IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad 'B' (SMC) Bench, Hyderabad

Before Smt. P.Madhavi Devi, Judicial Member

ITA No.1434/Hyd/2015
(Assessment Year: 2005-06)

Shri Viswanadha Venkata Rao Hyderabad PAN: AHNPV 8854 H (Appellant)	Vs.	Income Tax Officer Ward 11(1) Hyderabad (Respondent)

For Assessee : Smt. S. Sandhya
For Revenue : Smt. U. Minichandran, DR

Date of Hearing : 5.7.2016
Date of Pronouncement : 29.7.2016

O R D E R

This is assessee's appeal for the A.Y 2005-06 against the penalty levied by the AO u/s 271(1)(c) of the I.T. Act and confirmed by the CIT (A).

2. Brief facts of the case are that the assessee, an individual, had deposited a sum of Rs.15,05,000 in his Syndicate Bank savings a/c during the financial year 2004-05 relevant to the A.Y 2005-06. On receipt of the information, the AO verified and found that the assessee is not assessed to Income Tax. Therefore, a notice u/s 142(1) of the Act, dated 27.8.07, was issued to the assessee calling for the return of income for the A.Y 2005-06. Assessee filed the return of income on 12.09.2007. In response to the notice u/s 143(2) of the I.T. Act, assessee filed a letter stating that the amount deposited in assessee's bank a/c was arranged by the Consultants M/s. Vishu Consultants Ltd, Hyderabad so as to enable the assessee's son to get visa to USA

for pursuing studies in USA. Since no documentary evidence was furnished in support of the contentions made in the letter, the assessment was completed by treating the amount as unexplained investment u/s 69 of the I.T. Act.

3. Thereafter, the AO initiated penalty proceedings u/s 271(1)(c) of the I.T. Act. The assessee was asked to file the reply as to why the penalty u/s 271(1)(c) should not be levied. Assessee did not respond to the penalty notice and therefore the AO levied minimum penalty on the amount of tax sought to be evaded for concealment of income by investing in the bank deposits. Aggrieved by the same, assessee preferred an appeal before the CIT (A) stating that the assessee's son Mr. Viswanadha Venkata Somayajulu was trying for admission in various universities outside the country and for obtaining visa, the bank balance of the parents was necessary. Therefore, the assessee approached the professionals and got the application prepared and the professional also provided a bank balance for a very short period for a charge. Accordingly Rs.15,05,000 was deposited in his bank a/c for a short duration. It was further submitted that since the Vishu Consultants had closed their operations in Hyderabad, the assessee could not obtain any confirmation from them. It was therefore, submitted that no income was derived by him and therefore, cannot be treated as income of the assessee. He prayed for deleting the penalty. The CIT(A), however, was not convinced with the assessee's contentions and observing that the explanation offered by the assessee did not appear to be bonafide explanation as all material facts were not brought on record, he held that the assessee failed to produce the material facts on record and the

onus is upon him to offer an explanation and also to substantiate it. Therefore, he confirmed the penalty levied by the AO. Assessee is in second appeal before us.

4. It is noticed that the appeal is time barred by a period of 12 days. The assessee has filed an affidavit explaining the reasons for the delay and taking the same into consideration, we are satisfied that the delay in filing the appeal is not wilful. In view of the same, the delay is condoned.

5. The learned Counsel for the assessee Smt. S. Sandhya, while reiterating the submissions made before the authorities below, submitted that the assessee has no souce of income whatsoever, and that the Consultants who have helped his son to apply to various universities outside India also helped the assessee in making deposit of money for a short duration to enable him to obtain a visa to USA. She submitted that the assessee was not even aware of the bank details and even the AO has not examined the bank a/c of the assessee to verify the assessee's contentions that the deposit was made by the Consultants for a very short period. She submitted that failure of the assessee to substantiate this claim has resulted in the addition, but cannot be a ground for levying penalty as no material has been brought on record by the authorities for the wilful concealment or evasion of tax. Therefore, according to her, the penalty is not sustainable.

6. The learned DR, on the other hand, supported the orders of the authorities below and submitted that M/s Visu Consultants Ltd was very much in existence in Hyderabad and the assessee's

contention that it has closed its operation in Hyderabad is not correct. She has also drawn our attention to the fact that the assessee has not been able to prove that the Visu Consultants have, in fact, provided the funds for deposit into the assessee's bank a/c, therefore, according to her, the assessee has failed in explaining the source of investment and hence the penalty is justified.

7. Having regard to the rival contentions and the material on record, we find that the assessee has not been able to substantiate or explain the source of the deposits in his bank a/c. The CIT (A) also confirmed the addition. However, it is not out of place to mention that in a series of decisions, various High Courts have held that an addition made in the assessment of the income does not automaticaly attract the levy of penalty. Unless and until the conditions for levy of penalty are satisfied/fulfilled, the AO cannot levy the penalty u/s 271(1)(c) of the Act. The penalty u/s 271(1)(c) is levied for furnishing of inaccurate particulars or concealment of income. In the case before us, the assessee has not filed the return of income till the AO has called for the return of income. Therefore, it cannot be stated to be a case of furnishing of inaccurate particulars of income. However, as regards the concealment of income, since the assessee has not furnished any information, it may be considered as a case of concealment of income. The assessee had not furnished any explanation before the AO as to why the penalty should not be levied. The explanation was filed only before the CIT (A). In support of the assessee's contention that M/s Vishu Consultants had provided the funds, the assessee has filed only a copy of the letter issued by M/s Vishu Consultants congraulating the

assessee's son on getting admission and has also offered to take the demand draft from an authorised bank in the name of the University. It is also a known fact that for the purposes of getting a visa, parents are required to maintain certain cash balance in the bank a/c and Consultants or the friends and family members of the applicant usually help in making the deposit for a short duration in order to help the candidate to get the visa. The AO and the CIT (A) have not verified the bank a/c of the assessee wherein the deposit was made, the duration of the deposit and how the deposit has been withdrawn. The fact of the assessee's son getting admission and also getting a visa is not disputed. The contentions of the assessee have not been disproved by the AO. Therefore, we agree with the contentions of the assessee, that though the addition is justified, it is not a fit case for levy of penalty u/s 271 (1)(c). Under similar circumstances, the Coordinate Bench of this Tribunal at Delhi in the case of Income Tax Officer vs. Shri N. Motilal Nalluri in ITA No.388/Del/2010 has deleted the penalty u/s 271(1)(c) of the Act. In view of the same, I delete the penalty levied by the AO u/s 271(1)(c) of the Act.

8. In the result, appeal of the assessee is allowed.

Order pronounced in the Open Court on 29th July, 2016.

Sd/-
(P. Madhavi Devi)
Judicial Member

Hyderabad, dated 29th July, 2016.

Vnodan/sps

<u>Copy to:</u>

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4. *Pr. CIT – 5 Hyderabad*
5. *The DR, ITAT, Hyderabad*
6. *Guard File*

By Order