 322 ITR 158**, the Supreme Court held that 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 is accepted then in each case of every Return where claim made is not accepted by the Assessing Officer for any reason, the assessee will invite penalty under Section 271(1) (c). This is not the intendment of the legislature.

The assessment order clearly indicates that the audited copy of the balance sheet and profit and loss account were filed, which were not accepted by the Assessing Officer and best judgment was passed.

In the entirety of the circumstances, we find that since the

penalty notice was only confined to the furnishing of inaccurate particulars and was not with regard to concealment of income, the imposition of penalty for the unexplained deposit in Bank amounting to Rs. 35,03,011 could not be imposed. The Tribunal was justified in deleting this penalty. In the light of the aforesaid, the appeal fails and is dismissed. The questions of law are answered against the department and in favour of the assessee.

Dated: 17.10.2014

MAA/-

(Dr.Satish Chandra,J.) (Tarun Agarwala,J.)