IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'F' : NEW DELHI)

BEFORE SHRI J.S. REDDY, ACCOUNTANT MEMBER
and
SHRI KULDIP SINGH, JUDICIAL MEMBER

ITA No.930/Del./2012
(ASSESSMENT YEAR : 2006-07)

Shri Raj Dutta, L – 1/18, 2nd Floor, Hauz Khas Enclave, New Delhi.	vs.	JCIT, Range 48, New Delhi.

(PAN : AADPD1490J)

(APPELLANT) (RESPONDENT)

ASSESSEE BY : S/Shri Parag Mohanty and
Vikas Srivastava, Advocate
REVENUE BY : Shri F.R. Meena, Senior DR

Date of Hearing : 02.08.2016
Date of Order : 12.08.2016

O R D E R

PER KULDIP SINGH, JUDICIAL MEMBER :

Appellant, Shri Raj Dutta (hereinafter referred to as 'the assessee'), by filing the present appeal sought to set aside the impugned order dated 13.12.2011 passed by the Commissioner of Income-tax (Appeals)-XXX, New Delhi, affirming the penalty order dated 22.06.2009 passed u/s 271(1)(c) of the Income-tax Act, 1961 (for short 'the Act'), qua the assessment year 2005-06 on the grounds inter alia that :-

"1. The order passed by the Learned Commissioner of Income Tax (Appeals)-XXX (hereinafter referred as 'CIT (A) under section 250 of the Act is bad in law and on the facts and circumstances of the case.

2. The Learned CIT (A), as well as Learned Assessing Officer (hereinafter referred as 'AO') has erred in law and on the facts and circumstances of the case by imposing the penalty u/s 271(1)(c) of the Income Tax Act, 1961 for concealment of income which was on account of a clerical mistake at the time of compiling the return of income.

3. The Learned CIT (A), as well as Learned AO have erred in law and on the facts and circumstances of the case by ignoring the Affidavit filed by the Income Tax Consultant of the appellant mentioning that due to the pressure of last minute rush of filing return of income, a clerical mistake had happened and on account of which short term capital gain was shown in the return of income as Rs.37,48,819 instead of Rs.56,07,323/-.

4. The levy of interest u/s 234B and 234D in this case is bad and untenable in law.

5. The above grounds of appeal are independent and without prejudice to one another.

6. The appellant may be allowed to add I withdraw or amend any ground of appeal at the time of hearing."

2. Briefly stated the facts of this case are : the assessee filed the return of income qua assessment year 2006-07 declaring total income at Rs.75,46,850/- and the assessment was completed under section 143 (3) of the Income-tax Act, 1961 (for short 'the Act') vide order dated 29.12.2008 at Rs.94,01,360/- and penalty proceedings u/s 271(1)(c) of the Act were ordered to be initiated

for the reason that the assessee has not declared short-term capital gain (STT not paid) amounting to Rs.18,54,504/- which was subsequently offered for taxation.

3. Assessee during the penalty proceedings taken the plea that due to bonafide mistake, he could not declared short term capital gain of Rs.18,54,504/- regarding which affidavit has been filed. However, AO, by invoking Explanation 1 to section 271(1)(c) of the Act, has not accepted the plea of the assessee and imposed the penalty as under :-

> " Considering the facts and circumstances of the case, the A.O. therefore impose penalty of Rs.6,24,225/- which is at the minimum rate i.e. 100% of the tax sought to be evaded and is computed as under :-

Tax on assessed income	Rs.31,08,395/-
Tax on returned income	Rs.24,84,170/-
Tax on concealed income	Rs.6,24,225/-
Minimum penalty imposable 100% of tax sought to be evaded	Rs.6,24,225/-
Maximum penalty imposable 300% of tax sought to be evaded	Rs.18,72,675/-

4. Assessee challenged the penalty order by way of an appeal before the ld. CIT (A) who has affirmed the penalty order by dismissing the appeal. Feeling aggrieved, the assessee has come up before the Tribunal by challenging the penalty order passed u/s 271(1)(c) of the Act.

5. We have heard the ld. Authorized Representatives of the parties to the appeal, gone through the documents relied upon and orders passed by the revenue authorities below in the light of the facts and circumstances of the case.

6. Ld. AR for the assessee challenging the impugned order contended inter alia that the assessee being a salaried tax payer deposited income-tax to the tune of Rs.26,00,000/- during the year under assessment but, due to bonafide mistake on the part of the Chartered Accountant, short term capital gain to the tune of Rs.18,54,504/- could not be counted, leaving behind a difference of Rs.6,00,000/-; that Chartered Accountant has already furnished the affidavit as to the mistake committed by him; that the mistake occurred due to punching incorrect sales figures at the time of computing the capital gain.

7. However, on the other hand, to repel the arguments advanced by the ld. AR for the assessee, ld. DR contended that such a mistake cannot be bonafide on the part of the assessee who was working as CEO of a multinational company and relied upon the order passed by AO/CIT(A).

