

IT : Where penalty proceeding initiated against assessee were dropped after considering reply submitted by assessee, Assessing Officer was not justified in initiating fresh penalty proceedings on same set of facts

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[2018] 96 taxmann.com 100 (Gujarat)
HIGH COURT OF GUJARAT
Principal Commissioner of Income-tax-2

v.

Geetaben Chandulal Prajapati*

M.R. SHAH AND A.Y. KOGJE, JJ.
R/TAX APPEAL NO. 816 OF 2018†
JULY 10, 2018

Section [271\(1\)\(c\)](#), read with section [275\(1A\)](#), of the Income-tax Act, 1961 - Penalty - For concealment of income (Second penalty proceedings) - Assessment year 2006-07 - Whether since Assessing Officer dropped penalty proceedings after considering reply submitted by assessee, second penalty proceeding initiated on same set of facts, was not justified - Held, yes [Para 4.2] [In favour of assessee]

FACTS

- The assessee did not file the return of income for the year under consideration, though she received a total sum of Rs. 62 lakhs out of the sale consideration for sale of the land and thereafter she filed the return of income only after notice under section 148 and offered the aforesaid amount to tax.
- The income was assessed at Rs. 62 lakhs. However, the Assessing Officer also initiated the penalty proceedings to which the assessee filed the reply.
- The Assessing Officer dropped the penalty proceedings considering the reply submitted by the assessee. Against the assessment order the assessee filed appeal before the Commissioner (Appeals). The said appeal came to be dismissed by the Commissioner (Appeals). That thereafter on dismissal of the appeal by the Commissioner (Appeals), the Assessing Officer issued the fresh notice to the assessee for imposing the penalty under section 271(1)(c) and thereafter passed the order imposing the penalty under section 271(1)(c).
- On appeal, the Commissioner (Appeals) dropped the penalty levied under section 271(1)(c).
- On further appeal of the revenue, the Tribunal confirmed the order passed by the Commissioner (Appeals).
- On appeal to the High Court:

HELD

- It appears that against the assessment order the assessee filed appeal before the Commissioner (Appeals). The said appeal came to be dismissed by the learned

Commissioner (Appeals). That thereafter on dismissal of the appeal by the Commissioner (Appeals), the Assessing Officer issued the fresh notice to the assessee for imposing the penalty under section 271(1)(c) and thereafter passed the order imposing the penalty under section 271(1)(c). The same has been deleted by the Commissioner (Appeals) confirmed by the Tribunal on the ground that once earlier the penalty proceedings were initiated and thereafter the same came to be dropped by the Assessing Officer after considering the reply submitted by the assessee, thereafter the Assessing Officer was not justified in initiating fresh penalty proceedings. [Para 4.1]

- It can be said that fresh penalty proceedings are permissible only with a view to give effect to the order of the higher Forum revising the assessment and a fresh penalty order can be passed and/or penalty can be imposed, enhancing, reducing or canceling the penalty or dropping the proceedings for the imposition of the penalty on the basis of the assessment as revised by giving effect to such order of the Commissioner (Appeals) etc. Therefore, in a case where the assessment was not required to be revised pursuant to the order passed by the Commissioner (Appeals) or the Appellate Tribunal or the High Court or the Supreme Court, as the case may be, the power under section 275(1A) cannot be exercised and the fresh penalty proceedings cannot be initiated once earlier the penalty proceedings were dropped after considering the reply submitted by the assessee, as there is no revised assessment which is required to be giving effect to. Therefore, it is to be noted that the Commissioner (Appeals) as well as the Tribunal are justified in deleting the penalty imposed under section 271(1)(c) faced with a situation that earlier the penalty proceedings were dropped after considering the reply submitted by the assessee and that thereafter the assessment was not required to be revised giving effect to the order passed by the learned Commissioner (Appeals) as the Commissioner (Appeals) simply confirmed the assessment order determining the income at Rs. 62 lakhs. In the facts and circumstances of the case narrated herein above, the order passed by the Tribunal deleting the penalty under section 271(1)(c) is to be confirmed. No substantial question of law arises and hence, present Tax Appeal deserves to be dismissed. [Para 4.2]

