

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर
IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE
BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER
AND
SHRIB.M. BIYANI, ACCOUNTANT MEMBER

ITA No.255/Ind/2023
Assessment Year : 2011-12

Smt. Kavita Sachdev, 112,Jairampur Colony, Indore. (Assessee / Appellant)	<u>बनाम/</u> Vs.	Income-tax Officer, 3(4), Indore. (Revenue / Respondent)
PAN : ARCPS6793D		
Assessee by	Shri Milind Wadhvani, CA	
Revenue by	Shri Ashish Porwal, Sr. DR	
Date of Hearing	14.05.2024	
Date of Pronouncement	16.05.2024	

आदेश/O R D E R

Per Vijay Pal Rao, JM:

This appeal by the assessee is directed against the order dated 28th November, 2022, of Ld. CIT(A) arising from penalty order u/s 271(1)(c) of the Income-tax Act, 1961, for assessment year 2011-12.

2. There is a delay of 165 days in filing the present appeal. The assessee has filed application for condonation of delay, which is supported by an affidavit of the assessee. The Ld. Authorized Representative of the assessee has submitted that the assessee is a 58 years old lady suffering from various medical illnesses. The impugned order of Ld. CIT(A) was sent through e-mail, but due to health problem the assessee was undergoing the treatment, and, therefore, could not notice the

impugned order of the Ld. CIT(A). The Ld. Authorized Representative of the assessee has referred to the medical record of the assessee running into 216 pages and submitted that the assessee was suffering from various medical ailments and was confined to bed-rest and, therefore, the assessee could not file the appeal within a period of limitation. He has, thus, pleaded that the delay in filing the appeal is neither intentional nor willful, but due to circumstances, which were beyond control of the assessee and, therefore the same may be condoned.

3. On the other hand, the Ld. Departmental Representative has not seriously objected to the condonation of delay by considering the reasons as medical problems of the assessee.

4. We have considered the rival submissions as well as material placed on record. The assessee in the application as well as supporting affidavit has explained reasons for delay as suffering from various diseases and serious ailments. The summary of the medical ailments and hospitalization is given in para 4 of the affidavit as under :-

"4. I affirm that during the year 2022, I endured hospitalizations for various ailments as outlined below :

S.No.	Reasons for admission (as per discharge summary)	Date of Admission	Date of Discharge	Name of Hospital
1.	Left Eye Vitrectomy with Retinal Detachment	04.02.22	05.02.22	Shankara Hospital
2.	Typical Pneumonia with Acute Respiratory Distress Syndrome(ARDS), Respiratory failure, Left Ventricular Dysfunction with Cardiac Failure	23.04.22	07.05.22	Arihant Hospital

3.	<i>BL Pneumonitis, ARDS, Sepsis, Multiple Organ Failures & Hepatitis</i>	29.05.22	08.06.22	<i>Arihant Hospital</i>
4.	<i>Acute Febrile Illness (AFI), Urinary Tract Infection and ARDS</i>	26.06.22	03.07.22	<i>Arihant Hospital</i>
5.	<i>Left Ventricular Ejection Fraction (LVEF) 45-50 %, Urinary tract infection, DMII and HIN</i>	18.10.22	21.10.22	<i>Suyog Hospital</i>
6.	<i>Vitreo Retinal surgery for Retinal Detachment</i>	05.12.22	06.12.22	<i>Shankara Hospital</i>

We further note that the assessee has supported the reasons with medical record showing that the assessee was undergoing treatment of various ailments and was advised complete rest and in isolation for a period of about 6 months. Therefore, having considered the reasons explained by the assessee that she was suffering from various ailments and undergoing treatment, we are satisfied that the assessee was having sufficient cause for not filing the appeal within the period of limitation and accordingly the delay of 165 days in filing the present appeal, is condoned.

5. The assessee has raised following grounds of appeal :-

- “1. *On the facts and circumstances of the case and in law, the Ld. CIT(A) erred in upholding, the penalty order which is bad in law, unjustified, illegal, void ab-initio.*
2. *On the facts and circumstances of the case and in law, the Ld. CIT(A) erred in upholding, the penalty u/s 271(1)(c) of Rs. 2,10,000/- which is not leviable.*

6. In the case of the assessee, the assessment u/ 143(3) read with Section 147 was completed on 21st December, 2018, at a total income of Rs. 12,00,400/-. The AO noted that the assessee did not file original return of income for the year under consideration and as per the information the assessee sold the immovable property with nine other co-owners for a consideration of Rs. 1,13,94,700/-. The AO issued notice u/s 148 on 31st March, 2018. In reply, the assessee filed her return of income declaring total income of Rs. 12,00,400/- from long term capital gain interest and other sources. The AO also initiated the penalty proceedings u/s 271(1)(c) and levied a penalty equivalent to 100 % of the tax sought to be evaded, amounting to Rs. 2,10,000/-. The assessee challenged the action of the AO before the Ld. CIT(A) and explained that the assessee paid self-assessment tax of Rs. 2,02,083/- on 29.07.2011 and thereafter a further self-assessment tax of Rs. 8,310/- was also deposited on 19.06.2017. Thus, the assessee pleaded that when the assessee had already paid self-assessment tax and there was no outstanding demand u/s 156 of the Income-tax Act, 1961, then penalty levied u/s 271(1)(c) of the Act is not valid/justified and the same be deleted. The Ld. CIT(A) did not accept the contention of the assessee and confirmed the penalty levied by the AO while passing the impugned order.

