IN THE INCOME TAX APPELLATE TRIBUNAL
CHANDIGARH BENCHES, 'SMC', CHANDIGARH

BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER

ITA No. 913/CHD/2016
Assessment year: 2009-10

Sh. Ajay Kumar, C/o M/s Parkash Chand Kedar Nath, Ahmedgarh	Vs.	The ITO, Ward IV(3), Malerkotla
PAN No. ADFPK8317A		
(Appellant)		(Respondent)

Appellant By	:	Sh. N.K. Garg
Respondent By	:	Sh. S.K. Mittal

Date of hearing	:	23.12.2016
Date of Pronouncement `	:	03.01.2017

ORDER

This appeal by the assessee has been directed against the order of Ld. CIT(A)-2, Ludhiana dated 17.5.2016 for assessment year 2009-10 challenging the levy of penalty u/s 271(1)(c) of the Act.

2. Brief facts in this case are that assessee filed its return of income on 14.12.2009 by declaring income of Rs. 1,90,400/-. The assessment was completed u/s 143(3) of the Act on 30.12.2011 at an assessed income of Rs. 5,76,124/- and Long Term Capital Gain of Rs. 3,10,236/- after making addition of Rs. 6,95,965/-. During the course of assessment proceedings, the assessee contended that he had

voluntarily surrendered the amount of Rs. 3,11,250/- as ‘other income’ (petty cash deposited in Catholic Syrian Bank Ltd) and Rs. 3,10,236/- on Long Term Capital Gain not declared in the return of income, both was rejected by the Assessing officer. Further, Assessing officer initiated penalty proceedings u/s 271(1)(c) of the Act on addition of Rs. 3,11,250/- on other income and Rs. 3,10,236/- on Long Term Capital Gain not declared in the return of income. The Assessing officer vide separate order levied penalty u/s 271(1)(c) of the I.T. Act on both these additions and imposed penalty of Rs. 1,32,249/- @ 100% of the tax sought to be evaded.

3. The penalty order was challenged before the Ld. CIT(A) and written submissions of the assessee is reproduced in the impugned order in which assessee briefly explained that at the initial stage of the proceedings, the assessee has submitted a revised computation of income in which Long Term Capital Gain of Rs. 3,10,236/-, income from other sources Rs. 3,11,250/- and loss of Rs. 8,00,305/- in share market transaction in the nature of derivative / future / options and intraday trading have been declared. The assessment has been completed vide order dated 30.12.2011 on the basis of revised computation of income and after making certain disallowance of the expenses. The loss of Rs. 8,00,305/- has not been carried forward because return was not filed within time. The loss is not speculative loss in view of the definition u/s 43. Therefore, the loss being

business loss is adjustable against income of the current year u/s 70/71 of the I.T. Act.

4. The assessee moved application u/s 154 of the I.T. Act in this regard. The Assessing officer levied penalty on both the additions ignoring the explanation of the assessee. The assessee had explained that there is neither concealment of income nor any furnishing if inaccurate particulars of income. The assessee voluntarily disclosed the income as well loss in revised computation and not due to the any detection made by the Assessing officer. It is clear from the assessment proceedings that Assessing officer neither detected the concealment nor any investigation was made resulting into finding of concealed income. The income is assessed on the basis of declaration made by the assessee. It was further explained that no disclosure of the income in the return filed earlier was due to the reason that assessee under bonafide belief has been treating the said income and transaction belonging to his HUF because initial investment were made out of the funds received from the father. The assessee voluntarily disclosed the amount in question so, no penalty is leviable. The assessee disclosed both amounts and loss and, therefore, net result was loss, therefore, there was no willful intention of the assessee to evade tax because there were no tax due rather income declared in the return would be further reduced. There is no case of concealment of income or furnishing of inaccurate particulars of income. The assessee relied upon several decisions in support of his contention. The Ld. CIT(A) , however, did not accept the explanation of the assessee and

dismissed the appeal of the assessee. The Ld. CIT(A) noted that the Assessing officer rejected the explanation of the assessee regarding willful disclosure of both the above amounts and that assessee revised its income only after receiving the notices u/s 143(2) / 142(1) of the I.T. Act. The appeal of the assessee as accordingly dismissed.

5. I have heard Ld. Representatives of both the parties. The Ld. counsel reiterated the submissions made before the authorities below and filed copy of the order sheet of the Assessing officer and questionnaire dated 30.5.2011 issued by the Assessing officer, copies of which are filed at pages 1 to 5 of the paper book and submitted that Assessing officer did not raise any query with regard to the other income and Long Term Capital Gain declared by the assessee in the revised computation. PB-6 is reply of the assessee dated 6.9.2011 filed before the Assessing officer in which assessee himself has enclosed the computation showing income from business of M/s Garg Enterprises and Long Term Capital Gain, other income etc. in the name of the assessee and it was explained that the same income now added as the same was omitted earlier under the belief that the same belong to HUF. The revised computation is filed in the paper book, in which assessee declared loss of Rs.8,00,305/-, income from capital gains as Rs. 3,10,236/- and other income of Rs. 3,11,250/-. He has, therefore, submitted that nothing was detected by the Assessing officer at assessment stage and assessee suo moto declared this income along with loss, therefore, there is no concealment of income

