

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES : "F" NEW DELHI

BEFORE SHRI G.C. GUPTA, VICE PRESIDENT
AND SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER

ITA No: 6146/Del/2013
Assessment Year : - 2008-09

Rani Shaver Polutry Breeding Farms Pvt. Ltd. 3, Shopping Centre, West End, New Delhi. (PAN AAACR3036Q) (Appellant)	vs. DCIT Circle-15(1) C.R. Building, New Delhi. (Respondent)
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Appellant by : Shri P.N. Mehta, CA
Respondent by : Shri Vikram Sahay, Sr. DR

Date of Hearing : 10.4.2015
Date of pronouncement : 17.4.2015

ORDER

PER INTURI RAMA RAO, AM

This is an appeal filed by the assessee company seeking the deletion of penalty of Rs. 6,27,710/- levied u/s 271(1)(c) of the Income Tax Act, 1961 raising the following grounds of appeal :-

- 1. "That on the facts and circumstances of the case the Commissioner (Appeals) has erred in upholding penalty levied by the Assessing Officer under section 271(1)(c) of the Income Tax Act.*
- 2. That the Ld. Commissioner (Appeals) has upheld the contention of the assessee that the assessee has not concealed the particulars of income, based on which the Assessing Officer has levied the penalty.*
- 3. That the Commissioner (Appeals) has confirmed the levying of penalty levied by the Assessing Officer on the plea that the assessee has furnished inaccurate particulars of income.*

4. *That the mere fact that the assessee had claimed the expenditure for which complete details were filed, which was not acceptable to the Revenue by itself does not attract the levy of penalty under section 271(1)(c) and therefore, the Commissioner (Appeals) has erred in upholding the penalty levied by the Assessing Officer.*
5. *That the addition to the disclosed income was made on estimate basis and as such the Commissioner (Appeals) has erred in upholding the penalty levied by the Assessing Officer."*

2. Though as many as five grounds of appeal are raised, all the grounds relate to the levy of penalty u/s 271 (1)© of the Income Tax Act. The brief facts leading to the present appeal are as follows :-

The appellant is a company and was engaged in the business of Poultry Breeding. However, due to unfavourable conditions in the business, the business activity was discontinued and the surplus funds were invested in various mutual funds and securities. The income thereon was offered to tax from which a deduction of expenditure of Rs. 25.83 lac was claimed, but the AO allowed to the extent of Rs. 63,000/- only. The appeal filed before the Commissioner of Income Tax (Appeals) was dismissed. The Tribunal also dismissed the order of CIT(A) vide order dated 16.3.2012 in ITA No. 12/Del/2012.

3. The AO initiated the penalty proceedings by issuing show cause notice dated 17.10.2012 u/s 275 r.w.s 271(1)© of the Act. In response to the said show cause notice, the appellant had filed a reply dated 22.10.2012 wherein it was pleaded that no penalty be levied for mere disallowance of a claim. The AO finally levied penalty of Rs. 6,27,710/- u/s 271(1)© vide order dated 29.10.2012.

4. Aggrieved by this penalty order the appellant had preferred an appeal before the CIT(A) who dismissed the appeal placing a reliance on the decision of CIT vs. Zoom Communication (P) Ltd. (supra). Aggrieved the present appeal.

5. It was argued before us that mere disallowance of claim does not lead to the conclusion that the appellant has furnished inaccurate particulars of income or concealed particulars of income and therefore penalty is not leviable. On the other hand, Ld. DR has argued that Commissioner of Income tax confirmed the order of penalty following the ratio laid down from the jurisdiction High Court in the case of CIT vs. Zoom Communication (P) Ltd. (supra) and, therefore, penalty should be confirmed.

