

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "B": NEW DELHI**

**BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER
AND
SHRI O.P. KANT, ACCOUNTANT MEMBER**

ITA Nos. 4148,4147,4149/Del/2015
Asstt. Years: 2004-05, 2003-04, 2005-06

Petroleum Sports Promotion Board. S-25, 2 nd Floor, Green Park Extension New Delhi – 110 016 PAN AAATP1593P	Vs.	ITO (E) Ward-2(4), Civic Centre New Delhi-110 001
(Appellant)		(Respondent)

Assessee by:	Shri Anil Kumar Khanna, FCA
Department by :	Shri B.S. Rajpurohit, Sr. DR
Date of Hearing	04/12/2018
Date of pronouncement	06/12/2018

ORDER

PER O.P. KANT, A.M.

The above-mentioned appeals of the assessee are directed against separate orders dated 24/04/2015 passed by the Ld. Commissioner of Income Tax (Appeals)-40(Exemption), New Delhi [in short the Ld. CIT(A)] for assessment years 2003-04 to assessment year 2005-06 in relation to penalty levied under section 271(1)(c) of the Income Tax Act, 1961 (in short the Act). The identical set of circumstances exist in all the three appeals and grounds of appeal

raised in all the three appeals are also identical except change of amount involved, therefore , we have heard all these appeals together and disposed off by way of this consolidated order for convenience.

2. The grounds of the appeal raised in ITA No. 4147/del/2015 for assessment 2003-04 are reproduced as under:

“That, Ld CIT (Appeals) failed to appreciate the facts that the Assessee is a federation of oil companies of the Government of India (PSU) and the same is for the purpose of promotion of sports. None of office bearer would be interested in evading tax. It had accidentally misinterpreted provision of law but disclosed all the facts in the Computation of Income. There was no intention to make bogus claim of exemption.

That the assessee had committed an inadvertent and bona fide error and had not intended to or attempted to either conceal its income or furnish inaccurate particulars of the same.

On the basis of the facts and circumstances of the case, it is submitted that mistake is bonafide and there was no intention to evade tax or claim exemption. Thus, CIT (A) was not justified in confirming the penalty of Rs. 3,43,215/- imposed by the Assessee Officer.

It is, therefore, prayed that appeal may please be allowed.

3. In ITA No. 4148/del/2015 and ITA No. 4149/del/2015 the amount of Rs. 9, 93, 603/-and Rs. 3, 98, 862/-is involved.

4. Briefly stated facts of the case as culled out from the order of the lower authorities are that the assessee society is registered under the Societies Registration Act, 1860 on 11/09/1979 and registered under section 12AA(1) of the Act on the 28/04/2006 w.e.f. 01/04/2005 for the assessment year 2006-07 onward. The assessee had been enjoying the exemption under section 10(23) of the Act up to assessment year 2002-03. However the provisions of section 10(23) have been omitted by the Finance Act 2002 w.e.f. 01/04/2003. In the return of income filed for the assessment years 2003-04 to 2005-06, the assessee claimed exemption of its income under section 11(1) of the Act without any registration under section 12AA(1) of the Act. As far as status of the quantum proceedings is concerned, the factual position as mentioned by the Ld. CIT(A) in para 4.2 of the impugned order, is reproduced as under for ready reference:

“4.2 So the assessee was earlier enjoying the exemption u/s 10(23) and has been enjoying the exemption u/s 11(1) subsequently but the assessee did not have any registration u/s 12AA(1) or notification u/s 10(23) during the period of 03 assessment years of 2003-04, 2004-05 & 2005-06 for which the assessee had filed the application for registration u/s 12AA(1) dated 29/08/2003 but the same was rejected by the DIT(Exemption) in the order dated 24/07/2004. The assessee had claimed the routine exemption during the AY 2003-04, 2004-05 & 2005-06 but the same was denied by the AO and the AO had also disallowed the even the regular expenses claimed by the assessee. The assessee had filed the appeal against the order of the AO and the Ld. CIT(A) had allowed the all the regular expenses to the assessee. The department had filed the appeal against the order of the Ld. CIT(A) and the Hon'ble Tribunal in the consolidated order dated 27/07/2012 in ITA No. 2328, 2329 &

2330/De1/2009 had dismissed the appeal and thereafter the Hon'ble Delhi High Court in the order dated 03/03/2014 has also dismissed the departmental appeal.”

5. In view of the addition sustained in quantum proceedings, the Ld. Assessing Officer initiated penalty under section 271(1)(C) of the Act in all the three assessment years from 2003-04 to 2005-06. On further appeal, the Ld. CIT(A) also confirmed the penalty levied by the Assessing Officer. Aggrieved, the assessee is in appeal before the Tribunal raising the grounds is reproduced above.

