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Court : Income Tax Appellate Tribunal ITAT Delhi

Decided On : Jul-02-2001

Judge : R Gupta

Appellant : Assistant Commissioner of

Respondent : Geeta Devi

Judgement :

1. This is an appeal by department against the order of CIT (Appeals) dt. 21-9-1994 relating to assessment year 1991-92. The following ground of appeal has been taken by the department:-- "On the facts and circumstances of the case, Ld. CIT(A)-X, New Delhi has erred in deleting the penalty of Rs. 2,00,000 imposed under Section 271(1)(c) of the Income-tax Act, 1961." 2. Brief facts of the case are that the assessee earned income from purchase and supply of different types of iron goods to the Ministry of Railways on contract basis. During the course of assessment proceedings the assessee was required to file the month-wise details of purchase and sales. After verifying the purchases and sales, the Assessing Officer noted that purchases between January to March have been made more than Rs. 2 lakhs. However, the sales were shown in the months of January and February at Rs. 1,450 and Rs. 2,750 respectively. The closing stock was shown only at Rs. 8,208. The assessee was required to file the explanation regarding the closing stock, because the purchases were more than Rs. 2 lakhs and sales were only of about Rs. 4,000. In this way the closing stock should have been more than Rs. two lakhs; whereas the assessee have shown Rs. 8,208. It was replied that

due to clerical mistake the sales had not been shown in the months of January, February and March, because of the sales effected in these months had been shown in earlier months due to clerical error. It was further stated that the assessee prepares invoices for approval from the Railway Authorities and after getting the approval, then only the material was supplied. However, the Accountant, who was new one and this was being the first year of the trade, entered the sales as per invoices prepared for approval. This contention was not accepted by the Assessing Officer. During the course of assessment proceedings the assessee wrote letter to the Assessing Officer that he is ready to surrender amount of Rs. 2,11,621, as the same was difference in stock, because of clerical mistake. It was further added in the letter that the assessee is ready to surrender the amount just to buy peace and subject to no penal action against the assessee under the provisions of law. The addition was made by the Assessing Officer. However, penalty proceedings under Section 271(1)(c) were also initiated.

3. On a later stage the show-cause notice under Section 271(1)(c) was issued. The assessee filed reply that the amount was surrendered just to buy peace and subject to no penal action against the assessee. It was further stated that assessee had not concealed any particulars or furnished any inaccurate particulars. The mistake was due to clerical error. Accordingly the same submissions were reiterated as were made during the course of assessment proceedings. The Assessing Officer was not satisfied. In his view, the assessee furnished inaccurate particulars. Accordingly the closing stock was not shown properly, by further observing that it is a clear case of concealment of income by resorting to suppression of the closing stock. Accordingly a penalty of Rs. two lakh was imposed by the Assessing Officer under Section 271(1)(c) vide his order dated 30-9-1992.

4. The assessee preferred appeal before the CIT(A) who after considering the material and various case laws relied upon by the assessee, was of the view that this is not a case of concealment. It was further observed by the CIT(A) that assessee has successfully explained the reason of difference in stocks. The purchases and sales made by assessee were also noted by the CIT(A) and it was also examined that this is a trade practice of the assessee to prepare invoices first,

then the same were sent to the Railway Authorities for approval and when the approval was made and the payment was also received on the same day, then only the material was supplied to the Railway Authorities. Accordingly it was found by the CIT (Appeals) that there was a mistake on the part of accountant, who entered the sale as per the invoices prepared for approval and it was also ascertained by CIT(Appeals) that assessee supplied the material after getting the approval of the invoices. Accordingly the penalty was cancelled by the CIT(Appeals). Now the department is in appeal here before the Tribunal.

5. The learned DR placed reliance on the order of the Assessing Officer. On the other hand, the learned counsel of the assessee placed reliance on the order of the CIT(Appeals), 6. I have considered the orders of the authorities below and found that the CIT(A) was correct in cancelling the penalty. Undisputedly this was a trade practice of the assessee that invoices were prepared first and they were sent to the Railway authorities for approval and after getting the approval along with the payments through cheque, then the material was supplied to the Railways. For example, the assessee raised a proforma Invoice No. 111, dated 29-10-1990 for approval of the Railway authorities. The material was supplied on 4th January, 1991 after preparing final bill, as the assessee received approval along with cheque from the Railway authorities on 3-1-1991 and accordingly the material was supplied to them on 4-1-1991. The Accountant of the assessee not being conversant with the proper entries in this regard and the entries were made in sale register on 29-10-1990, with should have been made in the month of January, 1991, i.e., on 4-1-1991.

