

**आयकर अपीलीय अधिकरण “ ई ” न्यायपीठ मुंबई में।**

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH “E”, MUMBAI**

**BEFORE SHRI D KARUNAKARA RAO, ACCOUNTANT MEMBER AND  
SHRI CN PRASAD, JUDICIAL MEMBER**

**ITA NO. 6020/MUM/2014 : (A.Y : 2010-11)**

Shri Sachidanand Padgaonkar Vs. ITO 26(2)(3)  
4 Madhukendra Aayakar Bhavan  
N.C.Kelkar Road MK Road  
Dadar New Marine Lines  
Mumbai – 400 028 Mumbai – 400 020  
**PAN : AADPP9408J**

(अपीलार्थी / Appellant)

(प्रत्यर्थी / Respondent)

अपीलार्थी की ओर से / Appellant by : **Shri Dinkle Hariya**  
प्रत्यर्थी की ओर से Revenue by : **Shri Akhilendra Yadav**

सुनवाई की तारीख / **Date of Hearing : 10/11/2016**  
घोषणा की तारीख **Date of Pronouncement : 03/02/2017**

**आदेश / O R D E R**

**PER C.N.PRASAD (J.M.) :**

This appeal is filed by the assessee against the order of the Ld. CIT (Appeals) dated 19.08.2014 for the assessment year 2010-11 in sustaining the penalty levied under Section 271(1)(c) of the Act.

2. The assessee is a software engineer deriving income from salary and other sources, filed return of income on 27.07.2010 declaring income of Rs.4,15,152/-. The return was selected for scrutiny and assessment was

completed under section 143(3) on 06.03.2013 determining the income at Rs.10,66,210/-. The assessing officer while completing the assessment made addition of Rs.6,51,062/- under the head other sources being the interest income from savings bank and fixed deposits. In the course of assessment proceedings and from the verification of AIR details, assessing officer came to know that the assessee earned interest income from savings bank and fixed deposits and the same was not declared in the return. After issue of notices under Section 143(2) and 143(1), assessee's authorized representative filed a revised computation of income by including the interest income from savings bank and fixed deposits through letter dated 07.02.2013 and stated that there is a mistake in not including the said interest income for the reason that the assessee was out of India and his return of income was filed by his father and he suffered stroke and memory loss. The explanation of the assessee was not accepted by the assessing officer and addition was made holding that it is the responsibility of the assessee to disclose the income fully and truly and the omission of such huge amount cannot be treated as a simple mistake.

3. Penalty proceedings were initiated under section 271(1)(c) of the Act and order was passed imposing penalty of Rs.1,92,440/-. In the course of penalty proceedings, the assessee's authorized representative submitted the explanation stating that during the assessment year under review, assessee was non-resident and his tax return was filed by his father. Assessee's father was undergoing medical treatment and to substantiate this fact, medical papers were submitted before the assessing officer. It was also submitted that certain income was remained to be offered in the original return of income was now offered in the revised statement during the assessment proceedings. The explanation offered by the assessee was rejected by the assessing officer and

imposed penalty under Section 271 (1)(c) of the Act. On appeal, the Ld. CIT (Appeals) sustained the penalty observing that this amount is too big to be simply forgotten or an inadvertent mistake while filing return of income.

4. The Ld. Counsel for the assessee before us submits as under.

- “ • The Assessee is an individual. He is a Software Engineer by qualification. He is presently employed with Capgemini.
- During the relevant assessment year he was employed with Infosys Technologies and was on a deputation outside India for more than 5 years.
- He had been residing abroad since the last 10 years and regularly filed his return of Income in India since then. During the previous year 2009-10, relevant to assessment year 2010-11 the return of income in the status of Non-Resident Individual offering the salary income of Rs.4,15,152/- was filed by the assessee's father.
- Except salary, the assessee did not have any other source of income other than interest income.
- In the return of income so filed while computing the total income, the inclusion of interest income was missed out as no computation was prepared by the assessee and the return was filed simply by his father on the basis of Form 16 received by him from his employer. As a result the interest of Rs.6,51,062/- was left to be included in the return filed for AY 2010-11.
- During the course of assessment proceedings the assessee having realized his mistake of erroneously missing out the inclusion of interest income in his total income, voluntarily and in order to co-operate with the Department offered the same to tax by filing a revised computation before the Assessing Officer ["the AO" for short] and paid the tax thereon immediately which was accepted by the AO.

