

IN THE INCOME TAX APPELLATE TRIBUNAL
AMRITSAR BENCH, AMRITSAR
BEFORE SH. SANJAY ARORA, ACCOUNTANT MEMBER AND
SH. N.K.CHOUDHRY, JUDICIAL MEMBER

ITA No.220(Asr)/2016
Assessment Year:2004-05

Sh. Paramjit Singh (Prop.) of Vs. Income Tax Officer
M/s Doaba Filling Station Kapurthala-II
Amritsar Road, Kapurthala Kapurthala

PAN:AJIPS 9329K

(Appellant)

(Respondent)

Appellant by: Sh. Tarun Bansal (Adv.)
Respondent by: Sh. Rajeev Gubgotra (Ld. DR)

Date of hearing: 19.03.2018
Date of pronouncement: 27.03.2018

ORDER

PER N.K.CHOUDHRY, JM:

The instant appeal has been preferred by the Assessee/Appellant, on feeling aggrieved against the order dated 17.02.2016 passed by the Ld. CIT(A)-2, Lalandhar, u/s 250(6) of the I.T. Act, 1961 (hereinafter called as 'the Act').

2. The brief facts of the case are that the assessee is running a petrol pump under the name and style of M/s Doaba Filling Station at Amritsar Road, Kapurthala (as a proprietor). The

income of the assessee was assessed u/s 143(3) of the Act by making various additions which included addition on account of unexplained loans shown as outstanding in the names of one Sh. Barinder Pal Singh and Smt. Paramjit Kaur to the tune of Rs.2,00,000/- each.

3. On feeling aggrieved against the assessment order, the assessee preferred the appeal before the Ld. CIT(A), who vide order dated 26.12.2007 upheld the addition of Rs.2,00,000/- made by the Assessing Officer on account of unexplained loan shown as taken from Smt. Paramjit Kaur. The said order was appealed before the ITAT, Bench and vide para no.7 of its order, while setting aside the issue with regard to the loan of Rs.2,00,000/- taken from Smt. Paramjit Kaur, remanded to the file of the Assessing Officer for fresh examination. However, thereafter, on 23rd March, 2009, a penalty of Rs.60,000/- imposed upon the assessee on failing to prove the genuineness of the cash credit introduced by the assessee in the name of the Smt. Paramjeet Kaur in the books of account. The said penalty order was challenged before the Ld. CIT(A) who also upheld the same vide its order dated 17.02.2016.

4. On feeling aggrieved against the penalty order, the assessee preferred the instant appeal and in support of its case, the Id. AR submitted that in quantum proceedings, the aforesaid addition of Rs.2,00,000/- was set aside by the ITAT Bench at

Amritsar vide its order dated 27th March, 2008, to the file of the AO for fresh adjudication, in that eventuality, no addition qua unexplained loan taken from Smt. Paramjeet Kaur was in existence, however, the Ld. Assessing Officer erred in passing the penalty order and further the Id. CIT(A) has also erred in confirming the said order.

5. On the other hand, the Id. DR has not stated anything accept to rely upon the order passed by the authorities below.

6. We have heard the parties and perused the order available on record. It appears from the penalty order that at the time of passing penalty order on 23rd March, 2009, in reply to the show cause notice dated 13.03.2009 issued by AO u/s 129 of the Act, the assessee counsel filed written explanation by stating that the assessee has filed appeal before the ITAT, Amritsar Bench, Amritsar, against the order of the CIT(A), therefore, the penalty proceeding may be kept pending till the disposal of the appeal.

In the appellate proceeding before the Ld. CIT(A) although in the written submission dated 17.02.2016, it was given in writing that the Hon'ble ITAT, Amritsar bench has remanded the entire case to the file of the Ld. AO for deciding afresh, however, there is nothing on record to show that the assessee has specifically emphasized that the quantum order itself has been restored back to the file of the Assessing Officer for decision afresh and even otherwise, order of the ITAT, Amritsar, has not

been brought/placed on record for perusal by the Ld. CIT(A) for adjudication of the appeal.

We realize that at the initial stage of passing penalty order on dated 23rd March, 2009, if the order of the ITAT, Amritsar Bench would have been filed/placed before the Assessing Officer, then certainly the penalty order would not have been passed because the assessee simply filed a written explanation that the assessee has filed appeal before the ITAT, Amritsar Bench at Amritsar against the order of the CIT(A), therefore, due to certain limits of the law, the Assessing Officer was compelled to pass the penalty order in the absence of any authentic information/order of ITAT. Further, we have to add that even otherwise before the Ld. CIT(A) it was not specifically argued that the quantum order itself has been set aside by the ITAT, Amritsar Bench to the file of the AO for deciding afresh and in absence of ITAT Orders, the Ld. CIT(A) confirmed the penalty. We feel that in the instant case, the authorities below have passed the penalty orders on miscommunication, or inadvertently, or oversight of the actual facts.

We are of the considered opinion, once the quantum order dated 10.11.2006 is not in existence, therefore, on the basis of that order, no penalty can be levied, hence, the order under challenge is set aside and penalty imposed by the Assessing Officer and affirmed by the Ld. CIT(A) stands deleted.

7. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open Court on 27 .03.2018.

Sd/-
(SANJAY ARORA)
ACCOUNTANT MEMBER

Sd/-
(N.K.CHOUDHRY)
JUDICIAL MEMBER

Dated:27.03.2018

/PK/ Ps.

Copy of the order forwarded to:

- (1) Sh. Paramjit Singh, Kapurthala
- (2) The ITO, Kapurthala
- (3) The CIT(A)-2, Jalandhar
- (4) The CIT concerned
- (5) The SR DR, I.T.A.T., Amritsar

True copy

By order