

Income Tax Appellate Tribunal - Mumbai

Dhananjay V. Gupta, Mumbai vs Department Of Income Tax on 2 May, 2013

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IN THE INCOME TAX APPELLATE TRIBUNAL "D"

BENCH, MUMBAI

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BEFORE SHRI P.M. JAGTAP, AM AND Dr. S.T.M. PAVALAN, JM

./I.T.A. No.5733 /Mum/2011
(/ Assessment Year : 2006-07)

Income Tax Officer -

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Shri Dhananjay V.
Gupta,

18(2)(1),

Vs.

Room No. 110,
Piramal Chambers,
Lalbaug, Parel,
Mumbai - 400 012.

E/502, Gurukrupa Co-
Op. Hsg. Soc.,
Opp. Plaza Theatre,
N.C. Kelkar Road,
Dadar West,
Mumbai - 400 028

. /PAN : AGEPG6884E

(/Appellant)

..

(/ Respondent)

/ Appellant by : Shri Rajendra Kumar / Respondent by : Shri Devendra A. Mehta / Date of Hearing :
02-05-2013 /Date of Pronouncement : 08-05-2013 / O R D E R PER P.M. JAGTAP, A.M. :

This appeal is preferred by the Revenue against the order of the Id. CIT(A) -29, Mumbai dated 13-6-2011 for A.Y. 2006-07 whereby he cancelled the penalty of Rs. 6,12,272/- imposed by the A.O. u/s 271(1)(c) of the Income Tax Act, 1961 (the Act).

2 ITA 3719/Mum/2011

2. The assessee in the present case is an individual who filed his return of income for the year under consideration on 30-10-2006 declaring total income of Rs. 4,33,480/-. During the course of assessment proceedings, it was noticed by the A.O. that the amount of Rs. 18,18,995/- received by the assessee from his employer M/s Annunay Fab Limited on account of consultancy/commission etc. was shown under the head "profits and gains of business or profession" after deducting various expenses claimed to be incurred for earning the said income. According to the A.O., the said income was chargeable to tax in the hands of the assessee as salary income keeping in view the employer-employee relationship between M/s Annunay Fab Limited and the assessee and when this position was confronted by the A.O. to the assessee, the later accepted the same and filed revised computation of total income offering the income from consultancy/commission etc. received from the employer as the salary income. Accordingly, the assessment was made by the A.O. assessing the total income of the assessee at Rs. 18,84,420/- and penalty proceeding u/s 271(1)(c) of the Act were also initiated in respect of the addition made to the total income of the assessee as a result of change

of head of income from business to salary. In reply to the show cause notice issued by the A.O. during the course of penalty proceeding, the following explanation was offered by the assessee vide letter dtd. 1-6-2009:-

"During the course of assessment proceedings, I have realized that I have made mistake of showing commission of Rs. 17,90,283/- received from employer as business income which as per the IT Act is falling 3 ITA 3719/Mum/2011 under the head salary income. Further, I have received interest free housing loan of Rs. 15,50,000/- from my employer. The said interest is also in the nature of perquisite falling under the head income from salary.

I admit that I have made a serious mistake while filing the return of income for the assessment year indicated above. Therefore, I have filed a revised computation of my income during the assessment and the assessment order has been passed on the basis of revised computation.

The above mistake has occurred due to my ignorance of law and there was no intention to conceal any income or willfully submit inaccurate particulars of income.

According to the revised computation of income, I have to pay a sum of Rs. 6,66,303/- I have already made the full payment of taxes before 31-3-2009. The relevant tax payment challans are enclosed for ready reference. Thus the whole tax liability has been discharged.

In view of the above, I request you to drop the penalty charges since I never had malafide intention to circumvent income tax liability in any manner whatsoever. I hope you will consider my request."

The explanation offered by the assessee as above was not found satisfactory by the A.O. and rejecting the same, he imposed penalty of Rs 6,12,272/- u/s 271(1)(c) of the Act being 100% of the tax sought to be evaded by the assessee by offering income from commission/consultancy etc. as business income instead of salary income holding that the assessee was guilty of furnishing inaccurate particulars of his income.

