

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ
IN THE INCOME TAX APPELLATE TRIBUNAL,
" SMC" BENCH, AHMEDABAD

BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No. 352/Ahd/2022
निर्धारण वर्ष/Asstt. Year: 2011-2012

Pankajkumar Babulal Tiwari, C-52, Ishan-1, Crajdham Temple, Satellite, Ahmedabad-380015. PAN: ADJPT0223E	Vs.	A.C.I.T, Circle-4(2), Vadodara.
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(Applicant)		(Respondent)
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Assessee by :	Shri Anujkumar Tiwari, A.R
Revenue by :	Shri Sanjaykumar, Sr. D.R

सुनवाई की तारीख/**Date of Hearing** : **09/01/2023**
घोषणा की तारीख/**Date of Pronouncement**: **10/02/2023**

आदेश/ORDER

PER WASEEM AHMED, ACCOUNTANT MEMBER:

The captioned appeal has been filed at the instance of the Assessee against the order of the Learned Commissioner of Income Tax (Appeal), Vadodara, dated 29/07/2022 arising in the matter of penalty order passed under s. 271(1)(c) of the Income Tax Act, 1961 (here-in-after referred to as "the Act") relevant to the Assessment Year 2011-2012.

2. The only issue raised by the assessee is that the learned CIT(A) erred in confirming the levy of penalty under section 271(1)(c) of the Act.

3. The facts in brief are that the assessee is an individual and employed with Torrent Power Ltd. In the return filed under section 139 of the Act for the year under consideration, the assessee declared income at Rs. 22,81,620/- under the head salary and other income. Subsequently, it was found that the assessee during the year received an amount of Rs. 10,45,352/- on account of premature surrender of LIC against which the assessee has paid premium of Rs. 6,01,420/- only. Hence, the assessee earned net income of Rs. 4,43,932/- only. However, the same was not offered to tax by the assessee. Therefore, the assessment was re-opened by issuing notice under section 148 of the Act dated 29-03-2018. The assessee in response to such notice filed return of income under section 148 of the Act wherein he offered the additional income of Rs. 4,43,932/- and the AO accordingly framed the assessment accepting return income declared in response to notice under section 148 of the Act. However, the AO initiated penalty proceedings on account of concealment of income.

4. The assessee during the penalty proceeding submitted that he was under the bona-fide belief that receipt on surrender of LIC is not taxable. However, on realization of mistake, he deposited the due tax amount on such receipt of LIC even before the issuance of notice under section 148 of the Act. Finally, when he filed return of income in response to notice under section 148 of the Act, included the income from LIC in the computation of total income under the Act. Accordingly the assessee contended that there was no concealment of income or furnishing of inaccurate particular of income which was done with deliberate, willful or mala fide intention. As such the same was not shown due bona-fide belief that such receipt is not taxable. The assessee further contended that he has been regularly paying taxes for which he received certificate of appreciation from department of Income Tax in A.Y. 2017-18. Therefore, in such facts & circumstances, the penalty under

the provisions of section 271(1)(c) of the Act should not be levied. The assessee in support of his contention also relied on various case laws.

5. However, the AO found that the assessee offered the undisclosed income only when it was brought to his notice by the department. Therefore, the contention of assessee that the income was offered voluntary is not correct. The AO further found that the case laws relied on by the assessee are distinguishable from the facts of the assessee. As such in those cases return was revised by the assessee even before the issuance of notice. Thus, the AO held that the assessee deliberately concealed the particulars of income until the same was detected by the department. Hence, the AO levied the penalty of Rs. 1,37,174/- being 100% of tax being sought to be evaded.

6. On appeal by the assessee the learned CIT (A) also confirmed the penalty levied by the AO.

7. Being aggrieved by the order of the AO, the assessee is in appeal before me.

8. The learned AR before me filed written submissions along with the case laws running from pages 1 to 32 and submitted that the income from LIC was not offered to tax under the bona-fide belief by the assessee. Likewise, the amount of tax was paid much before the issuance of notice under section 148 of the Act. Accordingly, the penalty cannot be levied.

