

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'F', NEW DELHI**

**BEFORE SH. N. K. BILLAIYA, ACCOUNTANT MEMBER
AND
SH. ASTHA CHANDRA JUDICIAL MEMBER**

ITA No.6725/Del/2018
Assessment Year: 2007-08

Pradip Burman 4th Floor, Punjabi Bhawan 10, Rouse Avenue New Delhi PAN No.AAAPB7429C	Vs	DCIT Circle – 70 (1) New Delhi
(APPELLANT)		(RESPONDENT)

ITA No.4461/Del/2018
Assessment Year: 2006-07

DCIT Circle – 70 (1) New Delhi	Vs	Pradip Burman 4th Floor, Punjabi Bhawan 10, Rouse Avenue New Delhi PAN No.AAAPB7429C
(APPELLANT)		(RESPONDENT)

ITA No.4461/Del/2018
(Cross. Objection No.199/Del/2018)

ITA No.4461/Del/2018
Assessment Year: 2006-07

Pradip Burman 4th Floor, Punjabi Bhawan 10, Rouse Avenue New Delhi PAN No.AAAPB7429C	Vs	DCIT Circle – 70 (1) New Delhi
(APPELLANT)		(RESPONDENT)

Appellant by	Sh. M.P. Rastogi, Advocate
Respondent by	Sh. Vivek Vardhan, Sr DR

Date of hearing:	25/09/2023
Date of Pronouncement:	04/10/2023

ORDER

PER N. K. BILLAIYA, AM:

ITA NO.4461/Del/2018 is the appeal by the revenue preferred against the order of the CIT(A)-36, New Delhi dated 23.03.2018 and ITA No.6725/Del/2018 is the appeal by the assessee preferred against the order of the CIT(A)-28, New Delhi dated 19.09.2018 pertaining to A.Y. 2007-08 and cross objection NO.199/Del/2018 is the cross objection of the assessee preferred against the order of the CIT(A).

2. Since the underlying facts in these appeals are identical, therefore, they were heard together and are disposed of by this common order for the sake of convenience and brevity.

3. The grievance in appeal by the revenue relates to the deletion of the penalty levied u/s. 271 (1) (c) of the Act and the grievance of the assessee in his appeal relates to the levy of penalty u/s. 271 (1) (c) of the Act.

4. The under lying facts which prompted the levy of penalty u/s. 271 (1) (c) of the Act relates to the deposit in the HSBC account.

5. Pursuant to an information received by CBDT about the foreign account and income of the assessee for the period relevant to the assessment years 2006-07 and 2007-08, the assessee came to know about the information and approached the ADIT, Investigation on his own and offered to pay income tax on the alleged deposit in the alleged HSBC Bank account.

6. While making the offer the assessee categorically stated that he is willing to deposit the tax on the condition that such deposit should not be considered as his admission of guilt even before receiving the notice u/s. 148 of the Act the assessee paid taxes on the income offered for taxation which was US \$ 40,000 in A.Y. 2006-07 and US \$ 32.13 lacs in A.Y.2007-08.

7. Though the assessment was completed for the impugned assessment years by making the respective additions. The AO also levied penalty u/s. 271 (1) (c) of the Act. In A.Y. 2006-07 the CIT(A) deleted the penalty whereas A.Y.2007-08 he confirmed the levy.

8. Having heard the rival submissions we have carefully perused the orders of the authorities below and have also the benefit of the quantum appeals.

9. This quarrel was also a subject matter before ACMM (Special Acts) Central District. Vide order dated 18.11.2020 in CC

No.525792 /16 the Hon'ble Court decided the dispute. The relevant findings of the Hon'ble Court reads under :-

37. *Regarding the argument of complainant department that the accused admitted the complainant's version in the letters/replies/statements recorded, it is important to refer to the said documents.*

38. *The accused sent a letter Ex. CW-1/6 dated 30/08/2011 to the complainant department mentioning that he has learnt about his name appearing in list of stolen data of HSBC Bank, (Suisse) SA account holders and that such information is being shared with Indian Authorities by French Government. It was further informed in that letter that the accused was NRI / during the year 2000-2001 and 2001-2002 and had opened some accounts which were operated as per the erstwhile FEMA guidelines and to avoid any uncalled for suspicion he is ready to furnish further information if required. In this letter no bank account or branch is mentioned. So, no specific connection with the alleged branch /account is even remotely inferred from this letter.*

39. *The accused sent another letter dated 3.10.11 through AR Ex.CW-5/3 I and a letter dated 7.10.11 Ex. CW-5/4 to tax authorities. The former letter purports to challenge the authenticity, reliability of the stolen data on one hand whilst the accused maintains that his foreign bank accounts were opened when he was an NRI and the same stands closed. However, there is no specific mention of any account in the*

said letter. Interestingly, the accused agreed to pay income tax along with interest under pro-test on the balance mentioned in the list available with the complainant department.

40. The accused in the same communication further went ahead to state that under no circumstances the same ought to be construed as an admission of guilt and the data be not referred to any other department like RBI/Enforcement directorate so that any further harassment to the assessee is avoided. The later communication Ex. CW-5/4 more or less reiterates the former communication with an offer to pay tax and interest in order to buy peace. Thereafter, the accused through AR again filed a communication dated 14.10.11 Ex. CW-1/8, with the competent office thereby intimating the deposit of tax and interest for A.Y.2006-07 and A.Y.2007-08. In the statements recorded before the income tax authorities there is no admission of the factum of being owner of any undisclosed foreign account or having link with account numbers of the various entities/ companies as mentioned in the documents Ex. CW-1/5. It is clear from the aforesaid discussion that the averments made by accused cannot be called even admissions and thus question of the same being unequivocal admissions of the complainant version or guilt, does not arise at all.