3. The penalty imposed by the A.O. was challenged by the assessee in an appeal filed before the Id. CIT(A) and after considering the submissions made on behalf of the assessee as well as the material available on record before him, the Id. CIT(A) cancelled the penalty imposed by the A.O. for the following reasons given in para No. 5 of his impugned order:-

of income. The income from salary amounted to Rs. 2,40,000/- only. The TDS certificate issued for the commission income states that the nature of payment is consultancy and dalali.

2) There are genuine expenditure incurred for earning commission income which have been also disclosed in the return of income. The expenses are not doubted. The appellant maintains a separate establishment for his commission business by an annual payment of rent for office premises amounting to Rs. 1,20,000/-.

3) The appellant is not a related person of the company and is an independent employee. Therefore there is no presumption of splitting salary income into salary and commission.

4) There is only a change of head of income which has been accepted by the appellant."

Aggrieved by the orders of the Id. CIT(A), the Revenue has preferred this appeal before the tribunal.

4. We have heard the arguments of both the sides and also perused the relevant material available on record. It is observed that one of the reasons given by the Id. CIT(A) for canceling the penalty imposed by the A.O. u/s 271(1)(c) of the Act is that the corresponding addition made to the total income of the assessee was merely as a result of change of head of income. In this regard, the Id. D.R. has contended before us that by offering the income from commission/consultancy etc. received from his employer as business income instead of salary income, the assessee clearly found to be guilty of furnishing inaccurate particulars of his income and penalty was rightly imposed by the A.O. u/s 271(1)(c) of the Act. In the case of Reliance Petroproducts Pvt. Ltd. reported in (2010) 322 ITR 158 (SC), a similar 5 ITA 3719/Mum/2011 contention was raised on behalf of the Revenue by submitting that by making incorrect claim of expenditure on interest, the assessee had furnished inaccurate particulars of his income. The Hon'ble Supreme Court, however, did not accept the said contention holding that making an incorrect claim in law could not tantamount to furnishing of inaccurate particulars. It was held that merely making a claim, which is not sustainable in law, by itself, will not amount to furnishing of inaccurate particulars regarding the income of the assessee. It was held that when the assessee had furnished all the details of the expenditure as well as income in its return, which details, in themselves, were not found to be inaccurate nor could be viewed as the concealment of income on its part, penalty u/s 271(1)(c) of the Act was not attracted. It was held that merely because the assessee had made a claim which was not accepted or acceptable to the Revenue, that by itself could not attract the penalty u/s 271(1)(c) of the Act. As noted by the Id. CIT(A) in his impugned orders in this regard, full disclosure was made by the assessee regarding the nature of his income which was also reflected in the certificate issued by the employer. Even the genuineness of the expenditure claimed to be incurred by the assessee for earning commission income etc. was not doubted by the A.O. The assessee thus cannot be said to be guilty of furnishing inaccurate particulars of his income as held by the Hon'ble Supreme Court in the case of Reliance Petroproducts Pvt. Ltd. (supra) and the corresponding addition made to his total income being merely the result of change of head of income, we find ourselves in agreement with the Id. CIT(A) that it was not a fit case to 6 ITA 3719/Mum/2011 impose penalty u/s 271(1)(c) of the Act. We therefore uphold the order of the Id. CIT(A) canceling the penalty imposed by the A.O. u/s 271(1)(c) of the Act.

5. In the result, appeal of the Revenue is dismissed.

Order pronounced in the open court on 08-05-2013. . 08-05-2013

Sd/-
(Dr. S.T.M. PAVALAN)
JUDICIAL MEMBER

sd/-
(P.M. JAGTAP)
/ ACCOUNTANT MEMBER

Mumbai; Dated 8-5-2013

. . ./ RK , Sr. PS

/Copy

of the Order forwarded to :

1. / The Appellant
2. / The Respondent.
3. () / The CIT(A)--29, Mumbai.
4. / CIT - 18, Mumbai

5. , , / DR, ITAT, Mumbai H Bench

6. / Guard file.

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