

IN THE INCOME TAX APPELLATE TRIBUNAL
LUCKNOW BENCH "B", LUCKNOW

BEFORE SHRI . T.S. KAPOOR, ACCOUNTANT MEMBER
AND SHRI PARTHA SARATHI CHAUDHURY, JUDICIAL MEMBER

ITA No.486/LKW/2016
Assessment Year:2012-13

Pankaj Kumar Gupta C/o CA Ratan K gupta B-56, Butler Plaza Bareilly	v.	Income Tax Officer Ward 2(1) Bareilly
TAN/PAN:AKLPG3260B		
(Appellant)		(Respondent)

Appellant by:	None		
Respondent by:	Smt. Alka Singh, D.R.		
Date of hearing:	11	01	2018
Date of pronouncement:	16	01	2018

ORDER

PER PARTHA SARATHI CHAUDHURY, J.M:

This appeal preferred by the assessee arises from the order of the Id. CIT(A), Bareilly dated 30/6/2016 on the following grounds of appeal:-

1. That the authorities below have erred on facts and in law in imposing and the penalty U/s 271(1)(c) of the Income-tax Act, 1961 in the present at Rs.70,768/-.
 2. That the order of the Id. CIT(A) being erroneous is liable to be quashed.
 3. That the appellant craves for any other grounds which may be taken at the time of bearing of appeal.
2. The main grievance of the assessee is against the imposition and confirmation of penalty of Rs.70,768/- levied under section 271(1)(c) of the Act.

3. The brief facts in this case are that return was filed by the assessee on 12/3/2013 declaring an income of Rs.1,98,040/-. Later on, proceedings under section 147 of the Act was initiated by issuing notice under section 148 of the Act to examine the capital gain from sale of immovable property. The income from capital gain was not shown by the assessee, as he was unaware of the tax on sale of property. However, during the course of assessment proceedings, assessee himself attended the proceedings and agreed to pay taxes on the capital gain accruing to him on account of transfer of property. The assessment order was passed on 4/2/2015 and assessee paid taxes vide challan dated 4/2/2015. The Assessing Officer, however, passed penalty order under section 271(1)(c) of the Act stating that assessee has not shown in his return of income the income from sale of property and assessee had paid tax only when notice under section 148 was issued to the assessee. The Assessing Officer was of the opinion that had he not noticed the sale of property and not issued notice under section 148 of the Act, then the assessee would have not paid taxes on capital gain and thus penalty under section 271(1)(c) of the Act was imposed.

4. Before the Id. CIT(A), assessee filed written submissions wherein he has relied upon various case laws, which are as under:-

- (1) CIT vs. S.V. Electricals P. Ltd., 155 Taxman 158 (M.P).
- (2) CIT vs. Ashim Kumar Agarwal, 153 Taxman 226 (Jharkhand)
- (3) CIT vs. Harnarain in ITA No.2072/2010, order dated 31/10/2011.

- (4) CIT vs. Pricewaterhouse Coopers Pvt. Ltd., 2012-ITR-VSC-244 (SC).
- (5) T Ashok Pai vs. CIT [2007] 161 Taxman 340 (SC).

5. On the basis of the above judicial pronouncements, the Id. A.R. of the assessee submitted that because of the complexities of the income tax provisions, there was a bona-fide mistake, because of which tax on sale of property was not included in the return of income, but when he came to know about the tax to be paid, the very day when the assessment order was passed he paid taxes as is evidences on record. The assessee further submitted that following propositions are emerged from various case laws relied upon by him:-

- (a) Where the assessee surrenders his full income though at a later stage, there was no question of any concealment on his part and no penalty under section 271(1)(c) of the Act was leviable and that an omission from the return of income did not amount to concealment.
- (b) Surrender of the amount by the assessee after receipt of questionnaire could not lead to an inference that it was not voluntary in the absence of any material on record to suggest that it was bogus or untrue.
- (c) There cannot be any penalty under section 271(1)(c) of the Act for a bona-fide/inadvertent/human error.
- (d) Mere omission or negligence does not constitute deliberate act of suppression.

6. The Id. CIT(A), after considering the submissions of the Id. A.R. of the assessee and the assessment order, found favour with the

decision of the Assessing Officer and confirmed the penalty levied under section 271(1)(c) of the Act.

7. Being further aggrieved, assessee preferred this appeal before us. At the time of hearing, nobody was present on behalf of the assessee, therefore, we have proceeded to decide the appeal after considering the material available on record and after hearing the Id. D.R.

8. The Id. D.R., placed reliance upon the orders of the authorities below.

9. We have perused the case record and considered the judicial pronouncements placed before us. At the very outset, we observe that as appearing on record, in the return filed by the assessee the tax on sale of immoveable property was not paid or entered into. However, when notice under section 148 of the Act was issued, assessee himself attended the proceedings and thereafter paid the entire tax on the same date when the assessment order was finalized. This element of behaviour on the part of the assessee shows that when he had filed the return, there was some omission on the part of the assessee to include the tax on the sale of property. However, when he received notice under section 148 of the Act, he was very eager to know what mistake has been committed by him and, therefore, he himself attended the hearing before the Assessing Officer and on coming to know about the amount of tax payable, has immediately paid tax on the same date. He has not even challenged the assessment order and has accepted the assessment as passed by the Assessing Officer and paid due tax. Therefore, there is no loss to the Revenue. The Assessing Officer as well as the Id. CIT(A) were of the opinion that if the notice under section 148 of the Act was not issued, then assessee would have got away with

the tax evasion and, therefore, penalty was levied. The spirit of section 271(1)(c) of the Act says "concealment of income or furnishing of inaccurate particulars of income". Now the judicial pronouncements are absolutely clear that if in the return of income certain mistake is there, which is bona-fide and there is also no loss to the Revenue, then in the absence of any material on record, we cannot come to the conclusion that assessee has deliberately concealed the income or has furnished inaccurate particulars of income. In the instant case, nothing is on record to show that there was any malafide intention on the part of the assessee to conceal the income or furnish inaccurate particulars of income and there was an omission while filing the return of income which was rectified through challan on the very date of passing the assessment order. But the entire exercise cannot be brought to the ambit of penalty under section 271(1)(c) of the Act. We are, therefore, of the considered view that this penalty should be cancelled and we order cancellation of penalty.

10. In the result, appeal of the assessee is allowed.

Order pronounced in the open Court on 16//01/2018.

Sd/-
[T.S. KAPOOR]
ACCOUNTANT MEMBER

Sd/-
[PARTHA SARATHI CHAUDHURY]
JUDICIAL MEMBER

DATED: 16th January, 2018

JJ:1101

Copy forwarded to:

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