Mrs. Mauna M. Bhatt *for the Petitioner.*

JUDGMENT

M.R. Shah, J. - Feeling aggrieved and dissatisfied with the impugned order dated 23.02.2018 passed by the learned Income Tax Appellate Tribunal, Ahmedabad Bench 'A', Ahmedabad (hereinafter referred to as "Tribunal") in ITA No.213/Ahd/2016 for the Assessment Year 2006-07 by which the learned Tribunal has dismissed the said appeal preferred by the Revenue and has confirmed the order passed by the learned CIT (A) deleting the penalty levied by the Assessing Officer under Section 271(1)(c) of the Income Tax Act, 1961 (hereinafter referred to as "IT Act"), the Revenue has preferred the present Tax Appeal with the following proposed question of law.

"Whether the Appellate Tribunal has erred in law and on facts in deleting of penalty levied u/s.271(1)(c) of the Act without appreciating the specific provisions contained in Section 275(1A) of the IT Act?"

2. The facts leading to the present Tax Appeal in nut-shell are as under:

2.1 That a search was conducted on 08.12.2009 at the residential premises of one Shri Somabhai

Ambalal Prajapati, Ahmedabad. On the basis of the documents, evidences and other material seized during the course of search, the searched person made a disclosure of Rs. 13.02 Crores towards sale consideration of various plots of land at village Bhadaj. It was found that the assessee herein - Smt. Geetaben Chandulal Prajapati was co-owner of the land bearing Block Nos.500 and 510 at village Bhadaj. Being the co-owner she received total amount of Rs. 62,14,322/-. It was noticed that she did not file return of income for AY 2006-07 and therefore, the related capital gain arising out of the sale proceeds of the above two mentioned plots of land amounting to Rs. 62,14,322/- remained to be taxed. Therefore, notice under Section 148 of the IT Act was issued. In response to the same, the assessee filed return of income declaring total income of Rs. 62,15,820/-. The income was assessed at Rs. 62,15,820/-. It appears that the Assessing Officer also initiated the penalty proceedings to which also the assessee filed the reply. According to the assessee, the Assessing Officer dropped the penalty proceedings considering the reply submitted by the assessee. However, thereafter, a separate penalty proceedings under Section 271(1)(c) of the IT Act for concealment of income and the penalty notice under Section 274 read with Section 271 were issued on 26.10.2012. The assessee replied to the said penalty notice. It appears that due to the change in Assessing Officer, a fresh notice was issued and according to the Assessing Officer the said fresh notice was issued on 24.06.2011 fixing the case for hearing on 27.06.2011. As per the penalty order, nobody remained present and no reply was filed. That thereafter considering the fact that the assessee did not file the return of income and has concealed the income which was declared and offered for capital gain only when the notice under Section 148 of the IT Act was issued, the Assessing Officer imposed the penalty of Rs. 20,32,218/-levied under Section 271(1)(c) of the IT Act.

2.2 The penalty order was challenged by the assessee before the learned CIT (A). It was pointed out that earlier when the notice under Section 148 of the IT Act and assessment proceeding was initiated, the Assessing Officer also issued the penalty notice which was replied by the assessee and thereafter considering the reply filed by the assessee, the Assessing Officer consciously dropped the penalty proceedings initiated under Section 271(1)(c) of the IT Act for AY 2006-07. Therefore, it was submitted that once the Assessing Officer dropped the penalty proceedings after considering the reply furnished by the assessee, thereafter the second penalty proceedings were not permissible. The assessee made the submission on merits also. Accepting the submission made on behalf of the assessee, the learned CIT (A) dropped the penalty levied under Section 271(1)(c) of the IT Act.