- The account was maintained at ICICI Mangeshwar Branch, Mangalore and the fixed deposit got renewed automatically. However, the assessee's father was residing in Mumbai and was undergoing continuous medical treatment and the assessee himself had to frequently travel abroad for work.
- The return for the subsequent year, A.Y. 2011 - 12 was filed on 28.07.2011 where the interest income on fixed deposit was offered for tax and tax was paid thereon on 27.07.2011 though inadvertent typographical error mentioning the assessment year as A.Y. 2010 -11 instead of A.Y. 2011-12.
- However, the notice under section 143(2) for A.V. 2010 - 11 was issued on 25.08.2011 and 142(1) notices were issued on 12.10.2012 and 24.01.2013 which were after the date of filing of return for A.Y. 2011-12.
- The fact that Assessee's father was undergoing medical treatment at the time of filing return was not disputed.
- The assessee even in his original computation of income had not claimed the credit for tax deducted at source on the interest income on fixed deposit. The TDS credit was claimed in the revised return only when it came to the notice of the Appellant
- The assessee mostly residing out of India was always under a bona fide belief that all due taxes are being paid on all the income earned by him which is liable to tax in India.
- The quantification of penalty is based on the details furnished by the assessee
- The entire amount of income as computed by the AO was on the basis of the details provided by the assessee during assessment.

- The AO has nowhere in his assessment order nor in the order imposing penalty disproved the explanation of the Assessee
- A detailed submission before the Learned CIT{A} was made.
- The AO simply states that omission to include interest income cannot be considered to be a simple mistake without stating anything further or without disproving the appellant's claim. It is submitted that such an approach of the AO is in stark contrast and contumacious disregard of the law laid down by the Hon'ble Supreme Court in the case of Price Waterhouse Coopers vis CIT - (2012) 348 ITR 306 (SC).
- It is submitted that there was no malafide intention on the part of the assessee to not disclose the interest income.”

In view of the above submissions, the Ld. Counsel for the assessee prays for deletion of penalty.

5. The Ld. DR vehemently supported the orders of the authorities below in levying and sustaining the penalty on assessee.

6. We have heard the rival submissions and perused the orders of the authorities below. We find considerable force in the submissions of the assessee that there is no deliberate furnishing of inaccurate particulars in respect of the interest income. It is not in dispute that the assessee at the relevant assessment year was out of India and the return was filed by his father also suffered stroke and thereby lost his memory. The assessee's father filed return of income based on Form No.16 and by mistake he omitted to include the interest on savings and fixed deposits. The explanation of the assessee appears to be bonafide that his father inadvertently omitted to include interest income in the return of income filed for the assessment year 2010-11 appears

to be bonafide and genuine. The lower authorities did not prove that the explanation of the assessee is false and not a bonafide explanation. The conduct of the assessee does not show that there is deliberate concealment of income. Thus we delete the penalty levied under Section 271 (1) (c) of the Act.

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

Order pronounced in the open court on the 3<sup>rd</sup> day of February 2017.

Sd/-  
**D KARUNAKARA RAO**  
लेखा सदस्य /  
ACCOUNTANT MEMBER

Sd/-  
**C.N.PRASAD**  
न्यायिक सदस्य /  
JUDICIAL MEMBER

मुंबई / Mumbai; दिनांक / Dated 03/02/2017

LR, SPS

**आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A), Mumbai.
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR,  
ITAT, Mumbai
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

सहायक पंजीकार  
(Asstt. Registrar)  
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mum