9. On the other hand, the Id. DR vehemently supported the order of the authorities below.

10. I have heard the rival contentions of both the parties and perused the materials available on record. Admittedly, the assessee has not offered income on receipt from LIC in the original return filed under section 139 of the Act. The assessment was reopened by issuing notice under section 148 of the Act. The

assessee in the return filed in response to notice under section 148 of the Act offered income on the amount received from LIC. The income offered in the rerun filed in response to notice under section 148 of the Act was accepted by the AO without any adjustment. However, the AO initiated penalty proceeding under section 271(1)(c) of the Act for concealment of income and finally levied the penalty which was also confirmed by the learned CIT(A).

10.1 It is a settled position of law that the penalty proceedings are different from assessment proceedings. In the penalty proceeding burden is cast on the revenue to prove that the assessee has concealed income or furnished inaccurate particular of income. In holding so I find support and guidance from the judgment of Hon'ble Madhya Pradesh High Court in case of CIT vs. Suresh Chandra Mittal reported in 241 ITR 124 where it was held as under:

It is well-settled that under section 271(1)(c), the initial burden lies on the revenue to establish that the assessee has concealed the income or has furnished inaccurate particulars of such income. The burden shifts to the assessee only if he fails to offer any explanation for the undisclosed income or offers an explanation which is found to be false by the assessing authority. However, the proviso to Explanation 1 provides for shifting of this burden again where the explanation offered by the assessee is found to be bona fide.

10.2 On further appeal by the department the Hon'ble supreme court also confirmed the finding of the above of the Hon'ble High court which is reported in 251 ITR 9.

10.3 Coming to the case on hand, it is undisputed fact that assessee deposited tax on LIC receipt dated 09-03-2018 i.e. before issuance of notice under section 148 of the Act dated 29-03-2018. The assessee further revised his income in the return filed under section 148 of the Act and explained that he was under the bona-fide belief that the receipt from LIC is not taxable. However, on realization of mistake, deposited the tax due tax on such receipt. The explanation of the assessee nowhere found to be incorrect by the AO. The AO has also not brought any evidence on record that the assessee willfully not offered the income from receipt of LIC. As such, the AO only on the basis of presumption and surmises held that the assessee

offered income only after same has been identified by the department. Such presumption of the AO is not based on any material. Therefore, in this facts and circumstances, it cannot be held that the assessee has concealed his income and liable to penalty under section 271(1)(c) of the Act. In holding so, I also find support and guidance from the judgment of Hon'ble Gujarat High Court in case of PCIT vs. Gujarat State Electricity Corporation Ltd. reported in 144 taxmann.com 165 where the Hon'ble court held that in no penalty can be imposed where the assessee made bona fide mistake and corrected the same on realization of mistake. The relevant observation of the Hon'ble court is extracted as under:

11. We have considered the submissions made by learned advocate for the Revenue and in view of finding of fact arrived at by the Tribunal to the effect that the assessee on realisation of the mistake, has rectified the same by offering the provision for interest of Rs. 11.90 crores as prior period income in subsequent year and therefore, in view of such necessary correction done by the assessee on detecting the mistake pointed out by the Assessing Officer during the assessment proceedings for the year under consideration, it can be inferred that there is no mensrea on part of the assessee so as to attract the penalty under section 271(1) (c) of the Act.

10.4 In view of the above and considering the facts in totality, I find that the assessee under the bona fide belief not offered income on receipt from LIC in original return however rectified the same while filing the return under section 148 of the Act. The assessee also paid due tax on such receipt even before issuance of notice under section 148 of the Act. Thus, there was no will full attempt of the assessee to conceal his income. Therefore, I hereby set aside the finding of the learned CIT(A) and direct the AO to delete the penalty imposed by him. Hence the ground of appeal of the assessee is hereby allowed.

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

Order pronounced in the Court on 10/02/2023 at Ahmedabad.

**Sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER**

Ahmedabad; Dated 10/02/2023
Manish

(True Copy)