

Dcit Vs. Shri Paul Dhillon

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Court : Income Tax Appellate Tribunal ITAT Delhi

Decided On : Jan-31-2003

Judge : S Khan, Y Kapur

Appellant : Dcit

Respondent : Shri Paul Dhillon

Judgement :

1. The Revenue has filed the present appeal before us being aggrieved by the order of the CIT(A) dated 16th September, 1997 on the ground reproduced below :- "On the facts and circumstances of the case, the Ld. CIT(A) erred in canceling the penalty levied u/s 27(1)(c) by not appreciating the facts and circumstances as well as law." 2. At the time of hearing of the appeal no one was present for the assessee and the notice sent by registered post A/D by the Registry of this Tribunal was received back unserved with the remarks "left". There is no other address provided in the Memorandum of Appeal Filed on the record and we, in the circumstances, presumed that the assessee is not interested in prosecuting the appeal and, therefore, proceeded to hear the matter with the help of the Id. DR, who took us through the record.

The facts available on the record for the decision of the present appeal are that the assessee is a Canadian citizen and was assigned to India as General Manager in Air Canada, New Delhi. Office. The return of income for the assessment year 1995-96 was filed on 30.6.95 by the assessee which was processed u/s 143(1)(a) of the IT Act and necessary intimation along with the refund was also sent to him.

3. Later on 12th October, 1995 a letter was received from the employer of the assessee stating therein that the liability for payment of tax of the assessee to the Indian Government is that of the employer and, therefore, any refund that the appellant was entitled to as a consequence of processing should be given to Air Canada and not to the assessee. In the computation sheet attached with the return of income filed, the assessee made a statement in the computation sheet to the effect that tax payment was being shown as paid by the appellant himself which was not grossed up u/s 195A of the IT Act. Despite the fact that the assessee's employer had communicated that the tax was paid by them no revised return was filed by the assessee. Subsequently, the Department on 12th January, 1996 raised query to the assessee asking him to explain as to whether the taxes were borne by the assessee or the employer and also complete details of perquisites received from the company. Despite this, no reply was received.

Subsequently, the record transpires that another notice was issued on 29th January, 1996. In response to this notice the assessee reacted and filed a revised return at a total income of Rs. 39, 78, 613/-. In the revised return various components of income were included by the assessee and the details of the components in the form of perquisites, etc. enjoyed by the assessee are contained in the order of penalty at page 1 were disclosed.

4. Having filed the second return on 14th February, 1996 the assessee again revised the same on 11th March, 1996. Against the income of Rs. 39, 78, 613/- disclosed by the assessee in the said return filed by the assessee, the income disclosed was enhanced to Rs. 40, 55, 192/-. Apart from the fact that the reasons for filing the return was stated to be communication gap, no other reason was assigned as to why this income was not disclosed earlier.

5. As the assessee according to the AO filed inaccurate particulars in the original return and subsequently filed a revised return and that too in response to the query, proceedings u/s 271(1)(c) of the IT Act were initiated by issuance of a show cause notice which was replied to.

The explanation furnished by the assessee did not find favour with the AO who opined that the assessee at the time of filing of the original return was aware of the

perquisites but the same were not offered for taxation Not only this, when the return was processed u/s 143(1)(a) and intimation sent along with the refund the assessee did not react.

According to the AO it was only on a query raised by him after information from his employer as to the payment of tax by them, the assessee reacted and filed his revised return not once but twice, first indicating a taxable income of Rs. 39, 78, 613/- and then indicating a taxable income of Rs. 40, 55, 192/-. According to the AO, but for the information the AO has received the assessee would not have disclosed the true and correct particulars of his income in the initial return filed. It was in this background the AO rejected the explanation of the assessee and proceeded to impose the penalty u/s 271(1)(c) of the IT Act.

6. Being not satisfied with the order of the AO, the assessee filed an appeal before the CIT(A). Before the CIT(A) it was stressed that the revised return was voluntarily filed and since the act was voluntarily done, no penalty could be imposed in these circumstances. The provisions of Section 273-B were also indirectly pressed into service.

