

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'F' : NEW DELHI)**

**BEFORE SHRI J.S. REDDY, ACCOUNTANT MEMBER
and
SHRI KULDIP SINGH, JUDICIAL MEMBER**

**ITA No.1972/Del./2014
(ASSESSMENT YEAR : 2004-05)**

M/s. Royal Exports,
2719, Bank Street,
Karol Bagh,
New Delhi.

vs. ACIT,
Central Circle 33 (1),
New Delhi.

(PAN : AADFR6282M)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri Abhishek Anand, Advocate
REVENUE BY : Shri F.R. Meena, Senior DR

Date of Hearing : 03.08.2016

Date of Order : 08.08.2016

ORDER

PER KULDIP SINGH, JUDICIAL MEMBER :

Appellant, M/s. Royal Exports (hereinafter referred to as 'the assessee'), by filing the present appeal sought to set aside the impugned order dated 05.02.2014 passed by the Commissioner of Income-tax (Appeals)-XIX, New Delhi, affirming the penalty order dated 29.09.2010 passed u/s 271(1)(c) of the Income-tax Act, 1961 (for short 'the Act'), for the assessment year 2004-05 on the grounds inter alia that :-

“On the facts and in the circumstances of the case and in law the CIT (A) was incorrect and unjustified in

- 1) Dismissing the appeal of the assessee.
- 2) Not agreeing to keep the penalty proceedings pending till the decision of quantum appeal pending before the Hon'ble ITAT.
- 3) In confirming the penalty levied on the ground that the quantum appeal has been decided whereas the same is pending before the Hon'ble ITAT.
- 4) Holding that the assessee had filed inaccurate particulars of income or has concealed income.
- 5) Holding that the assessee was liable to penalty u/s 271(1)(c) even when there is neither any filing of inaccurate particulars of income or any concealment of income.
- 6) Holding that the assessee was liable for 271(1)(c) penalty even when the conditions necessary for such levy are not satisfied.
- 7) Holding that penalty was liable since it was a civil liability and no mens-rea etc. was required.
- 8) Holding that the assessee was liable for penalty since the assessee did not file an explicit note alongwith the computation of income.
- 9) Holding that change of head of income by the AO was liable for penalty.”

2. Briefly stated the facts of this case are : on the basis of assessment order dated 15.12.2006 passed u/s 143(3) of the Act at Rs.11,41,714/-, penalty proceedings were initiated against the assessee who is a 100% export oriented unit into the manufacturing

and export of plain gold jewellery and has been claiming deduction u/s 10A / 10B of the Act. Assessment order has been affirmed by the Id. CIT (A) vide order dated 25.04.2008. AO, after having satisfied himself, came to the conclusion that assessee, by making deliberate attempt, concealed his taxable income by furnishing inaccurate particulars and inflating the claim of deduction u/s 10A / 10B to the extent of Rs.3,06,207/- by claiming more than lawful deduction and further claiming interest to the tune of Rs.8,35,507/- on the business income whereas it was not business income and passed the following order :-

“ Accordingly, the undersigned is satisfied that it is a fit case for levy of penalty u/s 271(1)(c) read with explanation 1(A) thereto. The computation of penalty is as follows :-

Income sought to be evaded	11,41,714
Tax on above income (including Surcharge)	4,09,590
Minimum penalty leviable @ 100% tax sought to be evaded	4,09,590
Maximum penalty leviable @ 300% to be evaded	12,28,770

In view of the facts and circumstances of the case thereby levy a penalty of Rs.4,09,590/- @ 100% of the tax sought to be evaded u/s 271(1)(c) of the Income Tax Act, 1961 read with explanation 1(A) thereto for concealing and furnishing inaccurate particulars of income.”

3. Assessee carried the matter before the Id. CIT (A) who has affirmed the penalty order by dismissing the appeal. Feeling aggrieved, the assessee has come up before the Tribunal by challenging the penalty order passed u/s 271(1)(c) of the Act.

4. We have heard the Id. Authorized Representatives of the parties to the appeal, gone through the documents relied upon and orders passed by the revenue authorities below in the light of the facts and circumstances of the case.