6. Before us, the Ld. Counsel submitted that in all the three assessment years involved identical orders have been passed by the Ld. CIT(A) except change of amount. The Ld. Counsel submitted that assessee is a charitable institution engaged in promotion of the sports among the employees of the petroleum companies and there was no intention to evade any tax and the assessee has always enjoyed the benefit of the exemption except the three years involved. The Ld. Counsel relied on the submission made before the Ld. CIT(A). The Ld. Counsel further submitted that office bearer in the society would not be interested in evading tax and it had accidentally misinterpreted provisions of the law but all the facts in the computation of income were disclosed. He further submitted that there was no intention on the part of the assessee to make bogus claim of the exemption. According to him it was an inadvertent error and not intended to conceal its income or furnish inaccurate particulars of income. Accordingly, he submitted that penalty levied in all the three years might be deleted.

7. The Ld. DR on the other hand, submitted that the assessee was aware of the fact that it was not registered under section 12AA(1) of the Act for the three years involved and despite a bogus claim of exemption under section 11(1) was made by the assessee. The Ld. DR submitted that a bogus claim is liable for penalty under section 271(1)(c) of the Act in view of the decision of the Hon'ble Delhi High Court in the case of CIT Vs Zoom Communications private limited 327 ITR 510 (Del).

8. We have heard the rival submissions and perused the relevant material on record. The undisputed fact in the cases involved is that assessee failed to produce any evidence that it was registered under section 12AA(1) of the Act for these three assessment years. The claim of exemption of income under section 11(1) is allowed only when the assessee is registered under section 12AA(1) of the Act . In view of the no registration, the claim of exemption under section 11 is a patently bogus claim made by the assessee. In the facts and circumstances of the case ,the Ld. CIT(A) upheld the penalty in assessment year 2003-04 observing as under:

“4.5 I have considered the order of the AD and the submissions of the assessee but I do not find any merit in the submissions of the assessee. That the assessee is a charitable institution but it is not only a mere coincidence that the assessee did not get the benefit of exemption during the A.Ys. 2003-04, 2004-05 & 2005-06 which the assessee had always enjoyed in all other years.

4.6 The assessee was very much aware that the assessee did not have the benefit of any exemption under any provision of the Act

during these three years but still the assessee deliberately made the bogus claim of exemption in the return of income and took the chance that the department may overlook the matter otherwise there is no reason why the assessee should claim the benefit of exemption when it did not have any legal claim for this. It is a matter of great concern that the assessee despite having all the knowledge and assistance of legal or technical professionals made the deliberate attempt to claim bogus exemption.

4.7 The assessee may be a charitable institution but it cannot have any moral right to overlook the requirements of law for any purpose whatsoever and if this is allowed any assessee would take the plea that the mistake is bona-fide and the same is done for a noble cause even if the claim of assessee is not as per law and this will send a wrong message to the public at large.

4.8 So the explanation of the assessee is not bona-fide and is not satisfactory and the assessee cannot be allowed the benefit of Explanation 1 of section 271(1)(c).

4.9 I have considered the order of the AD and the submissions of the assessee and I do not find any merit in the submissions of the assessee. It is apparent from the order of the AO that the assessee made the wrong claim of exemption u/s 11(1) without having any legal claim for this and as such filed the wrong or inaccurate particulars of income within the meaning of section 271(1)(c).

4.10 The assessee has not been able to put forward any satisfactory explanation for non-levy of penalty u/s 271(1)(c). In my view, the case of the assessee clearly attracts the levy of penalty u/s 271(1)(c) as no satisfactory explanation has been put forward by the assessee. The case of the assessee is fully covered

against the assessee in the case of the Hon'ble Supreme Court in the case of U.O.I. Vs Dharmendra Textile Processors, 306 ITR 277 (SC) [2008] in which it has been held that the penalty u/s 271(1)(c) read with its explanations is a civil liability and wilful concealment is not an essential ingredient for attracting the civil liability/penalty.

4.11 The case of the Hon'ble Supreme Court of Dharmendra Textiles (supra) was again analysed and followed in the recent case by the Hon'ble jurisdictional Delhi High Court in the case of CIT Vs Zoom Communication P Ltd, 327 ITR 510 (Del) [2010] (ITA No.07/2010) order dated 24/05/2010. The Hon'ble High Court has noted in Para Nos.19 and 20 of its order as :-

“It is true that mere submitting a claim which is incorrect in law would not amount to giving inaccurate particulars of the income of the assessee, but it cannot be disputed that the claim made by the assessee needs to be bona fide. If the claim besides being incorrect in law is mala-fide, Explanation 1 to Section 271(1) would come into play and work to the disadvantage of the assessee..... (20) The Court cannot overlook the fact that only a small percentage of the Income Tax Returns are picked up for scrutiny. If the assessee makes a claim is not only incorrect in law but also wholly without any basis and the explanation furnished by him for making such a claim is not found to be bona fide, it would be difficult to say that he would still not be liable to penalty u/s 271(1)(c) of the Act. If we take the view that a claim which is wholly untenable in law and has absolutely no foundation on which it could be made, the assessee would not be liable to imposition of penalty, even if he was not acting bona fide while making a claim of this nature, that would give a licence to

unscrupulous assesseees to make wholly untenable and unsustainable claims without there being any basis for making them, in the hope that their return would not be picked up for scrutiny and they would be assessed on the basis of self-assessment u/s 143(1) of the Act and even if their case is selected for scrutiny, they can get away merely by paying the tax, which in any case, was payable by them. The consequence would be that the persons who make claims of this nature, actuated by a mala-fide intention to evade tax otherwise payable by them would get away without paying the tax legally payable by them, if their cases are not picked up for scrutiny. This would take away the deterrent effect, which these penalty provisions in the Act have.”