7. The CIT(A) after considering the matter proceeded to delete the penalty with the following observations:- "Mere filing of revised return may not by itself absolve a tax payer from the imposition of penalty u/s 271(1)(c). Having said that one has to look at the totality of facts and circumstances. No doubt, the appellant did not file a revised return after it was brought by the employer on record that the taxes were paid by the employer but it has been properly explained by the appellant that the details were in the process of being obtained from the employer. In any case, it cannot be denied that the fact that the taxes were paid by the employer was not detected by the Department, but brought on record by the appellant through his employer. It has also to be kept in mind that taxes in any case were to be borne by the employer. The appellant, therefore, cannot be said to have any advantage in concealing particulars of his income. In any case, this appears to be the first time that a mistake of this nature occurred in the case of the appellant.

In the facts and circumstances, therefore, the penalty imposed is cancelled and the appeal is allowed." 8. The Revenue has a grievance to the said order and is in

appeal before us.

9. At the time of hearing of the appeal, the Id. DR stressed that the CIT(A) was not justified in deleting the penalty and has not appreciated the facts in its right perspective. According to the Id. DR it was not the case where the assessee was not aware of what he is drawing. It was a case according to the Id. Dr of intentional concealment. The Id. DR drew our attention to the order passed by the AO u/s 271(1)(c) of the IT Act and submitted that in the revised return filed by the assessee which was pursuant to a query raised by the AO, the assessee had offered for taxation the amount drawn by him in the form of Expat. Premium, location difference, rent free accommodation, increase in the children educational allowance, lunch at work, meals, laundry and miscellaneous, tax paid by the employer. According to the Id. DR, these perquisites which the assessee was receiving was well within his knowledge and from part of his appointment letter which has been intentionally withheld. The assessee knows what rent is being paid, how it is being paid and who is paying what situation allowances he is getting what laundry allowance, who is to pay tax, etc. All these allowances, according to the Id. DR were being paid to the assessee month by month and, therefore, by no stretch of imagination can it be said that the assessee was not aware of it. Not only this, the other submission of the Id. DR was that the filing of the first return was an intentional act and in filing so, the assessee did not intentionally include these perquisites which from part of his income. According to the Id. DR it does not lie in the mouth of the assessee that he was not aware of it and, therefore, it was the submission of the Id. DR that there was an intentional concealment of the income disclosed by the assessee. In support of his contention, the Id. DR passed into service the judgement of the apex court in 251 ITR 99 in the case of K.P.Madhusoodan v. CIT. Another judgement on which the Id. DR placed reliance was again of the Apex Court reported in the case of G.C.Aggarawal v. CIT (Assam) reported in 186 ITR 571. The Id. DR also placed reliance on another judgement of the Apex Court reported in 205 ITR 244 in the case of CIT v. Jeevanlal Shah. It was the submission of the Id. DR that if the assessee fails to establish that he has not committed any willful default or fraud, the penalty u/s 271 (1)(c) has to be imposed which, according to the Id DR, the assessee failed to establish.

10. We have heard the Id. DR and taken ourselves through the record which reveals that the assessee during the relevant year was staying in India and apart from the salary he was drawing certain perquisites as per details mentioned in the order of penalty. A perusal of all the perquisites show that there cannot be any denying the fact that they were being paid to him month to month . The assessee was enjoying all these benefits without making payment. If the assessee was not making payment for all these perquisites he was enjoying then who else was making the payment. Obviously, all these were not gratuitous benefits and, therefore, the assessee despite having knowledge failed to disclose them in the return filed. Not only this, he did not react after the intimation u/s 143(1)(a) was sent.

11. All these facts led us only to one conclusion that this assessee is guilty of not offering these perquisites to taxation and once caught came up with the plea which was rightly not accepted by the AO.12. With the aforesaid observations the appeal filed by the Revenue succeeds and is hereby allowed.

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