Similarly, there were three-four bills and those were prepared in the months of October, November and December and the approvals were received in the month of January 1991 and accordingly the material was supplied to the Railway authorities in the month of January 1991. From this trade practice of the assessee it is clearly established that assessee first prepares proforma invoices, then the same were sent to the Railway authorities for approval and after getting the approval, then immediately the material was supplied. Accordingly, I am of the view that the CIT (Appeals) was right in deleting the penalty. From the facts of the present case I noted that assessee had already suffered in disclosing income of

Rs. 2,11,621 on account of mistake of the clerk and there should not be any further penal action against the bona fide mistake of the assessee. Even on merit the surrendered amount cannot be added to the income of the assessee, as there was no income because the sales, which should have been shown in the month of January, but due to mistake it was entered in the months of October, November, December.

However, the assessee himself had surrendered, just to buy peace.

Therefore, there is no point to treat this surrender as concealed income of the assessee.

7. Explanation 1 to Section 271(1)(c) applies in a case where the assessee fails to offer an Explanation or the Explanation offered by him is found by the Assessing Officer to be false. In the present case the assessee has successfully explained the fault. Therefore, in my considered view. Explanation 1 to Section 271(1)(c) does not apply on the facts of the present case. The purchases and sales were fully vouched and no defect of any kind was found by the Assessing Officer, neither any instance was noted that assessee had made any sales outside the books of account. In my considered view, it cannot be held as a inflexible rule that when an assessee agrees to an addition to his total income, he makes an admission which would by itself warrant the imposition of penalty. Even in such cases the department has to prove by independent evidence, in addition to the evidence already brought on record from various sources during the assessment proceedings, that the amount represented the concealed income of the assessee.

8. In the case of Sir Shadilal Sugar & General Mills Ltd. v. CIT [1987] 168 ITR 705, the Hon'ble Supreme Court has held that, "From assessee agreeing to additions to his income, it does not follow that amount agreed to be added was concealed income." This ratio of the Hon'ble Supreme Court is fully applicable on the facts of the present case. I am further of the view that it is well established that penalty cannot be levied merely because a certain item is surrendered unless there is material on record to show that surrendered item was assessee's concealed income. In other words, no penalty can be imposed simply because the assessee had agreed to offer certain amount as his additional income.

9. In the case of Chetan Das Lachman Das v. ITO [1993] 46 TTJ (Delhi) 19, the Bench has observed that penalty imposed on account of discrepancy in stock account and addition of cash credits, where the ITO compared the stock account and subsequent sales, deliberately ignoring the subsequent purchases it was found that there was complete tally except the tally in making the entry. As there was no discrepancy in the stock tally the inference that stocks were sold but the sale proceeds were not brought into account, is misplaced and no concealment can be inferred.

10. The facts in the present case are exactly similar. Here also the sales were shown inadvertently in the earlier months, whereas the purchases were effected in subsequent month, as the material was also supplied in the subsequent month. As I have already stated that due to clerical mistake by the Accountant, the entries in sales account was only on the basis of proforma invoice. This mistake cannot be said that assessee has furnished any inaccurate particulars or has concealed any income. There is a complete stock tally and all the purchases made, including the opening stock, were fully accounted for in the sales and closing stock. Therefore, I am of the firm view that assessee has not concealed any income on which penalty can be imposed under Section 271(1)(c).

11. In the case of Pannalal R. Shivhare v. Second ITO [1993] 47 TTJ (Bom.) 577, the Bombay Bench has held as under :-- "What transpires is that the assessee, with a view to buy peace, agreed to additions, on which basis the assessment was completed by the Assessing Officer within hours of the filing of the revised statement. Assessee also offered detailed Explanation in respect of the different items constituting the impugned addition but the CIT(A) did not consider such Explanation. To say the least, it can be said that from the facts no finding that there was any suppression of facts, much less concealment on the part of the assessee in respect of the disputed items of income which he reflected in his revised return, could even be deduced. Merely agreeing to an addition with a view to buy peace and maintain cordial relations with the department. An assessee does not render himself liable for being penalised under Section 271(1)(c). In the facts and circumstances of the case, it cannot be gainsaid that there is an absence or any material or finding that the assessee concealed his income. The penalty

imposed is deleted Sir Shadilal Sugar & General Mills Ltd. & Another v. CIT [1987] 168 ITR 705 (SC); CIT v. Haji Gaffar Haji Dada Chini [1988] 169 ITR 33 (Bom.) and N.N. Sippy v. ITO ITA Nos. 253 to 258/Bom./87 dt. 31st Dec., 1991] applied." 12. Similar view was taken by the Delhi Bench of Tribunal in the case of ITO v. Siya Ram Bros, in [IT Appeal No. 4914 (Delhi) of 1983, dated 30-7-1985]. Therefore, in view of these facts and circumstances and in view of the legal position, I hold that there is no infirmity in the order of CIT(Appeals) either on facts or in the eyes of law.

Accordingly, I confirm the order of CIT (Appeals).

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