4.12 The Hon'ble Delhi High Court in the case of CIT Vs Harprasad & Company ltd, 328 ITR 53 (Del) [2010] has held that if the assessee fails to submit the satisfactory explanation the AO will be justified to levy the penalty and held :-

"..... that the reasons given by the Tribunal for quashing the penalty proceedings were irrelevant, not germane to the issue and the Tribunal had lost sight of aspects which had been conclusively established in the quantum proceedings. The Tribunal had failed to take note of the fact that part of the claim as commission was allowed to the assessee not because R had rendered any services but because I had rendered services for which it was paid 1 per cent of the commission by R out of the 3 per cent received by her. As far as commission to R was concerned, it was accepted by the Tribunal in the quantum proceedings that she did not render any services at all. The assessee had failed to offer any explanation in respect of the addition of Rs. 1,83,078 and it could be deemed to have concealed the particulars of income or furnished inaccurate

particulars thereof, by virtue of this explanation. The Tribunal was not justified in deleting the penalty imposed by the Income-tax Officer under section 271(1)(c) of the Act.

The findings given in assessment proceedings are relevant and have probative value. Where the assessee produces no fresh evidence or presents any additional or fresh circumstance in penalty proceedings, he would be deemed to have failed to discharge the onus placed on him and the levy of penalty could be justified.

Even if there is no concealment of income or furnishing of inaccurate particulars, but on the basis thereof the claim which is made is ex facie bogus, it may still attract penalty provision.

The Explanations appended to section 271(1)(c) of the Act entirely indicate the element of strict liability on the assessee for concealment or for giving inaccurate particulars while filing return. The object behind enactment of section 271(1)(c) read with the Explanations indicate that the section has been enacted to provide for a remedy for loss of revenue. The penalty under that provision is a civil liability. Wilful concealment is not an essential ingredient for attracting civil liability as is the case in the matter of prosecution under section 276C of the Act."

4.13 After considering all the facts and circumstances of the case, I am of the view that there is concealment of income and the addition made by the AO comes clearly within the meaning of furnishing of inaccurate particulars of income u/s 271(1)(c) read with Explanation -1 and as such the AO is justified to levy the minimum penalty @ 100% on the addition made by the AO and I do not find any substantial reason to interfere with the order of

the AO and accordingly, the penalty levied by the AO is confirmed.”

9. Identical findings have been given by the Ld. CIT(A) in assessment year 2004-05 and 2005-06.

10. It is evident that the assessee failed to give any bonafide explanation in respect of the bogus claim made in all the three assessment years and thus Explanation -1 below the section 271(1)(C) of the Act is conspicuously attracted in the case of the assessee. For levying penalty under section 271(1)(C) of the Act, mensrea of having intention of evading tax is not important. What is important is whether the assessee has substantiated the explanation given and able to prove that the explanation is bonafide. If the assessee failed in doing so , it is liable to attract penalty under section 271(1)(C)of the Act .

11. We note that in the case of COMMISSIONER OF INCOME TAX vs. HCIL KALINDEE ARSSPL(2013) 261 CTR 0462 (Del) the Hon'ble jurisdictional High Court has held *that Penalty provisions are not criminal and do not require culpable mensrea. Whether or not the assessee had acted malafidely is not the relevant question to be asked and answered .The relevant question to be asked and answered is whether the assessee has discharged the onus and satisfied the conditions mentioned in Explanation 1 to Section 271(1)(c) of the Act.*

12. The Hon'ble High Court has further observed that *Absurd or illogical interpretations cannot be pleaded and become pretence and excuses to escape penalty. “Bonafides” have to be shown and cannot be assumed.*

13. In view of the aforesaid discussion, we are of the opinion that order of the Ld. CIT(A) on the issue in dispute is well reasoned and we do not find any error in the same. Accordingly, we uphold the penalty sustained by the Ld. CIT(A) for all the three assessment years involved.

14. In the result, all the three appeals of the assessee are dismissed.

This decision was pronounced in the Open Court on 6th December, 2018.

Sd/-
(H.S. SIDHU)
JUDICIAL MEMBER

Sd/-
(O.P. KANT)
ACCOUNTANT MEMBER

Dated: 06 /12/2018

Veena

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi