

आयकर अपीलीय अधिकरण, मुंबई न्यायपीठ "सी" मुंबई
IN THE INCOME TAX APPELLATE TRIBUNAL "C" BENCH, MUMBAI

BEFORE HON'BLE S/SHRI H.L. KARWA, PRESIDENT AND B.R.BASKARAN (AM)
सर्वश्री एच.एल. कार्वा, अध्यक्ष एवं बी.आर.बास्करन, लेखा सदस्य

आयकर अपील सं./I.T.A. No.8653/Mum/2011
(निर्धारण वर्ष / Assessment Year :2004-05)

Ms.Prema Gopal Rao, G-1, Everest Apt, 156 Tardeo Tardeo, Road, Tardeo, Mumbai-400034	बनाम/ Vs.	Dy. Commissioner of Income Tax 16(1), Matru Mandir, Tardeo Road, Mumbai-400007
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

स्थायी लेखा सं./जीआइआर सं./**PAN/GIRNo.:AABPR7003D**

अपीलार्थी ओर से / Assessee by :	Shri Nishit Gandhi
प्रत्यर्थी की ओर से/Respondent by :	Shri Neil Philip.

सुनवाई की तारीख / Date of Hearing : 29.12.2014
घोषणा की तारीख /Date of Pronouncement : 07 .01.2015

आदेश / ORDER

Per B.R.BASKARAN, Accountant Member:

The assessee has preferred this appeal challenging the order dated 15.11.2011 passed by Ld CIT(A)-25, Mumbai and it relates to the assessment year 2004-05. The assessee is aggrieved by the decision of Ld CIT(A) in confirming the penalty of Rs.2,46,300/- levied by the AO u/s 271(1)(c) of the Act.

2. The facts that led to the levy of penalty are stated in brief. The assessee filed original return of income on 10.09.2004 declaring total income of Rs.12,16,600/-, which included Long Term Capital Gain on sale of Shares of Rs.3,60,305/-. The case was selected for scrutiny and hence the AO issued notice u/s 143(2) of the Act on 28.3.2005. After the receipt of the said notice, the assessee filed revised return of income, wherein the assessee revised the Long term Capital gains upwards to Rs.14,87,789/-. The AO completed the assessment as per the Revised return of income by making certain

disallowances. The AO took the view that the assessee has revised the return of income only after the enquiry was initiated by him. Accordingly the AO held that the penalty is leviable on a sum of Rs.15,84,783/-, which included following amounts:-

Long Term Capital gain enhanced amount	-	11,27,484
Interest income & Profit from Zuari Mutual fund added in the assessment order	-	1,40,373

Accordingly, the AO levied a penalty of Rs.2,46,300/-. The Ld CIT(A) also confirmed the penalty mainly on the reasoning that

- (a) The filing of revised return of income was not voluntary, since it was filed after selection of the original return of income for scrutiny.
- (b) The assessee had made wrong and dubious claims.

3. We heard the parties and perused the record. We notice that the assessing officer has determined the concealed income at Rs.15,84,783/-. However, the additions made in the assessment order was only Rs.1,40,373/- and further the difference in Long term Capital gains between the revised return and the original return was only Rs.11,27,484/-. Thus there is a difference in the amount of 'concealed income' determined by the AO, for which the assessing officer has failed to give the details in the penalty order. Be that as it may, we notice that the tax authorities have taken the view that the amount of Long term Capital gain enhanced by the assessee in the revised return of income should be considered as 'concealed income', since the assessee had revised the same after receipt of the notice u/s 143(2) of the Act, i.e., according to the tax authorities the notice has prompted the assessee to file the revised return of income hence it was not voluntary. At the time of hearing, the Ld A.R brought to our notice that the AO did not ask for any details at the time of issuing notice u/s 143(2) and hence the question of detection of the discrepancy in the Long Term Capital Gain by the AO does not arise in the instant case. Accordingly he submitted that the Revised return of income was voluntary in nature and the same has also been filed within the due date prescribed in the Act for filing revised return of income. He further submitted that the AO has also recognised the said return in the assessment proceedings. He also placed reliance on the decision rendered by the Delhi bench of Tribunal in the case of ACIT Vs. Ashok

Raj Nath (2013)(33 taxmann.com 588), wherein the Tribunal had deleted the penalty levied under identical set of facts.

4. We have gone through the order passed by Delhi bench of Tribunal referred supra. We notice that the assessee therein had filed revised return of income beyond the time prescribed u/s 139(5) by enhancing the Long term capital gain, after the receipt of notice u/s 143(2) of the Act. Even though the revised return was invalid, the AO completed the assessment by accepting the income declared in the revised return. Under these set of facts, the Tribunal had held that the additional amount of capital gain disclosed in the revised return did not tantamount to detection of concealment of income u/s 271(1)(c) of the Act.

5. In the instant case, the revised return of income was filed within the time prescribed u/s 139(5) of the Act. Even though the assessed filed the revised return of income after the receipt of notice u/s 143(2) of the Act, yet the admitted fact remains that the assessing officer did not seek any type of particulars in that notice. Hence the mistake in the Long term Capital gain could not have come to the notice of the AO at that point of time, meaning thereby, it should be construed that the assessee has declared the higher amount of Long term capital gain voluntarily upon its detection. Hence, we are unable to agree with the view of the tax authorities that the revised return of income was not voluntary one, but the assessee was constrained to enhance the Long term capital gain only upon the receipt of notice u/s 143(2) of the Act. Accordingly, we set aside the order of Ld CIT(A) on this issue and direct the assessing officer to delete the penalty levied on the enhanced Capital gain amount.

6. With regard to the addition of Rs.1,40,373/- made in the assessment order, we notice that the assessee has omitted to declare the same in the revised return of income also and no convincing explanation was given for the same. Hence we confirm the penalty levied on the above said amount.

7. With regard to the balance amount, we have already noticed that the AO has failed to give the details of the same. Hence we restore the same to his file with the direction to reconsider the same after giving necessary details to the assessee.

8. In the result, the appeal filed by the assessee is partly allowed.

The above order was pronounced in the open court on 7th Jan,2015.

घोषणा खुले न्यायालय में दिनांक: 7th Jan 2015 को की गई ।

sd
(एच.एल. कार्वा/ H.L. KARWA)

अध्यक्ष/ **PRESIDENT**

मुंबई Mumbai: 7th Jan, 2015.

व.नि.स./ SRL , Sr. PS

sd
(बी.आर. बास्करन,/ B.R. BASKARAN)

लेखा सदस्य/**Accountant Member**

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)- concerned
4. आयकर आयुक्त / CIT concerned
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई /
DR, ITAT, Mumbai concerned
6. गार्ड फाईल / Guard file.

true copy

आदेशानुसार/ BY ORDER,

सहायक पंजीकार (Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई /ITAT, Mumbai