

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES : SMC : NEW DELHI
BEFORE SHRI R.S. SYAL, ACCOUNTANT MEMBER

ITA No.519/Del/2014
Assessment Year : 2009-10

Rajiv Kumar Garg,
C/o Prem Prakash, Advocate,
183/2, North Civil Lines,
Muzaffarnagar.

Vs. ITO,
Ward-2,
Shamli.

PAN: AJDPG6774H

(Appellant)

(Respondent)

Assessee By : None
Department By : Shri Amrit Lal, JCIT

Date of Hearing : 15.06.2015
Date of Pronouncement : 15.06.2015

ORDER

This appeal by the assessee arises out of the order passed by the
CIT (A) on 29.11.2013 upholding the penalty of Rs.45,100/- imposed by

the AO u/s 271(1)(c) of the Income-tax Act, 1961 (hereinafter also called 'the Act') in relation to the assessment year 2009-10.

2. Briefly stated, the facts of the case are that the assessee is engaged in trading of cement. Closing stock of Rs.3,85,580/- was shown in the audited balance sheet. The AO, during the course of assessment proceedings, observed that the closing stock of bags should have been valued at Rs.6,25,961/-. It was done so on the basis of the last purchase bill dated 28.3.2009. The assessee agreed for the resultant addition amounting to Rs.2,40,381/-. Thereafter, the AO imposed penalty amounting to Rs.45,100/- @ 100% of tax sought to be evaded u/s 271(1)(c) of the Act in relation to the said addition. The Id. CIT(A) upheld the penalty.

3. I have heard the Id. DR and perused the relevant material available on record. There is no appearance from the side of the assessee despite notice. As such, I am proceeding to dispose of this appeal *ex parte qua* the assessee. It is noted that the penalty u/s 271(1)(c) has been imposed on the basis of difference in the value of stock shown by the assessee

and as estimated by the AO by applying the rate of last purchase bill dated 28.3.2009. But, for that, there is nothing to show that the assessee, in fact, concealed his income or furnished inaccurate particulars of income. There can be several reasons for a different valuation. It is not necessary that all the bags are always of good quality. Some of the cement bags may have leaked, spoilt or fixed.

4. It is an admitted position that the assessee accepted the addition and did not challenge it further. But the mere fact that an addition has been accepted or is confirmed in quantum proceedings cannot be conclusive of the imposition of penalty. The Hon'ble Calcutta High Court in *Durga Kamal Rice Mill vs. CIT (2004) 265 ITR 25 (Cal)*, has held that quantum proceedings are different from penalty proceedings. The Hon'ble Kerala High Court in *CIT vs. P.K. Narayanan (1999) 238 ITR 905 (Ker.)*, has held that despite the addition being confirmed by the Tribunal in quantum proceedings, the penalty can still be deleted by the Tribunal, if the facts justify.

5. It is noticed that the only basis of addition is the estimate of valuation made by the AO in valuing the closing stock @ Rs.200.50 per bag, being the cost price of cement bags vide last purchase bill dated 28.3.2009. Apart from this estimate made by the AO, there is nothing to show that the way in which the assessee valued its closing stock was incorrect. This divulges that the addition has been made only on the basis of estimate made by the AO. It is a settled legal position that when income is estimated, then, there can be no question of imposing penalty u/s 271(1)(c) of the Act. The Hon'ble Delhi High Court in *CIT vs. Aero Traders Pvt. Ltd.*, (2010) 322 ITR 316 (Del), has held that no penalty u/s 271(1)(c) can be imposed when income is determined on estimate basis. Similar view has been taken by the Hon'ble P&H High Court in *Harigopal Singh vs. CIT* (2002) 258 ITR 85 (P&H) and the Hon'ble Gujarat High Court in *CIT vs. Subhash Trading Company*, 221 ITR 110 (Guj). In view of the foregoing precedents including the one from the Hon'ble jurisdictional High Court, it is apparent that when the bedrock of instant penalty is the estimate of valuation of closing stock, the same

cannot be sustained. Overturning the impugned order, I order for the deletion of penalty amounting to Rs.45,100/-.

6. In the result, the appeal is allowed.

The order pronounced in the open court on 15.06.2015.

Sd/-

[R.S. SYAL]
ACCOUNTANT MEMBER

Dated, 15th June, 2015.

dk

Copy forwarded to:

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

AR, ITAT, NEW DELHI.