

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

**BEFORE SHRI JOGINDER SINGH, JUDICIAL MEMBER
&
SHRI WASEEM AHMED, ACCOUNTANT MEMBER**

**ITA No.- 703/Del/2015
(Assessment Year: 2010-11)**

Sh. Raghavan Sasiprabu Karunamittom, J-15, Jangpura Extension, New Delhi-110014 PAN AANPS0661A	vs	Assistant Commissioner of Income Tax, Circle 61(1) (Old Circle 37(1), New Delhi
Assessee by	Sh. V. Sachdeva, CA	
Revenue by	Sh. Atiq Ahmad, Sr. DR	

Date of Hearing	09.04.2018
Date of Pronouncement	11.04.2018

ORDER

PER SH. WASEEM AHMAD, AM.

This is an appeal filed by the assessee against the order of Ld. CIT(A)-XXVIII, New Delhi pertaining to A.Y. 2010-11. The Assessed has raised the following grounds of appeal:-

- “ 1.1 That the Ld. CIT(A) has grossly erred in law & on facts of the case in upholding the penalty of Rs. 9,16,350/- (Rupees Nine Lacs Sixteen Thousand Three Hundred

Fifty Only) levied by the Asst. Commissioner of I. Tax U/s 271(1)(c) of the I. Tax 1961.

- 1.2 That the Ld. CIT(A) has grossly erred in not appreciating the facts that the assessee had voluntarily offered an amount of Rs. 29,65,533/- (Twenty Nine Lacs Sixty Five Thousand Five Hundred Thirty Three Only) on account of cessation of liability U/s 41(1) of the I. Tax Act 1961 in order to buy peace of mind and also due to the reason that the accounts of the creditors were complex. The Ld AO has failed to appreciate that the liability towards various creditors had never ceased to exist. The amounts were clearly payable to various leading senior advocates of the country & no discharge of the liability whatsoever was ever obtained by the assessee nor any effort was made by the AO to verify the same independently.
- 1.3 That the Ld. CIT(A) has failed to appreciate that there was no mutual cessation/remission of liability by any of the creditors & offer for voluntarily taxation U/s 41(1) of the I. Tax Act 1961 was made under a bonafide belief formed on the basis of professional advice that the same would not entail any penal consequences.
- 1.4 The Assessee craves leave to add, alter or amend any of the Grounds of appeal at the time of hearing.”

2. The only issue raised by the assessee in all the grounds of appeal is that the Ld. CIT(A) erred in confirming the order of AO by sustaining the penalty of Rs. 9,16,350/- u/s 271(1)(c) of the I. Tax Act.

3. Briefly stated facts are that the assessee in the present case is an individual and acting as an advocate by profession. The assessee is in balance sheet as on 31.3.2010 shown sundry creditors of Rs. 34.02 lacs only. The assessee claimed to have paid a sum of Rs. 4.37 lacs out of such sundry creditors in the subsequent years. The assessee during the proceedings conceded the fact that a sum of Rs. 29.65 lacs (34.20 - 4.37 lacs) representing the sundry creditors as on 31.3.2010 has not been paid till the date. On question by the AO about such outstanding sundry creditors, the assessee surrendered the same as income u/s 41(1) of the Act. The assessee during the assessment proceedings further prayed that no penalty proceedings u/s 271(1)(c) should be initiated. Accordingly, the AO treated sum of Rs. 29.65 lacs of income of the assessee u/s 41(1) of the Act and added to the total income of the assessee.

4. Further the AO during the assessment proceedings initiated penalty proceedings u/s 271(1)(c) of the Act. Subsequently, the AO issued a show cause notice u/s 274 read with section 271 of

the Act for imposing the penalty u/s 271(1)(c) of the Act. The assessee in compliance to the show cause notice submitted that the amount of sundry creditors are due to senior advocates including Shri G.E. Vahnavati, Mr. Harish Salve, Mr. Kapil Sibal, Mr. Kirti N. Rawal, Mr. Mukul Rohtagi and Mr. Rajiv Nayyar. The amount of sundry creditors was representing the actual liability on the part of the assessee but he surrendered the same under the provisions of Section 41(1) of the Act to avoid the multiplicity of the proceedings and buy peace of mind.

5. The assessee also submitted that the accounts of these sundry creditors were complex and therefore it was decided to offer the same as income u/s 41(1) of the Act. As the income was offered under deeming provision of section 41(1) of the Act, therefore there was no deliberate intention of the assessee either to conceal the income or furnished inaccurate particulars of income. The amount was offered to tax just to buy peace of mind.

6. The assessee to justify that the amount of sundry creditors represents the actual liability has enclosed the copy of reminder

for the payment of the fees received from Mr. Harish Salve, an advocate standing as sundry creditor in the book of the assessee.