7. Before the Tribunal, the Ld. Authorized Representative of the assessee has submitted that the assessee diligently and voluntarily computed and paid self assessment tax of Rs. 2,16,470/- through challan dated 29.07.2011. However, due to the medical conditions and various ailments, the assessee is able to trace the return of income. Even in response to notice u/s 148, the assessee filed the return of income and declared the income of Rs. 12,00,400/-, which was accepted by the AO while passing the order u/s 147 read with Section 143(3) of the Act. There is no

addition made by the AO in the assessment framed u/s 147 read with section 143(3). Further, as per Explanation 4(c), when the assessee has already paid self-assessment tax and nothing was outstanding, then penalty u/s 271(1)(c) is not leviable. He has referred to the computation of income and penalty by the AO as well as the demand u/s 156 and submitted that the AO has accepted the self-assessment tax paid by the assessee, seven years prior to the notice issued u/s 148, then the amount of penalty ought to have been calculated, as per the formula provided in clause (c) of Explanation 4 to Section 271(1)(c) of the Act. In the case of the assessee, if the self-assessment tax paid prior to notice issued u/s 148 is taken into consideration then there is no amount remains as tax sought to be evaded and consequently, no penalty is leviable u/s 271(1)(c) of the Income-tax Act, 1961. The Ld. Authorized Representative of the assessee has further submitted that the assessee has paid self-assessment tax voluntarily much prior to the notice issued u/s 148 and, therefore, there is no concealment of income or furnishing of inaccurate particulars of income on the part of the assessee. Further, the return of income filed by the assessee was accepted by the AO on which the self-assessment tax was paid, seven years prior to the notice issued u/s 148. Hence, the penalty levied by the AO, u/s 271(1)(c) is not justified and is liable to be deleted. In support of his contention, he has relied upon the following decisions:-

- (i) CIT vs. Pushpendra Surana, (2014) 264 CTR 204 (Raj).
- (ii) CIT vs. Suresh Chandra Mittal, 241 ITR 124 (MP)
- (iii) CIT vs. Gujarat State Electricity Corporation Ltd., 144 taxmann.com 165.

8. On the other hand, the Ld. Departmental Representative had relied upon the orders of the authorities below and submitted that the assessee did not file the return of income u/s 139(1) of the Income-tax Act, 1961, but the return was filed after issue of notice u/s 148. Therefore, the income declared by the assessee is not voluntary, but in response to the notice u/s 148 of the Income-tax Act, 1961.

9. We have carefully considered the rival submissions as well as the material placed on record. Though the assessee did not file a valid return u/s 139, however, the self-assessment tax was paid by the assessee of Rs. 2,16,470/- vide challan dated 29.07.2011, placed at page no.17 of the paper book. Thereafter, the assessee has paid tax of Rs. 8,310/- vide challan dated 19.06.2017. The AO has acknowledged the self-assessment tax paid by the assessee in computation of income and calculation of tax of Rs. 2,16,470/-, which is placed at page no. 8 of the paper book. This fact is also reflected in Form No. 26AS placed at page no.18 of the paper book. Therefore, there is no dispute that the assessee paid self-assessment tax amounting to Rs. 2,16,470/- prior to the notice issued u/s 148 and, therefore, as per Explanation 4 to Section 271(1)(c), the amount of tax sought to be evaded shall be determined in accordance with the formula provided in clause (a) to (c) of the said Explanation. For ready reference, clause (c) of Explanation 4 to Section 271(1)(c) of the Act are reproduced as under :-

“(c) where in any case to which Explanation 3 applies, the amount of tax sought to be evaded shall be the tax on the total income assessed as reduced by the amount of advance tax, tax deducted at source, tax collected at source and self-assessment tax paid before the issue of notice under section 148.”

10. Thus, the amount of tax sought to be evaded shall be determined by taking into consideration the amount of tax on the total income assessed as reduced by the amount of advance tax, tax deducted at source, tax collected at source and self-assessment tax paid before the issue of notice u/s 148. The case of the assessee is covered by this clause (c) of Explanation 4 to Section 271(1)(c) and, hence, when the AO has determined the total tax on the income assessed at Rs. 2,08,142/- whereas the self-assessment tax paid by the assessee before the notice u/s 148 was issued is Rs.2,16,470/-, then balance would be nil and ,consequently, there would be nil amount of tax sought to be evaded for the purpose of levy of penalty u/s 271(1)(c) of the Income-tax Act, 1961. Accordingly, when the amount of tax to be evaded is nil in the case of the assessee, then question of levy of levy of penalty u/s 271(1)(c) does not arise and hence, the penalty levied by the AO u/s 271(1)(c) ,of Rs. 2,10,000/- is not justified and the same is deleted. Though the Ld. Authorized Representative of the assessee has advanced various contentions against the levy of penalty, however, the penalty found to be not justified and liable to be deleted, on the ground of no amount of tax sought to be evaded, then other pleas raised by the Ld. Authorized Representative of the assessee becomes academic in nature and we do not propose to decide each and every argument advanced by the assessee .

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

Order pronounced in the open court on 16.05.2024.

Sd/-
(B.M.BIYANI)
ACCOUNTANT MEMBER

sd/-
(VIJAY PAL RAO)
JUDICIAL MEMBER

Indore

दिनांक/Dated : 16.05.2024

CPU/Sr. PS

*Copies to: (1) The appellant
(2) The respondent
(3) CIT
(4) CIT(A)
(5) Departmental Representative
(6) Guard File*

By order

*Assistant Registrar
Income Tax Appellate Tribunal
Indore Bench, Indore*