2.3 Feeling aggrieved and dissatisfied with the order passed by the learned CIT (A) deleting the penalty levied under Section 271(1)(c) of the IT Act, the Revenue preferred the appeal before the learned Tribunal and by impugned order the learned Tribunal has dismissed the appeal preferred by the Revenue and has confirmed the order passed by the learned CIT (A) deleting the penalty levied under Section 271(1)(c) of the IT Act.

2.4 Feeling aggrieved and dissatisfied with the order passed by the learned Tribunal confirming the order passed by the learned CIT (A) deleting the penalty levied under Section 271(1)(c) of the IT Act, the Revenue has preferred the present appeal with the aforesaid proposed question of law.

3. Mrs. Mauna Bhatt, learned Counsel appearing on behalf of the Revenue has vehemently submitted that while deleting the penalty levied under Section 271(1)(c) of the IT Act, the learned Tribunal has not at all appreciated and/or considered the specific provisions contained in section 275(1A) of the IT act.

3.1 It is submitted by Mrs. Bhatt, learned Counsel appearing on behalf of the Revenue that as such considering section 275(1A) of the IT Act, the Assessing Officer was very much within its jurisdiction to pass the order imposing penalty even though he had earlier dropped the penalty proceedings on the basis of the assessment as required by giving effect to the order of Commissioner (Appeals).

3.2 It is submitted by Mrs. Bhatt, learned Counsel appearing on behalf of the Revenue that in the present

case the order of assessment was challenged by the assessee before the learned CIT (A) and the learned CIT (A) confirmed the assessment order and therefore, thereafter when the penalty proceedings were initiated giving effect to the order passed by the Commissioner (Appeals), the Assessing Officer was justified and/or was well within its jurisdiction to pass an order imposing penalty even though he had earlier dropped the penalty proceedings.

3.3 Mrs. Bhatt, learned Counsel appearing on behalf of the Revenue has also made submission on merits that as the assessee did not file the return of income though she received a total sum of Rs. 62,14,322/- out of the sale consideration for sale of the land bearing Block Nos.500 and 510 at village Bhadaj and thereafter she filed the return of income only after notice under Section 148 of the IT Act and offered the aforesaid amount to tax, the Assessing Officer was justified in imposing the penalty under Section 271(1) (c) of the IT Act.

Making above submissions and heavily relying upon section 271(1A) of the IT Act, it is requested to admit the present Tax Appeal.

4. Heard Mrs. Bhatt, learned Counsel appearing on behalf of the Revenue at length.

At the outset it is required to be noted that after the proceedings under Section 148 of the IT Act, the assessee filed the return of income declaring total income of Rs. 62,15,820/-. Thereafter, the assessment order under Section 143(3) read with Section 147 for AY 2006-07 was passed on 26.10.2012 by determining the total income of the assessee at Rs. 62,15,820/- against the return of income of Rs. 62,15,820/- and the penalty notice under Section 274 read with Section 271(1)(c) of the IT Act was issued on 26.10.2012. It is not in dispute that in response to the penalty notice dated 26.10.2012, the assessee filed the reply vide letter dated 24.03.2013. The Assessing Officer after considering the assessee's reply, passed an order dated 28.03.2013 dropping the penalty proceedings which read as under:

"DROPPING PROCEEDING INITIATED UNDER SECTION 271F OF THE IT ACT, 1961

In view of the reply dated 24.03.2013, the penalty proceedings initiated u/s.271(1)(c) in the above case for A.Y. 2006-07 is hereby dropped."

