

**IN THE INCOME TAX APPELLATE TRIBUNAL
CHANDIGARH BENCHES 'SMC' CHANDIGARH**

BEFORE SHRI H.L.KARWA, HON'BLE VICE PRESIDENT

ITA No. 536/Chd/2014
Assessment Year: 2009-10

Shri Jagjit Singh,
Chandigarh

Vs. The ITO, Ward-3(2),
Chandigarh

PAN No. APGPS2394E

(Appellant)

(Respondent)

Appellant By : Shri Tej Mohan Singh
Respondent By : Shri R.K.Gupta

Date of hearing : 15/06/2015
Date of Pronouncement : 19/06/2015

ORDER

PER H.L.KARWA, VP

This appeal filed by the assessee is directed against the order of CIT(A), Chandigarh dated 26.3.2014 in confirming the penalty of Rs. 1,08,452/- imposed u/s 271(1)(c) of the Income-tax Act, 1961 (in short 'the Act') for the assessment year 2009-10.

2. The assessee is an individual and filed his return of income for the assessment year under consideration on 31st March, 2010 declaring a total income a Rs. 7,67,760/-. The return was processed u/s 143(1) of the Act. Subsequently, the case was selected for scrutiny under CASS, on the basis of AIR information. During the assessment year under consideration, the assessee worked as an Exhibitor and Infrastructure Provider. During the course of examination of the case, the Assessing Officer noticed that assessee had debited

an amount of Rs. 1,01,999/- on account of building material and Rs. 75,000/- as processing charges in the trading / profit and loss account. The Assessing Officer disallowed the above expenses stating that they are of capital nature and added the same to the total income of the assessee. While scrutinizing the profit and loss account of the assessee, the Assessing Officer also noted that assessee has debited an amount of Rs. 66,405/- as interest on Over Draft (herein referred to 'O.D.'). The Assessing Officer also noticed that the assessee had withdrew funds of Rs. 9 lakhs from the business as imprest. The Assessing Officer disallowed Rs. 66,405/- stating that this is not an allowable expense and added the same to the total income of the assessee. The Assessing Officer further observed that assessee had debited an amount of Rs. 34,663/- under the head 'Credit Card payments'. The Assessing Officer disallowed the same holding that the same was not related to the business. Since the assessee has failed to disclosed fully and truly particulars of his income, penalty proceedings u/s 271(1)(c) were initiated. A show cause notice was issued to the assessee on 28.12.2011 and in response to the said notice, the assessee submitted written reply on 14.2.2012 stating, inter alia that the impugned additions were made on estimate basis and he has not submitted any inaccurate particulars and concealed any facts and all the particulars of income and expenses are shown in the profit and loss account and the balance sheet of the assessee. Thus the bonafide of the assessee cannot be doubted. However, the Assessing Officer did not accept the above explanation of the assessee and imposed penalty of Rs. 1,08,452/- u/s 271(1)(c) of the Act.

3. On appeal the CIT(A) confirmed the penalty for the reasons stated in para 5 to 5.2 of the impugned order and, hence, the assessee is in appeal before the Tribunal.

4. I have heard Shri Tej Mohan Singh Ld. Counsel for the assessee and Shri R.K. Gupta, Ld. DR at length and also have perused the materials available on record.