5. The Id. AR for the assessee challenging the impugned order contended that since the addition of Rs.11,41,714/- made by the AO vide order dated 15.12.2006 qua AY 2004-05 stands already deleted by the Tribunal in case cited as M/s. Royal Exports vs. ACIT in ITA No.2402/Del/2008 vide order dated 22.02.2016, the penalty order is not sustainable in the eyes of law. However, on the other hand, Id. DR to repel the argument addressed by Id. AR contended that the penalty proceedings are not to be influenced by the quantum proceedings and relied upon the order passed by the Id. CIT (A).

6. In the backdrop of the undisputed fact that addition of Rs.11,41,714/- made vide assessment order dated 15.12.2006 qua AY 2004-05 against the assessee has already been deleted vide

order dated 22.02.2016 by the Tribunal in ITA No.2402/Del/2008

(supra), the sole question arises for determination in this case is:-

“as to whether penalty imposed under section 271(1)(c) of the Act on the basis of addition made by the AO is sustainable when addition has already been deleted by the Appellate Tribunal?”

7. Hon'ble Supreme Court in the judgment cited as K.C. Builders v. Assistant Commissioner of Income-tax 265 ITR 562 (SC) answered the aforesaid question in favour of the assessee by recording following findings :-

“ Where the additions made in the assessment order on the basis of which penalty for concealment was levied, there remains no basis at all for levying the penalty for concealment and, therefore, in such a case no such penalty can survive and the same is liable to be cancelled. Ordinarily, penalty cannot stand if the assessment itself is set aside.

Once penalties imposed on the assessee under section 271(1)(c) of the Income-tax Act, 1961, are cancelled on the basis of the conclusive finding of the Appellate Tribunal that there is no concealment of income, prosecution of the assessee for an offence under section 276C for willful evasion of tax cannot be proceeded with thereafter : quashing of the prosecution is automatic.

The appellants, who were engaged in the business of construction, had returned their income for the assessment years 1983-84 to 1986-87 at certain figures of cost of construction. Thereafter when enquiries were made they filed revised returns disclosing higher cost of construction in the basis of an approved valuer's report. The revised returns were accepted by the Department and assessments were completed. The difference between the incomes originally returned and

those in the revised returns were treated as concealed income and penalties were levied under section 271(1)(c) of the Income-tax Act, 1961. The appellants were also prosecuted for the offence under section 276C and certain sections of the Indian Penal Code, 1860. The Appellate Tribunal held that there was no concealment of income. And giving effect to the trial on the basis of the Department's complaint had proceeded after charges had been framed. The appellants applied to the magistrate for adjournment. The magistrate did not adjourn the trial but permitted the firm to mark the appellate orders of the Tribunal in evidence at the appropriate stage of the trial, as the matter was in the stage of further cross examination. The appellants preferred revision petitions but the High Court dismissed the revision petitions taking the view that since the charges had been framed and the matter was in the stage of further cross examination the prosecution could proceed with the trial. On appeal to the Supreme Court :

Held, reversing the decision of the High Court, that the finding of the Appellate Tribunal was conclusive and the prosecution could not be sustained since the penalty was cancelled following the Tribunal's order and no offence survived under the Income-tax Act thereafter. Quashing of the prosecution was automatic. Allowing the trial to proceed further would be an idle and empty formality."

8. Following the judgment in the case of K.C. Builders v. Assistant Commissioner of Income-tax (supra) delivered by Hon'ble Apex Court and in view of the fact that additions made by the AO qua AY 2004-05 have already been deleted and the order of the Tribunal has since attained finality, the penalty order dated 29.09.2010 affirmed by the CIT (A) is not sustainable in the eyes of law. So, when the appellate Tribunal came to the conclusion that

there is no material on record to sustain the addition, there is no question of concealment of income by the assessee to attract the provisions contained u/s 271(1)(c) of the Act. So, we hereby allow the present appeal and quash the penalty order.

Order pronounced in open court on this 8th day of August, 2016.

**Sd/-
(J.S. REDDY)
ACCOUNTANT MEMBER**

**sd/-
(KULDIP SINGH)
JUDICIAL MEMBER**

**Dated the 8th day of August, 2016
TS**

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT(A)-XIX, New Delhi.
- 5.CIT(ITAT), New Delhi.

**AR, ITAT
NEW DELHI.**