

Asstt. CIT v. Bhavi Chand Jindal

ITA No. 6810/Del/2015

17 April, 2018

Department by: Ravi Kant Gupta, Sr. DR

Assessee by: Rohit Jain, Advocate & Deepashree Rao, CA

ORDER

H.S. Sidhu, J.M.

This appeal by the Revenue is directed against the order dated 20-10-2015 passed by the learned Commissioner (Appeals)-30, New Delhi relating to assessment year 2012-13 on the following grounds :--

1. Whether on the facts and circumstances of the case, the learned Commissioner (Appeals) has erred in law and on facts in cancelling the penalty imposed under section 271AAA on unexplained cash payments offered as additional income amounting to Rs. 30,00,00,000 whereas the assessee did not substantiate the manner in which this undisclosed income was derived in view of the provisions of section 271AAA(2)(ii) of the Income Tax Act, 1961.
2. Whether on the facts and circumstances of the case, the learned Commissioner (Appeals) has erred in law and on facts in cancelling the penalty under section 271AAA whereas the conditions laid down in the Income Tax Act, 1961 have not been fulfilled.
3. That the order of the Commissioner (Appeals) is perverse, erroneous and is not tenable on facts and in law.
4. That the grounds of appeal are without prejudice to each other.
5. That the appellant craves leave to add, amend, alter or forgo any ground(s) of appeal either before or at the time of hearing of the appeal.

2. The brief facts of the case are that in this case a search and seizure action under section 132 of the Income Tax Act, 1961 (hereinafter referred as the Act) was carried out on 14-11-2011. In the statement recorded on 15-11-2011, under section 132(4) of the Act, a disclosure of Rs. 30 crores was made, since loose papers were found and seized. The return of income was filed on 31-8-2012 by the assessee, declaring total income of Rs. 30,28,31,503, which includes disclosures of Rs. 30 crores also. The due taxes alongwith interest, were also paid while filing the return of income. The assessment was completed by the assessing officer under section 143(3) of the Act on 31-3-2014, at returned income of Rs. 30,28,31,503. However, the assessing officer initiated the penalty under section 271AAA of the Act read with section 274 separately on 31-3-2014 on the ground that since the assessee has admitted the undisclosed income however he had not substantiated the manner in which the income had been derived. In response to this notice a reply dated 28-4-2014 was filed. Assessing officer observed that at the time of search the assessee was confronted on the documents found and seized from his residence premises 20C, Belvedere Alipore, Kolkata, from factory premises of M/s Jindal India Ltd., Jindal Photo Ltd., at 2/1, Ahmed Mamuj Street Liluah, Howrah and Annexure JJ/1 & JJ/7 impounded from factory premises of Jindal India Ltd., Anjul, Howrah. These documents contained details of cash payments made to various parties for acquisition of land. These documents when confronted, the assessee had offered the amount of Rs. 30 crore as undisclosed income and the same was declared in the return of income filed for which the source and manner of deriving such undisclosed income could not be explained. Hence, the

quantum of penalty was computed @10% of the amount of disclosure at Rs. 30 Crores and penalty of Rs. 3 crore under section 271AAA of the Act was imposed vide order dated 24-9-2014.

3. Against the penalty order, assessee appealed before the learned Commissioner (Appeals), who in turn elaborately considered the submissions of the assessee, impugned penalty order, the assessment order and statements recorded under section 132(4) and deleted the penalty of Rs. 3 Crore vide order dated 20-10-2015.

4. Against the impugned order, Revenue is in appeal before the Tribunal.

5. Learned DR relied upon the penalty order of the assessing officer and reiterated the contentions raised in the grounds of appeal. He however, submitted that penalty under section 271AAA levied in this case may be confirmed in view of reason mentioned in detail by the learned Commissioner (Appeals). He further stated that the assessee, in the course of the search, in a statement under section (4) of section 132, never specified the manner in which such income had been derived and also failed to substantiate the manner in which the undisclosed income was derived during the course of assessment proceedings. To support his contention, he relied upon the following case laws :--

-- *STC v. Modi Sugar Mills Ltd. AIR 1961 SC 1047 Pg. 1051*

-- *Anand Sancheti v. DCIT (ITA No. 305/Nag./2015)*

-- *ACIT v. Shailesh Gopal Mhaske (2017) 86 taxmann.com 263 (Pune- Trib.)*

6. On the contrary, learned A.R. of the assessee relied upon the order of the learned Commissioner (Appeals) and stated that he has passed a well reasoned order which does not need any interference. In support of the impugned order, he draw our attention towards page no. 2 of the Paper Book filed by the assessee's counsel i.e. computation of income showing the income from other sources amounting to Rs. 30 cores for the assessment year in dispute. He further draw our attention towards page no. 8 to 10 of the Paper Book which is the detail of disclosure of Rs. 30 crores in assessment year 2012-13 i.e. assessment year in dispute. He further stated that learned Commissioner (Appeals) in para no. 4.4 of the impugned order has carefully considered the written submissions, oral arguments and the other documentary evidences filed by the assessee and rightly deleted the penalty in dispute by holding that since no specific query was raised at the time of recording the statement under section 132(4) of the Act and during the course of assessment proceedings, the manner was substantiated by filing the written submissions and also referring the relevant documents relating to undisclosed income, which were found and seized and also rightly held that assessee is not at fault for substantiating the manner for earning the undisclosed income, in the absence of any specific query raised by the Authorised Officer while recording the statement under section 132(4) of the Act and therefore, rightly cancelled the penalty in dispute. Hence, he requested that the impugned order may be upheld by dismissing the appeal of the Revenue. In support of his aforesaid contentions, he relied upon the following case laws :--

