

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH ' G', NEW DELHI)
BEFORE SHRI J. S. REDDY, ACCOUNTANT MEMBER AND SHRI A.
T. VARKEY, JUDICIAL MEMBER**

I.T.A. No.1423 /Del/2013

Assessment year : 2008-09

Simran Singh Gambhir,
C/o M/s. RRA Taxindia,
D-28, South Extension Part I,
New Delhi.

Vs. DDIT, International
Taxation, NOIDA

GIR / PAN:AHXPG5793L

(Appellant)

(Respondent)

Appellant by :

Dr. Rakesh Gupta, and
Shri Somil Aggarwal, CA

Respondent by :

Shri K.K.Jaiswal, Sr. DR

Date of hearing : 15.07.2015

Date of pronouncement : 21.07.2015

ORDER

This is an appeal filed by assessee directed against the order of Ld. CIT(A) NOIDA, dated 24.12.2012 for the Assessment Year 2008-09 on the following grounds:

“1. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of Ld. AO in levying penalty of Rs.12,00,000/- and that too without assuming jurisdiction as per law and the impugned penalty order being illegal and void ab-initio and the impugned penalty order has been passed without appreciating the facts and circumstances of the case.

2. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of Ld. AO in passing the impugned penalty 'order being contrary to law as the assessment order framed under section 143(3) dated 25-10-2010 was also illegal, beyond jurisdiction and void ab-initio.

3. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of Ld. AO in levying penalty U/S 271(1) (c) on the addition made in the

assessment order U/S 143(3) dated 25-10-2010 as these additions/disallowances are also contrary to law and facts.

4. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of Ld. AO in levying penalty U/S 271(1) (c) is bad in law being beyond jurisdiction and barred by limitation and contrary to the principles of natural justice and has been passed by recording incorrect facts and findings and without giving adequate opportunity to the assessee and the same is not sustainable on various legal and factual grounds.

5. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of Ld. AO in imposing a penalty of Rs.12,00,000/- and that too without recording mandatory "satisfaction" as per law."

2. The brief facts of the case as stated in assessment order are as under:

"As per computation of income furnished by the assessee he has shown Income from Long Term Capital Gain on sale of NHB Bonds. He has invested Rs. 2,00,00,000/- on 10.08.2004, and received Rs. 2,32,86.842/- on maturity, which interest amounting to Rs 3286842. After adopting indexation cost method he has shown income from long term capital gain of Rs. 3,28,509/- . As interest income is to be taxed under the head of Income from other sources. The assessee was asked to furnish the explanation vide order sheet entry dated 26.11.2009. In response to this assessee has furnished written reply as under "The gross maturity proceeds of the said investment amounting to Rs232,86,842/- includes Long- Term-Capital Gain of Rs32,86,842 which was declared in the 3assessee has not received any interest or any other income during the holding Period of the said investment in bonds and said Bonds were Long Term specified asset as also mentioned on the certificate issued by National Housing Bank".

After the perusal of records and details filed by the assessee it is found that the reply filed by the assessee cannot be accepted as NHB bonds are specified assets in Terms of section 54-EC for claiming exemption on Long Term Capital Gain and interest on "these bonds, is to be taxed under the head of income from other sources. The assessee has shown cost of purchase cost of NHB Bonds Rs. 2,00,00,000/- and the maturity value of the said bond is Rs.

2,32,86,842/- . After considering Rs. 3,28,509/- already shown by the assessee, addition of Rs. 29,58,333/- is made to the income of the assessee."

3. Penalty was levied u/s 271(1)(c) by the A.O. and confirmed by Ld. CIT(A). Before us, Dr. Rakesh Gupta, and Shri Somil Aggarwal, CA, Ld. counsels for the assessee and Shri K. K. Jaiswal, Sr. Department Representative were present and submitted their contentions.

4. We have heard rival submissions and on careful consideration we hold as follows:- In the present case, the assessee offered to tax, the income from the sale / maturity of National Housing Bond under the head long term capital gain. The A.O. chooses to tax the same under ht head 'income from other sources'. The interest of all the three years was offered to tax in the year of maturity and not year-wise. In my view, this is just change in the head of income under which the income is offered to tax. The taxation of the receipt is changed to the head of income 'other sources' from the head of income 'capital gain'.

5. Ld. Counsel for the assessee submitted that under similar circumstances, the penalty has been cancelled and he relied upon the following case laws:

- i) CIT Vs Auric Investment and Securities Ltd. 310 ITR 121
- ii) CIT Vs Bennett Coleman & Co. Ltd. 87 DTR 368
- iii) CIT Vs Bhartesh Jain 235 CTR 220

6. The Ld. counsel for the assessee reiterated the submissions made before the A.O. as well also Ld. CIT(A). The Ld. D.R. submitted that N.H.B. issued a prospectus along with the application form of bond and that in such prospectus it is mentioned that interest would be paid on maturity.

He also pointed out that T.D.S., has been made on interest by N.H.B. and argued that the assessee was fully aware that interest is taxable under the head income from other sources and had claimed T.D.S. credit. He prayed that the penalty be confirmed.