7. The assessee also submitted that all the details, full and true disclosure of sundry creditors was made during the assessment proceedings. Therefore, there is no question of levying the penalty u/s 271(1)(c) of the Act.

However, the AO disregarded the contention of the assessee by observing that the liability was offered to tax only on being questioned during the course of assessment proceedings. Finally, the AO levied the penalty of Rs. 9,16,350/- being 100% of the amount of the tax sought to be evaded u/s 271 (1)(c) of the Act.

8. Aggrieved assessee preferred an appeal before Ld. CIT(A). The assessee before the Ld. CIT(A) submitted that all the sundry creditors were arising from the earlier years which were duly accepted by the Revenue. The AO has not put any effort to establish that the amount of sundry creditors is bogus.

9. All the necessary details with regard to the sundry creditors were duly disclosed in its balance sheet. The amount of sundry creditors was offered to tax just to buy the peace of mind. The assessee offered the sundry creditors to tax u/s 41(1) of the Act and the AO did not put any effort in obtaining any confirmation from such parties.

10. However, the Ld. CIT(A) disregarded the contentions of the assessee and confirmed the order of AO by observing as under:-

" In the above facts and circumstances of the case. I am of the considered opinion that the explanation furnished by the assessee before the Assessing Officer was not substantiated by it by bringing any evidence. The evidence on record, on the other hand, would support the Assessing Officer's view that the explanation of the assessee could not be substantiated by it. The Assessing Officer, therefore, was justified in levying the impugned penalty. It was only when the Assessing Officer issued the show cause and asked the assessee to file necessary evidence that the amount was surrendered by the assessee. This shows that the claim of the Appellant was not bona fide. Therefore, the information furnished by the appellant in the return of income was factually incorrect and the appellant cannot escape the rigors of section 271(1)(c) of the IT Act, 1961. In view of the above, the penalty levied by the Assessing Officer is required to be confirmed as the necessary ingredients for levy of penalty i.e inaccurate particulars, mala fide intention and mensrea are present.

The Hon'ble Delhi High Court in the case of CIT vs. Escort Finance Ltd. 328 ITR 44 has held that even if there is no concealment of income or furnishing of inaccurate particulars, but if a claim which is ex-facie bogus is made, the same will still attract penalty provisions. Similar views have been expressed by the Hon'ble Court in the case of CIT vs. Zoom Communications (P) Ltd. holding that very few returns are selected for scrutiny and therefore, non sustainable claims cannot be said to be bonafide prima facie unsustainable claim made in the return of income shall definitely invite penalty u/s 271(1)(c) of the Act.

The claim of the appellant that he has disclosed the amount and paid the taxes thereon is squarely covered by the decision of the Hon'ble Delhi High Court in the case of CIT vs. MAK Data Ltd vide order dated 22.01.2013 in ITA No.415/2012 wherein the Hon'ble Court has on the issue of levy of penalty in the case of disclosed income, disclosed after enquiry conducted by the Assessing Officer held as under

A survey u/s 133A was conducted on the assessee's premises in the course of which certain documents belonged to certain entities who had applied for shares in the assessee company were found. The AO called upon the assessee to prove the nature and source of the monies received as share capital, the creditworthiness of the applicants and the genuineness of the transactions. The assessee offered Rs. 40.74 lakhs as income from other sources "to avoid litigation and to buy peace". It was made clear that in making the surrender, there was no admission of concealment. The AO completed the assessment by adding the said sum and levied penalty u/s 271(1)(c) for furnishing inaccurate particulars of income u/s 271(1)(c). This was upheld by the CIT(A) though reversed by the Tribunal (included in file) on the ground that there was no material to show any concealment and even in the penalty order it was not specified as to the particular credit in respect of which the penalty was being imposed. It was also emphasized by the Tribunal that the assessee had made it

clear while surrendering that there was no admission of concealment and that the offer was made in a spirit of settlement. On appeal by the Department to the High Court, HELD reversing the Tribunal:

When the AO called upon the assessee to produce evidence as to the nature and source of the amount received as share capital, the creditworthiness of the applicants and the genuineness of the transactions the assessee simply folded up and surrendered the sum of Rs 40.74 lakhs by merely stating that it wanted to 'buy peace" In the absence of any explanation in respect of the surrendered income, the first part of clause (A) of Explanation 1 to s. 271(1)(c) is attracted because the nature and source of the amount surrendered are facts material to the computation of total income. The absence of any explanation regarding the receipt of the money, which is in the exclusive knowledge of the assessee leads to an adverse inference against the assessee and is statutorily considered as amounting to concealment of income under the first part of clause (A) of the Explanation to s. 271(1)(c) and penalty has to be levied.