4.1 It appears that against the assessment order the assessee filed appeal before the learned CIT (A) determining the total income of the assessee at Rs. 62,15,820/-. The said appeal came to be dismissed by the learned CIT (A) on 20.08.2013. That thereafter on dismissal of the appeal by the learned CIT (A), the Assessing Officer issued the fresh notice to the assessee for imposing the penalty under Section 271(1)(c) of the IT Act and thereafter passed the order imposing the penalty under Section 271(1)(c) of the IT Act on 14.11.2014. The same has been deleted by the learned CIT (A) confirmed by the learned Tribunal on the ground that once earlier the penalty proceedings were initiated and thereafter the same came to be dropped by the Assessing Officer after considering the reply submitted by the assessee, thereafter the Assessing Officer was not justified in initiating fresh penalty proceedings. It is the case on behalf of the Revenue that in view of Section 275(1A) of the IT Act, the same was permissible as the fresh penalty proceedings were initiated after the dismissal of the appeal by the learned CIT (A) and with a view to give effect to the order passed by the learned CIT (A). The aforesaid has no substance. It is required to be noted that in the present case the learned CIT (A) simply dismissed the appeal and confirmed the order passed by the Assessing Officer determining the total income of the assessee at Rs. 62,15,820/-. Therefore, the assessment order was not in anyway modified by the learned CIT (A). Therefore, it can be said that there are no changed circumstances at all when the earlier penalty proceedings were dropped and thereafter when the fresh penalty proceedings were initiated. Therefore, in the facts and circumstances of the case, reliance placed upon section 275(1A) of the IT Act is absolutely misplaced. Section 275(1A) of the IT Act reads as under:

"In a case where the relevant assessment or other order is the subject-matter of an appeal to the Commissioner (Appeals) under section 246 or section 246A or an appeal to the Appellate Tribunal under section 253 or an appeal to the High Court under section 260A or an appeal to the Supreme Court under section 261 or revision under section 263 or section 264 and an order imposing or enhancing or reducing or cancelling penalty or dropping the proceedings for the imposition of penalty is passed before the order of the Commissioner (Appeals) or the Appellate Tribunal or the High Court or the Supreme Court is received by the [Principal Chief Commissioner] Chief Commissioner or the [Principal Commissioner or] Commissioner or the order of revision under section 263 or section 264 is passed, an order imposing or enhancing or reducing or cancelling penalty or dropping the proceedings for the imposition of penalty may be passed on the basis of assessment as revised by giving effect to such order of the Commissioner (Appeals) or, the Appellate Tribunal or the High Court, or the Supreme Court or order of revision under section 263 or section 264."

4.2 On fair reading of section 275(1A) of the IT Act, it can be said that fresh penalty proceedings are permissible only with a view to give effect to the order of the higher Forum revising the assessment and a fresh penalty order can be passed and/or penalty can be imposed, enhancing, reducing or canceling the penalty or dropping the proceedings for the imposition of the penalty on the basis of the assessment as revised by giving effect to such order of the Commissioner (Appeals)... etc. Therefore, in a case where the assessment was not required to be revised pursuant to the order passed by the Commissioner (Appeals) or the Appellate Tribunal or the High Court or the Hon'ble Supreme Court, as the case may be, the power under Section 275(1A) of the IT Act cannot be exercised and the fresh penalty proceedings cannot be initiated once earlier the penalty proceedings were dropped after considering the reply submitted by the assessee, as there is no revised assessment which is required to be giving effect to. Therefore, we are of the opinion that the learned CIT (A) as well as the learned Tribunal are justified in deleting the penalty imposed under Section 271(1)(c) of the IT Act faced with a situation that earlier the penalty proceedings were dropped after considering the reply submitted by the assessee and that thereafter the assessment was not required to be revised giving effect to the order passed by the learned CIT (A) as the learned CIT (A) simply confirmed the assessment order determining the income at Rs. 62,15,820/-. In the facts and circumstances of the case narrated herein above, we confirm the order passed by the learned Tribunal deleting the penalty under Section 271(1)(c) of the IT Act. No substantial question of law arises and hence, present Tax Appeal deserves to be dismissed.

5. The aforesaid proposed question of law is answered against the Revenue. Present Tax Appeal deserves to be dismissed and is, accordingly, dismissed.

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*In favour of assessee.

†Arising out of order of ITAT in IT Appeal No. 213 (Ahd.) of 2016, dated 23-2-2018.