41. Record further shows that in the reply dated 27.05.2013 Ex. CW-3/4 to notice under Section 142 (1) dated 02.05.2013 Ex. CW-3/3, it is specifically contended that the accused does not want to sign any blank proforma and hand over to the

complainant department as he does not have bank details of HSBC Zurich. Such reply and others in response to notice under Section 142 (1) consistently indicate the retraction of alleged implied admission qua existence of foreign bank or at least any connection with Ex. CW-1/5.

42. It is seen from the Record that reply dated 27.05.2013 was submitted even prior to the passing of assessment order dated 20.01.2014. It is very surprising that despite the firm stand of the accused none of the complainant officials concerned with issuing of notice under Section 142 of Income Tax served upon the accused a duly filled consent waiver form detailing information on the basis of document Ex. CW-1/5 along with covering letter attributing admission qua the same. The stereotyped pamphlets were issued time and again without considering the reply/stand taken by the accused.

43. It is evident from the aforesaid factual matrix and discussion that the assumed theory of the complainant regarding admission of guilt on the part of accused has been demolished. If for the sake of arguments the letters/replies /statements are treated as admissions then the same are not unequivocal and voluntary having been made under belief that, no further harassment is caused to accused and that accused would earn peace.

44. It is settled law that in tax proceedings even if a taxpayer has voluntarily included an amount in its return of income, he may resile from the said position for the purposes of assessment. So, merely because an amount has been offered as tax in order to buy peace that does not mean that the person has admitted that such amounts

*belongs to him. (Reliance is being placed on **Sir Shadi Lai Sugar & General Mills Ltd. v. Commissioner of Income tax AIR 1987 SC 2008 and Commissioner of Income tax. V. Punjab Tyres (1986) 162 ITR 517 (MP).***

45. *Moreover, it is established that implied admissions have been retracted as discussed above. It is settled law that admissions give rise to rebuttable presumption and in this case the presumption stands rebutted by way of consistent retraction. It is also a rule of criminal jurisprudence the confession, which is the strongest form of admission of guilt, even if inculpatory should be corroborated by independence evidence So, mere admission which has very weak evidentiary value than confession and which has been retracted cannot be used for inferring the guilt of the accused in the absence of any independent corroborating material. In this case, the complainant department has failed to bring on record any independent creditworthy material/ evidence / circumstance to establish the link of the accused with the alleged documents mentioning foreign bank account details or the entities stated therein. It follows that the so called admissions are of no consequence to support the complainant's case.*

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51. *It appears that the complainant department was in undue haste in filing present prosecution as efforts were not made to collect clinching evidence. Admittedly, the accused has deposited the additional tax for the relevant assessment years much before initiation of proceedings under Section 148 of this*

Act which shows that there was no possibility of revenue loss. It is not disputed that the appeals filed by the Accused/Applicant under the income tax Act are currently pending before Income Tax Appellate Tribunal.

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57. Perusal of the documents relied by the complainant department reveals that the same are bearing the signatures and official stamp of designation of concerned officials along with stamp of certified true copy but there is no whisper to the effect that it is a true copy of the original entries and that such original entries are contained in the records or other documents in its custody. It shows that even provisions of Section 279-B have not been properly applied by the complainant department for the reasons best known to them despite leading pre charge evidence as well as additional evidence.

58. It is clarified that the present order is primarily based on failure of the complainant department to prove the foundational facts as discussed earlier and not on the aspect of admissibility.

59. In the present facts, the accused's contentions deserve due consideration as it is clear that the complainant has failed to bring on record any material/ document/circumstance suggesting that the accused had opened the said bank account at a particular branch or carried out any transaction with the said foreign bank account during the relevant period or availed the service of said bank account for any purpose or received any benefit or was having any link with the entities/ their accounts stated in the foreign bank account details. It is established that there are inherent lacuna in the very foundation of the prosecution version. Ample opportunities have already been availed by the

complainant department for leading evidence but to no avail. It is also settled law that material/inherent lacuna cannot be permitted to be filled by leading further evidence in casual manner. Moreover, these lacunae cannot be filled by leading further evidence as no material was collected at the relevant time and question of obtaining necessary incriminating material by conducting further investigation does not arise as the same is neither tenable nor permissible in law in such case. No doubt there appears to be a bald suspicion that accused may be involved as his name and other particulars are mentioned in the said document but mere suspicion is not sufficient to proceed further by framing of charge and force the accused to face ordeal of criminal trial as the question of conviction of accused does not arise even if complainant's version remains unrebutted. So, the accused deserves discharge from this prosecution.

60. Keeping in view the facts and circumstances of the case, the aforesaid analysis of testimonies of witnesses and considering the documents available on record, this court is of the considered view that complainant has failed to make out any case against the accused which may warrant his conviction. Accordingly, accused Pardip Burman is discharged of the offences punishable under Section 276-C (1), 276-D and 277 of Income Tax Act as alleged against him”.

10. Considering the facts in totality in the light the decision of the Hon'ble ACMM (Special Acts), Central District (supra) we do not find any merit in the levy of penalty u/s. 271 (1) (c) of the Act. We, therefore, direct the AO to delete the penalty so levied. The appeal of the assessee is allowed and that of the revenue is dismissed.

Cross Objection No.199/Del/2018

(In ITA No. 4461/Del/2018 A.Y. 2006-07)

11. The cross objection becomes infructuous.

Sd/-

**[ASTHA CHANDRA]
JUDICIAL MEMBER**

Dated: .10.2023

Neha

Copy forwarded to:

1. Appellant
2. Respondent
3. CITi
4. CIT(A)
5. DR

Sd/-

**[N.K. BILLAIYA]
ACCOUNTANT MEMBER**

Asst. Registrar
ITAT, New Delhi