5. It appears from the record that above additions made by the assessee in the assessment order was never challenged by filing an appeal before the CIT(A). As per records, the assessee had debited Rs. 1,01,999/- on account of building material and Rs. 75,000/- on account of trading charges to the profit and loss account. The Assessing Officer has disallowed these expenses merely stating that as these expenses were of capital nature. He has not given any detailed finding on this issue. It is true that in the course of penalty proceedings, findings recorded in quantum proceeding can be referred to and relied upon, but confirmation of the quantum addition by itself cannot be reason enough for imposing penalty u/s 271(1)(c) of the Act. In the instant case the Assessing Officer had not given any independent reasons for imposing penalty but had merely relied upon the fact that in the quantum proceedings, the expenses claimed by the assessee were held to be of capital nature. In my considered opinion, on this score alone the penalty levied in respect to the above amount by the Assessing Officer can be held bad in law and deserves to be cancelled. It is true that penalty proceedings and the quantum proceedings are different and independent proceedings. As per law, the Assessing Officer was obliged to give independent reasons for imposing penalty u/s 271(1)(c). The assessee claimed these expenses as Revenue expenses in the profit and loss account. However, the Assessing Officer treated these expenses of capital nature. Thus, there was difference of opinion between the Assessing Officer and the assessee. Even otherwise also this issue is debatable in the sense that in the given facts and circumstances of the case whether these expenses can be treated as Revenue expenses or capital expenses which can be established by a long drawn process of reasoning on points on which there may be conceivably two

opinions. There is no discussion in the assessment order on this issue except one line is written which reads: “*These expenses are of capital nature should have been capitalized*”. He has not assigned any reason as to why these expenses can be considered as of capital nature. On the contrary the assessee has claimed these expenses as Revenue expenditure. Such issues are never free from controversy and, therefore, no penalty u/s 271(1)(c) of the Act can be levied on the above amount.

6. The assessee had claimed an amount of Rs. 66,405/- on account of interest on Overdraft. The Assessing Officer noticed that assessee had withdrawn funds of Rs. 9 lakhs from business as imprest and so he disallowed this interest of Rs. 66,405/- and imposed penalty u/s 271(1)(c) of the Act on an amount of Rs. 66,405/- also.

7. Shri Tej Mohan Singh, Ld. Counsel for the assessee submitted that the assessee has not furnished any inaccurate particulars of income and concealed any facts. All the particulars of income and expenses are shown in the profit and loss account and the balance sheet of the assessee. It is observed that this amount has been disallowed out of the interest expenses which were claimed on Overdraft account. Shri Tej Mohan Singh, Ld. Counsel for the assessee submitted that this amount has been routed through books of account. According to Ld. Counsel for the assessee, the issue is debatable in the sense that whether the amount of interest claimed is allowable or not, it is not free from controversy and, hence, there is no concealment of income or filing of any inaccurate particulars of income.

8. It is apparent from the record that assessee had withdrawn Rs. 9 lakhs from the business as ‘imprest’. The Assessing Officer has made disallowance of Rs. 66,405/- without assigning any reason which is clear from para 3.3 of the assessment order. Para 3.3 of the assessment order reads as under:-

“3.3 Interest on O.D.

While scrutinizing the profit and loss account of the assessee it is noticed that the assessee has debited an amount of Rs. 66,405/- as interest on O.D. However, while further examining the case it is noticed that the assessee has withdrew funds of Rs. 9 lacs from the business as imprest. Keeping this fact in view, this is not an allowable expense. As such an addition of Rs. 66,405/- is made to the total income of the assessee.”

9. Even in the penalty order the Assessing Officer has not given independent reasons for imposing penalty but merely relied upon the findings given in the assessment order. In fact the Assessing Officer disallowed Rs. 66,405/- without assigning any reason. He has simply observed that this amount is not an allowable expense. The penalty order passed by Assessing Officer is non-speaking and the Assessing Officer has not given any independent reason for imposing penalty. It is well settled law that confirmation of quantum addition by itself cannot be reason enough for imposing concealment penalty u/s 271(1)(c) of the Act. I have already observed hereinabove that issue is debatable in the sense that the amount of interest claimed on overdraft is allowable or not, is not free from controversy. Secondly, the Assessing Officer has not given any independent reason while imposing penalty u/s 271(1)(c) of the Act. On both counts, penalty u/s 271(1)(c) is not leviable on the amount of disallowance of Rs. 66,405/-. Accordingly, I cancel the impugned penalty.