7. We carefully considered these submissions and the propositions laid down by various case law cited. The Hon'ble Karnataka High Court in the case of CIT Vs Manjunatha Cotton and Ginning Factory and others reported in 359 ITR 565 after considering a number of judgements on the issue of penalty u/s 271(1)(c) culled out the proposition as under:

“62 In the light of what is stated above, what emerges is as under :

(a) Penalty under section 271(1)(c) is a civil liability.

(b) Mens rea is not an essential element for imposing penalty for breach of civil obligations or liabilities.

(c) Willful concealment is not an essential ingredient for attracting civil liability.

(d) Existence of conditions stipulated in section 271(1)(c) is a sine qua non for initiation of penalty proceedings under section 271.

(e) The existence of such conditions should be discernible from the assessment order or the order of the appellate authority or the revisional authority,

(f) Even if there is no specific finding regarding the existence of the conditions mentioned in section 271(1)(c), at least the facts set out in Explanation I(A) and I(B) it should be discernible from the said order which would by a legal fiction constitute concealment because of deeming provision.

(g) Even if these conditions do not exist in the assessment order passed, at least, a direction to initiate proceedings under section 271 (1) (c) is a sine qua non for the Assessing Officer to initiate the

proceedings because of the deeming provision contained in sub-section (1B).

(h) The said deeming provisions are not applicable to the orders passed by the Commissioner of Income-tax (Appeals) and the Commissioner.

(i) The imposition of penalty is not automatic.

j) The imposition of penalty even if the tax liability is admitted is not automatic.

(k) Even if the assessee has not challenged the order of assessment levying tax and interest and has paid tax and interest that by itself would not be sufficient for the authorities either to initiate penalty proceedings or impose penalty, unless it is discernible from the assessment order that, it is on account of such unearthing or enquiry concluded by the authorities it has resulted in payment of such tax or such tax liability came to be admitted and if not it would have escaped from tax net and as opined by the Assessing Officer in the assessment order.

(l) Only when no explanation is offered or the explanation offered is found to be false or when the assessee fails to prove that the explanation offered is not bona fide, an order imposing penalty could be passed.

(m) If the explanation offered, even though not substantiated by the assessee, but is found to be bona fide and all facts relating to the same and material to the computation of his total income have been disclosed by him, no penalty could be imposed.

(n) The direction referred to in Explanation 1(B) to section 271 of the Act should be clear and without any ambiguity.

(o) If the Assessing Officer has not recorded any satisfaction or has not issued any direction to initiate penalty proceedings, in appeal, if the appellate authority records satisfaction, then the penalty

proceedings have to be initiated by the appellate authority and not the assessing authority,

(p) Notice under section 274 of the Act should specifically state the grounds mentioned in section 271(1)(c), i.e., whether it is for concealment of income or for furnishing of incorrect particulars of income

(q) Sending printed form where all the grounds mentioned in section 271 are mentioned would not satisfy the requirement of law.

(r) The assessee should know the grounds which he has to meet specifically. Otherwise, the principles of natural justice is offended. On the basis of such proceedings, no penalty could be imposed to the assessee.

(s) Taking up of penalty proceedings on one limb and finding the assessee guilty of another limb is bad in law.

(t) The penalty proceedings are distinct from the assessment proceedings. The proceedings for imposition of penalty though emanate from proceedings of assessment, it is independent and separate aspect of the proceedings.

(u) The findings recorded in the assessment proceedings in so far as

"Concealment of income" and "furnishing of incorrect particulars" would not operate as res judicata in the penalty proceedings. It is open to the assessee to contest the said proceedings on the merits. However, the validity of the assessment or reassessment in pursuance of which penalty is levied, cannot be the subject matter of penalty proceedings. The assessment or reassessment cannot be declared as invalid in the penalty proceedings."

6. Applying these propositions to the facts of the present case, we are of the considered opinion that the explanation filed by the assessee is bona fide. This is a case of a bona fide mistake on part of the assessee. All the

information has been disclosed in the income tax return filed by the assessee. Income had been offered under the head 'capital gain' T.D.S. Under these circumstances, we cancel the penalty levied u/s 271(1)(c) of the Act.

7. In the result, appeal of assessee is allowed.
8. Order pronounced in the open court on 21st July, 2015.

Sd./-

(A.T. VARKEY)
JUDICIAL MEMBER
Date:21st July, 2015

Sp

Copy forwarded to:-

1. The appellant
2. The respondent
3. The CIT
4. The CIT (A)-, New Delhi.
5. The DR, ITAT, Loknayakan Bhawan, Khan Market, New Delhi.

True copy.

Sd./-

(J. S. REDDY)
ACCOUNTANT MEMBER

By Order

(ITAT, New Delhi).

S.No.	Details	Date	Initials	Designation
1	Draft dictated on	15/7		Sr. PS/PS
2	Draft placed before author	16,21,		Sr. PS/PS
3	Draft proposed & placed before the Second Member			JM/AM
4	Draft discussed/approved by Second Member			AM/AM
5	Approved Draft comes to the Sr. PS/PS	21/7/15		Sr. PS/PS
6	Kept for pronouncement	21/7		Sr. PS/PS
7	File sent to Bench Clerk	21/7		Sr. PS/PS
8	Date on which the file goes to Head Clerk			
9	Date on which file goes to A.R.			
10	Date of Dispatch of order			