In view of the afo esaid, I hold that the Assessing Officer has rightly charges the appellant company with concealment and furnishing of inaccurate particulars. Accordingly, the penalty u/s 271(1)(c) of the Act is being sustained."

11. Being aggrieved by the order of Ld. CIT(A), the assessee is in second appeal before us. The Ld. AR reiterated the submissions as made before the Ld. CIT(A). On the other hand, Ld. D/R vehemently supported the order of the authorities below.

12. We have heard the rival contentions and perused the materials available on record. The facts of the case are not in dispute therefore we are not inclined to repeat the same for the sake of brevity. The penalty u/s 271(1)(c) of the Act can be levied :-

- (i) Either for concealment of income;
- (ii) Or furnishing inaccurate particulars of income;

These two offences mentioned above are not cumulative but are mutually exclusive. Penalty may be levied u/s 271(1)(c) for either or both of the offences. Penalty is to be imposed on the basis of the tax sought to be evaded as a result of either or both of the defaults. But proceedings for penalty initiated for one type of offence cannot be sustained or justified on the basis of the other. The word '**conceal**' means to hide, to keep secret, '**concealment**' involves a deliberate Act. It imputes knowledge to the person concealing. Concealing the particulars of income would include claiming false exemptions or deductions. A person shall also be deemed guilty of concealment of his income where he does not include its income as part of taxable income.

The provisions of section 271(1)(c) is a penal provision and therefore it needs to be construed strictly. There would be no penalty unless the case of the assessee falls within the four-corners of the said provision. Sub-section (1) of section 271 stipulates certain contingencies on the happening whereof the Assessing Officer or the Commissioner

(Appeals) may direct payment of penalty by the assessee. Clause (c) of section 271(1) authorizes imposition of penalty when the Assessing Officer is satisfied that the case of the assessee falls under any of the condition as discussed above.

It was not the case of furnishing inaccurate particulars of income, as in the income-tax return, particulars of income had been duly furnished and the surrendered amount of income was duly reflected in the income-tax return. The question was whether the particulars of income were concealed by the assessee or not. It would depend upon the issue as to whether concealment had reference to the income-tax return filed by the assessee viz., whether concealment was to be found in the income-tax return.

The mere fact that the assessee agreed to the inclusion of certain addition and disallowance or other amounts in the total income on account of his inability to prove the source or to avoid protracted litigation with the Department or that his representative consented in the imposition of the minimum penalty before the lower authorities does not by itself justify the levy of penalty. It is therefore, not possible to levy penalty automatically in a case where the assessee has agreed to certain additions. Mere fact that certain additions have been accepted or in respect of the income added, the explanations to Section 271 are attracted will not automatically result in the levy of

penalty. There are a number of explanations to u/s 271(1)(c) which deal with the concept of concealment. These explanations deal with the burden of proof. They are therefore, merely rules of evidence. Further they are rebuttable. Mere agreement of addition to income will alone not justify penalty. In every case it will be the facts alone that will be relevant. These explanations have been introduced and have undergone changes in view of certain judicial decisions. The explanations, in their evolution and development have sought to make the assessee more and more responsible in the discharge of the burden of proof. It is possible that the assessee may not be wanting to press for an explanation or its acceptance either with a view to avoid embarrassment to third parties or because the assessee wants to avoid protracted litigation with the Department. He may not want to offer an explanation to purchase peace. In such situations where there is no positive evidence against the assessee, penalty will not be leviable.

In the instant case we find that the assessee during the course of assessment proceedings surrenders the creditors to tax in pursuance to the provisions of section 41(1) of the Act. The amount of sundry creditors was duly disclosed in the financial statements of the assessee and the necessary details were supplied by the assessee during the assessment proceedings. It is also undisputed facts that these creditors were carried forward from the earlier years. There was

no independent finding of the AO regarding the concealed income of the assessee. We find in such circumstances the Hon'ble Supreme Court in the case of *CIT vs. Reliance Petroproducts Pvt. Ltd.* reported in 322 ITR 158. The relevant extract of the order reads as under :-

"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."

In view of above and after relying in the case of *Reliance Petroproducts Pvt. Ltd.* (supra) as discussed above and considering the facts & circumstances of the present appeal, we reverse the orders of authorities below and delete the penalty accordingly.

In the result, assessee's appeal is allowed.

Order pronounced in the open court on 11/4/2018

Sd/-

(JOGINDER SINGH)
JUDICIAL MEMBER

Sd/-

(WASEEM AHMED)
ACCOUNTANTMEMBER

Dated: 11.04.2018
Pooja/-

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

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