10. In the assessment order, the Assessing Officer had disallowed Rs. 34,663/- being Credit Card payments observing as under:-

“3.4 Further, while examining the profit and loss account of the assessee it is noticed that assessee has debited the following amounts:-

i) Credit card Payment : Rs. 34,663/-:-

The assessee has debited an amount of Rs. 34,663/- under the head credit card payments. The same are disallowed being not related to business.”

11. The Assessing Officer levied penalty u/s 271(1)(c) of the Act of above amount stating that the addition of Rs. 34,663/- was made by his predecessor as the same was not related to business. He, therefore, held that it is a fit case where penalty u/s 271(1)(c) of the Act should be imposed. The Ld. CIT(A) confirmed the penalty.

12. Shri Tej Mohan Singh Ld. Counsel for the assessee submitted that there is no question of concealment of income or filing of inaccurate particulars of income because amount has been routed through the books of account. There is no discussion in the assessment order and also in the penalty order as to how these expenses are not related to business. The Assessing Officer has not pointed out any single item of expenses which was not related to business. There are no such findings that these expenses are non-genuine or bogus or was claimed to reduce the tax liability. In the absence of such findings, I am of the opinion that levy of penalty u/s 271(1)(c) of the Act is not correct. In the case of DCIT v Abhishek Exports (2014) 148 ITD 20 (Ahd.), the Tribunal held that merely because such an expenses claimed by the assessee have incurred in cash but not supported by documentary evidence to the satisfaction of Revenue authorities, it could not be said that Revenue has proved that expenses claimed were not genuine. The relevant observations made by the ITAT, Ahmedabad Bench are as under (head note page 22...) :-

“In the absence of complete and convincing corroborative evidence, the Revenue may justifiably disallow certain part of the expenses claimed by the assessee, but in the matter of

penalty proceedings, the onus lies heavily on the Revenue to prove that the assessee had concealed its income or has filed inaccurate particulars of its income. In this case, the Revenue has failed to prove that the claim of the expenses under the head 'wages to workers' were non-genuine or were inflated by the assessee. Merely because certain expenses have been claimed by the assessee to have incurred in cash and were not supported by documentary evidence to the satisfaction of the Revenue authorities, it could not be said that the Revenue has proved that the expenses claimed were inflated or non-genuine."

The Tribunal further observed as under (head note page 22...):-

"It is well settled that the parameters of judging the justification for addition made in the assessment case of the assessee is different from the penalty imposed on account of concealment of income or filing of inaccurate particulars of income and that certain disallowance/addition could legally be made in the assessment proceeding on the preponderance of probabilities, but no penalty could be imposed under section 271(1)(c) of the Act on the preponderance of probabilities and Revenue has to prove that the claim of the expenses by the assessee was not genuine or was inflated to reduce its tax liability. No such material has been produced by the Assessing Officer to suggest that the assessee has infact inflated its expenses or non-genuine expenses were claimed under the head 'wages to workers'. The decisions relied upon by the Revenue are distinguishable since in these cases some corroborative evidence to support the charge of concealment of income or filing of inaccurate particulars of income was produced. Thus, it is not a fit case to levy penalty under section 271(1)(c) of the Act, which was rightly cancelled by the Commissioner (Appeals) and the grounds of the appeal of the Revenue being without any merit are dismissed."

13. Considering the facts of the present case and also keeping in view the decision of ITAT, Ahmedabad Bench referred to above, I am of the considered opinion that no penalty u/s 271(1)(c) of the Act is leviable on an amount of Rs. 34,663/-.

14. In view of the above, I cancel the penalty of Rs. 1,08,452/- imposed by the Assessing Officer and confirmed by CIT(A).

15. In the result appeal is allowed.

Order Pronounced in the Open Court on 19.06.2015

Sd/-
(H.L.KARWA)
VICE PRESIDENT

Dated : 19th June, 2015

Rkk

Copy to:

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