-- Decision of the Hon'ble Supreme Court in the case of *ACIT v. Gebilal Kanhaiyalal HUF : 348 ITR 561.*

-- Decision of Hon'ble Allahabad High Court in the case of *CIT v. Radha Kishan Goel : 278 ITR 454.*

-- Decision of Hon'ble Gujarat High Court in the case of *Mahendra C Shah : 299 ITR 305.*

-- Decision of Hon'ble Delhi High Court in the case of *Pr. CIT (Central-1) v. M/s Emirates Technologies Pvt. Ltd. ITA No. 400/2017.*

-- Decision of Hon'ble Delhi High Court in the case of *Pr. CIT, Central-I v. Sandeep Gupta ITA No. 967/2017.*

-- Decision of the Hon'ble Gujarat High Court in the case of *Pr. CIT v. Mukeshbhai Ramanlal Prajapati : ITA No. 434 of 2017.*

-- Decision of ITAT, Delhi Bench in the case of *Neerat Singal v. ACIT 146 ITD 152.*

- Decision of ITAT, Delhi Bench in the case of *M/s Spaze Tower Pvt. Ltd. v. DCIT* : ITA No. 2296/Del/2012.
- Decision of ITAT, Delhi Bench in the case of *DCIT v. M/s NKG Infrastructure Ltd.* : ITA No. 2730/Del/2014.
- Decision of ITAT, Delhi Bench in the case of *Sita Ram Gupta v. ACIT* : ITA No. 1835 & 1836 of 2013.
- Decision of Delhi, ITAT, in the case of *ACIT v. Shri Sandeep Yadav* ITA No. 6551/Del/2013.

7. We have heard both the parties and perused the records especially the assessment order; penalty order and the impugned order as well as the statement recorded under section 132(4) of the Act and the case laws relied by both the parties, especially the Hon'ble Jurisdictional High Court decisions referred by the learned Counsel of the assessee in the cases of *Pr. CIT (Central-1) v. M/s Emirates Technologies Pvt. Ltd.* ITA No. 400/2017 and *Pr. CIT, Central-I v. Sandeep Gupta* ITA No. 967/2017. However, the case laws relied upon the learned DR are on distinguished facts, because the assessee has substantiated the manner by referring the relevant documents relating to undisclosed income of Rs. 30 crores, on which due taxes alongwith interest have been paid while filing the return. But in the case laws cited by the learned Counsel of the assessee i.e. *Pr. CIT (Central-1) v. M/s Emirates Technologies Pvt. Ltd.* passed in ITA No. 400/2017, we find that Hon'ble High Court has dismissed the appeal of the Revenue by holding as under :--

"3. The Commissioner (Appeals) in para 4.7 of the order dated 4-11-2013 noted that no specific query had been put to the assessee by drawing his attention to section 271AAA of the Act asking him to specify the manner in which the undisclosed income, surrendered during the course of search, had been derived. The Commissioner (Appeals), therefore, relying on the decisions of this Court held that the jurisdictional requirement of section 271AAA was not met.

4. The above view has been concurred with by the ITAT.

5. In the facts and circumstances of the case, the Court is of the view that the concurrent decision of the Commissioner (Appeals) and the ITAT represent a plausible view which cannot be said to be perverse.

6. No substantial question of law arises for consideration.

7. The appeal is accordingly dismissed."

7.1 We find that during the assessment proceedings, the assessee has stated that the undisclosed income in dispute has been earned from transactions in land/properties and from other speculative activities and for this claim, papers and correspondence was also found and seized. The breakup of the disclosure of Rs. 30 crore was also submitted before the assessing officer vide letter dated 25-3-2014 which states as under :--

(a) On the basis of loose paper seized :	Rs.13,32,11,768
(b) Cash deposited into PNB :	Rs.16,00,00,000
(c) Other (based on seized paper) :	Rs. 67,88,232
Total :	Rs. 30,00,00,000

7.2 We further observe that since no specific query was raised at the time of recording statement under section 132(4) and during the assessment proceedings, however, the manner was substantiated by filing written submission and also referring relevant documents relating to undisclosed income, which were found and seized. Therefore, the learned Commissioner (Appeals) has rightly held that assessee is not at fault for substantiating the manner for earning the undisclosed income, in the absence of any specific query raised by the Authorised Officer while recording statement under section 132(4) of the Act. However, it is clear that the assessee has substantiated the manner, during the assessment proceedings, therefore, the learned Commissioner (Appeals) has rightly deleted the penalty in dispute.

7.3 Keeping in view of the facts and circumstances of the case as explained above and respectfully following the precedents, as relied upon by the learned Counsel of the assessee, we do not find any infirmity in the order of the learned Commissioner (Appeals), hence, we uphold the same and reject the grounds raised by the Revenue.

8. In the result, the appeal of the Revenue stand dismissed.