6. We have heard the rival parties. We find from the penalty order dated 29.10.2012 passed u/s 271(1)© of the Income Tax Act, it is not clear whether the appellant is held guilty of furnishing inaccurate particulars of income or concealing the particulars of income, which is a *sine-qua-non* for levying of penalty u/s 271(1)©. It is also not clear as to which information furnished by the appellant is found to be false as a result of which the addition was entailed. In the absence of such finding, the penalty order is liable to be quashed. We refer in this regard the following judicial precedents :

- a). CIT vs. Balbir Singh 2008J 304 ITR 125/2007J 164 taxman 65 Punj and Har
- b). National textiles v. CIT 2001J 249 ITR 125/114 Taxman 203 (Guj)

- c). Nainu Mal Het Chand V. CIT (2007) 294 ITR 185 ALL
- d) CIT v. Super Metal Re-Rollers (2004) 265 ITR 82 (Del)
- e) Diwan Enterprises v. CIT (2000) 246 ITR 571 (Del)
- f) CIT v. Shivnarayan Jamnalal & Co. (1998) 232 ITR 311 (MP)
- g) CIT vs. Abdul Majeed (T) 232 ITR 50 (Ker.)

7. On mere reading of the penalty order, it is clear that the penalty was levied merely because the claim made by the assessee came to be disallowed in the assessment order. This does not lead to conclusion that assessee is a guilty of conduct as envisaged u/s 271(1)© of the Income Tax Act. It is well settled proposition of law that no penalty can be levied u/s 271(1)© for mere disallowance of the claim made in the assessment proceedings. We shall profitably refer to the following judicial decisions :-

- a) *The Delhi HC in the case of Karan Raghav Exports Pvt. Ltd. vs. CIT (349 ITR 112) has held that claim made by the assessee might have been rejected but it would not be said that claim was not plausible or legally tenable and therefore it cannot be said that the assessee has furnished inaccurate particulars of income.*
- b) *In the case of Balaji Distilleries Ltd. vs. CIT (214 taxman 96 Madras) it has been held that when additions were confirmed not for lack of bonafides but for rejecting the explanation of the assessee the penalty cannot be levied u/s 271(1)(c).*
- c) *In the case of CIT vs. International Audio Visual Company (288 ITR 570) it has been held that when all facts relating to claim were disclosed, but claim was not allowed, it does not suggest that particulars of income of the assessee or concealment of his true income has been made.*

d) *The Delhi High Court in the case of CIT vs. DCM (37 taxman.com 477) held that " law does not bar or prohibit as assessee for making a claim he believes may be accepted or is plausible. When such a claim is made during the course of regular or scrutiny assessment, liberal view is required to be taken as necessarily the claim is bound to be carefully scrutinized both on facts and in law. Threat of penalty cannot become a gag or haunt an assessee for making a claim which may be erroneous or wrong when it is made during the course of the assessment proceedings. Normally penalty proceedings in such cases should not be initiated unless there are valid or good reasons to show that factual concealment has been made or inaccurate particulars on facts were provided in the computation."*

8. The ratio laid down by the Hon'ble Delhi High Court in the case of CIT vs. Zoom Communication (P) Ltd. (supra) is not applicable for simple reason that it is a case where the claim made was found to be not bonafide, whereas in the present case the claim cannot be called not bonafide, in as much as there is cleavage of judicial opinion to the effect that even when business activity is lull, the expenditure incurred in running the company can be claimed as a revenue expenditure. Therefore, in our considered opinion the addition made in the quantum proceedings is not free from doubt. We are of the considered opinion that the present case is covered by the ratio of the Hon'ble Apex Court in the case of CIT vs Reliance Petroproducts Pvt. Ltd. 322 ITR 158(SC) which reads as under :-

"We have already seen the meaning of the word "particulars "in the earlier part of this judgment. Reading the words in conjunction, they must mean the details supplied in the return, which are not accurate, not exact or correct, not according to truth or erroneous. We must hasten to add here that in this case, there is no finding that any details supplied by the assessee in its return were found to be incorrect or erroneous or false. Such not being the case, there would be no question of inviting the penalty under section 271(1)(C) of the Act. A mere making of the claim, which is not sustainable in law, by itself, will not amount to furnishing inaccurate particulars regarding the income of the assessee. Such claim made in the return cannot amount to the inaccurate particulars. "

9. Following the ratio laid down by Hon'ble Apex Court in the above case, we have no hesitation to quash the penalty levied u/s 271(1)(c) of the Income Tax Act.

10. In the result appeal filed by the assessee is allowed.

Order pronounced in the open court on 17th April, 2015.

sd/-

(G.C. GUPTA)
VICE PRESIDENT

sd/-

(INTURI RAMA RAO)
ACCOUNTANT MEMBER

Dated: the 17th April, 2015

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Copy of the Order forwarded to:

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

By order
Dy. Registrar