or filing of inaccurate particulars. The Ld. Counsel for the assessee further submitted that assessee filed application u/s 154 of the I.T. Act before the Assessing officer which is decided vide order dated 9.9.2015 and after allowing carry forward of the loss of Rs. 8,00,305/-, the business income was in looses and ultimately demand has arisen for a sum of Rs. 33,109/- only and Assessing officer directed to refund the excess tax paid by the assessee. He has submitted that on the basis of the 154 order (supra), the Assessing officer also vide order dated 14.9.2016 u/s 154 of the I.T. Act reduced the penalty to Rs. 33,109/-, copy of these orders are filed on record. The Ld. Counsel for the assessee submitted that assessee has filed revised ground of appeal on quantum of penalty which has been revised from Rs. 1,32,249/- to Rs. 33,109/-. The Ld. Counsel for the assessee therefore, restricted the claim to the reduced amount of appeal i.e. Rs. 33,109/-.

6. The Ld. DR relied on the order of the authorities below and submitted that assessee surrendered the amount in question only after issue of notice u/s 142(1) of the I.T. Act after raising the query by the Assessing officer.

7. I have considered the rival submissions and perused the material in record. The Assessing officer in the assessment order dated 30.12.2011 u/s 143(3) of the Act has noted that during the year the assessee has shown Long Term Capital Gain on account of sale of

property and other income in his own name. The Assessing officer also made addition of both these amounts of Rs.3,11,250/- and Rs. 3,10,236/- as was shown in the revised computation sheet. The Assessing officer did not discuss anything in the assessment order on this issue while making the addition. It is therefore, clear that when assessee declared both the amounts for the purpose of taxation in the revised computation of income, the Assessing officer accepted the explanation of the assessee and made the addition. The Assessing officer also initiated penalty proceedings for concealing the particulars of income. The Assessing officer thereafter passed the order u/s 154 dated 9.9.2015 and carry forward of the loss of Rs. 8,00,305/- was considered as mistake apparent from the record and business loss was computed in a sum of Rs. (-)2,99,674/- and tax liability was determined in a sum of Rs. 33,109/- and excess tax paid by the assessee was held to be refundable. The Assessing officer levied the penalty on addition of Rs. 6,21,486/- on both the additions in a sum of Rs. 1,32,249/- and penalty was also reduced accordingly vide order dated 14.9.2016 and penalty was reduced to Rs. 33,109/-. In the background of these facts, it is clear from the order sheet of the Assessing officer that questionnaire issued on 30.5.2011 seeking explanation on various items but no specific query was raised on Long Term Capital Gain or other income declared by the assessee. The assessee filed the reply dated 6.9.2011 and has decaled both these incomes in revised computation of the income and explained that the same are added now as the same were omitted earlier under the belief

that the same belong to HUF. Therefore, nothing is detected at the assessment stage against the assessee regarding both these additions on which penalty was levied. Therefore, the assessee voluntarily filed revised computation of income and not due to detection by the Assessing officer. The explanation of the assessee was that he was under bonafide belief that the same income belong to HUF. After loss of Rs. 8,00,305/- was carry forward, there was net loss, therefore, there could not be any attempt on the part of the assessee to evade tax because there was no tax due rather income computed by the Assessing officer was reduced. It is, therefore, clear that assessee committed mistake in not declaring both incomes as assessee was under the belief that the same belong to HUF. When assessee detected the mistake at assessment stage, assessee sue moto declared the same as income in revised computation of income. The explanation of the assessee was, therefore bonafide. Nothing has been brought on record by the Revenue to suggest that the explanation of assessee was not bonafide or incorrect in any manner whatsoever. The Hon'ble Gujarat High Court in the case of CIT vs Union Electric Corporation [2006] 281 ITR 266 (Gujarat) held as under:-

> *"In view of undisputed finding of fact recorded by the Tribunal that the assessee itself had offered the wrongful claim for disallowance during the course of assessment proceedings before the Assessing officer had detected the same and that the bona fides of the assessee were evident, assessee was not liable for penalty under s. 271(1)(c)."*

8. Considering the above discussion, it is clear that the assessee himself had offered the above additions and carry forward of the loss during the course of assessment proceedings before the Assessing officer could detected the same and that the bonafide of the assessee were evident, therefore, no penalty is leviable against the assessee. The Assessing officer in the assessment order did not hold that explanation of the assessee was false or that it was not bonafide explanation of the assessee. The Assessing officer simply without discussing both the issues in the assessment order has accepted the income as is shown in the revised computation sheet. It is well settled law that levy of the penalty is not automatic in each and every case because it depends upon the facts and circumstances of the case. The facts and circumstances of the case as discussed and considered above clearly shown that it is not a fit case of levy of penalty. Therefore, I set aside the orders of the authorities below and cancel the penalty.

9. In the result, the appeal of the assessee is allowed.

Order pronounced in the Open Court.

Sd/-
(BHAVNESH SAINI)
JUDICIAL MEMBER

Dated : 3rd January, 2017
Rkk
Copy to:
1. *The Appellant*
2. *The Respondent*
3. *The CIT*
4. *The CIT(A)*
5. *The DR*