8. Undisputedly, the assessee has shown short term capital gain in his return of income as Rs.37,48,819/- instead of Rs.56,07,323/-; that the assessee while filing his return of income for the AY 2006-

07 has not declared short term capital gain to the tune of Rs.18,54,504/- which was subsequently offered for taxation; that the assessee has candidly admitted that the amount of short term capital gain to the tune of Rs.18,54,504/- has not been declared because of the fact that sale price of the mutual funds attracting short term capital gain was wrongly booked up and stated to be a bonafide mistake.

9. In the backdrop of the aforesaid facts and circumstances of the case, now the question arises for determination in this case is:-

> ***"as to whether the factum of not declaring the short term capital gain to the tune of Rs.18,54,504/- allegedly due to bonafide mistake/clerical error amounts to concealment of income so as to attract the penalty u/s 271(1)(c) of the Act?"***

10. Bare perusal of the facts and circumstances of the case, undisputed facts enumerated in the preceding para, the contentions raised by the ld. Authorized Representatives of the parties and the settled principle of law leads to the irresistible conclusion that the penalty order dated 22.06.2009 passed by the AO and affirmed by the ld. CIT (A) is not sustainable in the eyes of law for the following reasons :-

(i) that no doubt Explanation 1 to section 271(1)(c) of the Act is categoric enough that where in case of

computation of total income, assessee fails to offer an explanation or offers an explanation which is found by AO or CIT (A) to be false then the amount added or disallowed in computing the total income shall be deemed to represent the income in respect of which particulars have been concealed. But in the instant case, the explanation has been offered but found to be not sustainable by AO as well as CIT (A) on the sole ground that such a mistake cannot be bonafide in the instant case as the assessee is a CEO of a multinational company which is not sustainable;

(ii) that in the given circumstances, wherein the assessee has made investment in numerous mutual funds of which he has furnished statement of short term capital gain before the ld. CIT (A), available at page 50 of the paper book, showing computation of capital gain to the tune of Rs.37,48,819/- whereas the same were required to be Rs.56,07,323/-, to our mind, such a computation cannot be considered as false rather result of bonafide mistake;

(iii) that merely because of the fact that assessee is a CEO of a multinational company mistake cannot be treated as false because in case of a person holding senior position such

like mistake oftenly crept in as invariably person holding high position use to delegate the computation work to file the return of income to a Chartered Accountant who has filed a categoric affidavit that, *"due to pressure of work, a clerical mistake has happened in computing the short term capital to the tune of Rs.37,48,819/- instead of Rs.56,07,323/-"*;

(iv) that keeping in view the profile of the assessee who has paid Rs.26,00,000/- as income-tax during the year under assessment and the fact that the entire work has been carried out by senior executive / chartered accountant of a reputed firm who has filed affidavit, available at page 29 of the paper book, the mistake is considered as bonafide;

(v) that the contention of the ld. DR that in case this case was not subjected to scrutiny the assessee would have evaded the tax to the tune of Rs.6,00,000/- is not sustainable because mere filing of the return of income by the assessee is not to be treated by the revenue as a gospel truth and it has to be examined by the expert taxman or to be put to the scrutiny;

(vi) that Hon'ble Supreme Court in case cited as **Price Waterhouse Coopers (P.) Ltd. vs. CIT, Kolkata – I –**

(2012) 25 taxmann.com 400 (SC) held that bonafide mistake in indicating in the tax audit report that provision towards payment of gratuity was not allowable but it failed to add provisions for the gratuity to its total income is a bonafide mistake and does not amount to furnishing of inaccurate particulars or an attempt to conceal its income. So, in the instant case also, the mistake is bonafide and inadvertent as to wrongly computing the short term capital gain;

(vii) that Hon'ble jurisdictional High Court in case cited as **CIT, Delhi-2 vs. Compro Technologies (P.) Ltd. – (2015) 55 taxmann.com 180 (Delhi)** also held that in case where Chartered Accountant appointed by assessee committed mistake while computing book profits u/s 115JB, which mistake he has admitted by filing personal affidavits, the assessee cannot be held guilty of concealment of particulars of income so as to attract penalty u/s 271(1)(c);

(viii) that both the judgments cited as **Price Waterhouse Coopers (P.) Ltd. vs. CIT, Kolkata – I** and **CIT, Delhi-2 vs. Compro Technologies (P.) Ltd.** (supra) are squarely applicable to the facts and circumstances of the

case as in the instant case assessee has engaged a Chartered Accountant who has admitted his mistake by filing affidavit and he being a professional was not to be benefited from the underreporting in the computation of short term capital gain rather it was loss or benefit as the case may be of the assessee and Chartered Accountant was concerned with his professional fees only. Even otherwise, the amount of Rs.18,54,504/- ought to have been declared by the assessee in the return of income was subsequently offered for taxation.

11. In view of what has been discussed above, we are of the considered opinion that penalty order dated 22.06.2009 affirmed by ld. CIT (A) is not sustainable, hence hereby quashed by allowing the appeal under consideration.

Order pronounced in open court on this 12th day of August, 2016.

Sd/-	**sd/-**
(J.S. REDDY)	**(KULDIP SINGH)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Dated the 12th day of August, 2016/TS

Copy forwarded to:

1.Appellant
2.Respondent
3.CIT
4.CIT(A)-XXX, New Delhi.
5.CIT(ITAT), New Delhi.

AR, ITAT
NEW DELHI.