

2012 SCC OnLine ITAT 15689

In the Income Tax Appellate Tribunal "B" Bench, Ahmedabad
(BEFORE MUKUL KR. SHRAWAT, J.M. AND ANIL CHATURVEDI, A.M.)

Patel Dhirajbhai Galbabbhai At: Jalotra Tal: Vadgam (B.K.) ...
(Appellant)

Versus

The ITO Ward-3 Palanpur ... (Respondent)

PAN/GIR No. AKKPP 8829 SL

I.T.A. No. 3350/Ahd/2009, Assessment Year: 2006-07

Decided on April 30, 2012, [Hearing on: April 26, 2012]

Appellant by: Shri Sakar Sharma A.R.

Respondent by: Shri Samir Tekriwal, Sr. D.R.

ORDER

MUKUL KR. SHRAWAT, J.M.:— This is an appeal at the behest of the Assessee which has emanated from the order of Learned CIT (Appeals)-XV, Ahmedabad dated 04/11/2009 passed for A.Y. 2006-2007. Initially, the grounds raised were argumentative in nature, hence the same were concised and the solitary ground argued before us is reproduced below:—

1. *The Ld. CIT(A) erred on facts and in law in confirming penalty u/s. 271(1)(c) on disallowance of Rs. 7,16,000/- for furnishing inaccurate particulars of income.*

2. Facts in brief as emerged from the corresponding penalty order passed u/s. 271(1)(c) of the I.T. Act dated 31/03/2009 and the assessment order passed u/s. 143(3) of the I.T. Act, 1961 dated 30/01/2008 were that the assessee in individual capacity is in the business of hiring of vehicles. The main hiring services were stated to be provided to B.K. District Co-operative Milk Producers' Union Ltd., Palanpur (Banas Dairy).

3. During the assessment proceedings, it was noticed by the Assessing Officer that there was unpaid "Truck Rent" expenses of Rs. 8,51,600/-, shown as liability in the balance-sheet. In compliance of the show-cause, the assessee has furnished a detailed list of unpaid hire expenses. The assessee has furnished date of hiring of vehicle, name of the vehicle owner, vehicle registration number, destination, amount of rent payable in respect of each route, name of the driver and signature of the driver. It was explained that the assessee has transported "Cattle Feed" (Banas Dana) from Banas Dairy Palanpur to various depots of Banas Dairy in Gujarat and at Kanpur. On the basis of the said details, the Assessing Officer has called for certain information from RTO Palanpur and Mehsana to enquire about vehicle owner and the vehicle registration number. The RTO has given certain information and on that basis the Assessing Officer has noted that the names of the truck owners was different from the names as provided by the assessee. The Assessing Officer has given the names of the owner of the vehicles as mentioned in the register maintained by the assessee and also simultaneously noted the names of the owners of those vehicles as per the information given by the RTO authority. A detailed enquiry was made by the Assessing Officer and summons were issued. On one hand, the assessee has claimed that the impugned pay-bill amount was pertaining to 29 trucks, but on the other hand, the said Banas Dairy has revealed that two trucks and two tankers were plied or put to use by the assessee. As per the information from Banas Dairy, bills raised by the assessee were limited to four vehicles only. However, few truck owners have appeared before

the Assessing Officer. On the basis of the enquiry made and few owners of the trucks appeared before the Assessing Officer, it was held that out of the total claim of Rs. 8,51,600/-, an amount of Rs. 5,19,400/- remained unsubstantiated. Accordingly, a disallowance of Rs. 5,19,400/- was made. The matter was carried before the first appellate authority, who has affirmed the addition.

4. During the course of penalty proceedings, it was vehemently contested that the information about the hiring of the trucks was made available to the Assessing Officer. Some of the truck owners have also appeared before the Assessing Officer, therefore part relief was granted by the Assessing Officer himself. Before the Assessing Officer, submissions were made in respect of the each truck by mentioning the names of the truck owners and some of them have admitted that the trucks were given on rent to the assessee. However, the Assessing Officer was not convinced and levied a penalty of Rs. 2,13,605/-. Levy of penalty was also challenged. However, Id. CIT(A) has held that the amount payable shown as outstanding was not proved by the assessee and only those outstanding hire charges which were found genuine were allowed. The Learned CIT (Appeals) has concluded that penalty with respect to hire charges found unproved stood confirmed. Being aggrieved now the assessee is further in appeal.

5. Assessee's counsel Mr. Sakar Sharma appeared and argued that the details of expenses were very much furnished alongwith the return. He has also placed chart through which he has demonstrated that the RTO has not intimated that the truck numbers were incorrect or the information about truck numbers was not genuine. Rather, in respect of the names of the owners of the trucks, Id. AR has vehemently argued that in most of the cases the information about the owners of the truck was correctly forwarded by the RTO. He has mentioned that while recording the names of the owners sometimes name of one of the relatives is noted for the purpose of making the payment but the vehicle numbers were correctly mentioned and the names of the persons did not matter much to the assessee. He has pleaded that this is the case of pure disallowance of expenses, therefore following the decision of Hon'ble Supreme Court in the case of *CIT v. Reliance Petroproducts (P) Ltd.* 322 ITR 158 (SC). He has also pleaded that no concealment should be levied either for concealing the particulars of income or for furnishing the inaccurate particulars. For this legal proposition, reliance was placed on *New Sorathia Engg. Co. v. CIT* 282 ITR 642 (Guj.). About the information given by Banas Dairy, Id. A.R. has informed, that as per one of the terms of the contract given of transportation the vehicles must be owned by the contractor, hence only those trucks nos. were informed and the bills were raised which are registered in the name of the assessee. He has vehemently pleaded that voluminous fodder was transported and that volume could only be transported by involving number of trucks as truly reported to the A.O.

6. From the side of the Revenue, Id. Sr. DR Mr. Samir Tekriwal appeared and informed that some of the persons who have appeared before the Assessing Officer have denied any finance connection with the assessee. Those persons were having truck meant for the purpose of transportation of bricks and sand. Id. DR has also argued that the assessee has shown any willingness to cross-examine those persons, he has therefore pleaded to confirm the penalty.

7. This is a case where rival claims have been made, one from the side of the appellant-assessee and the other from the side of the Revenue pertaining to a disallowance of expenses of Rs. 8,51,600/- under the head "unpaid truck rent expenses". Meaning thereby that the assessee has claimed expenses of truck hire charges, however as per the allegation of the Revenue Department those expenses could not be fully substantiated. There is no denial of this fact as well that in the quantum proceedings the first appellate authority has partly allowed the claim of expenditure only in respect of the persons who have confirmed the unpaid liability. There was one fact which was held against the assessee that the said Dairy had

revealed that only four vehicles were plied by this assessee. To controvert this statement of the said Diary a vehement contention has been raised that the voluminous size of the consignments which were transported by the assessee from one station to another station could not have been possibly carried in four trucks only. For transporting the entire voluminous consignment of 'Banas Dana' number of trucks were required and in fact the assessee has taken the trucks on hire to fulfill commitment. There was a limitation on the part of the said Diary to certify only the four trucks because of their internal regulations that the contract should be given only to the truck owners. The assessee has owned four trucks, as stated during the proceedings and informed that those trucks were used for the transportation of goods, but the fact was that number of trucks were used and the list of the truck numbers were duly acknowledged as per the bills raised. There was an another reason for the disallowance that in some of the cases, though the truck registration numbers have tallied with the information received from the RTO but the names of the owners have differed. This happened because of the reason that the assessee has intimated the names of the persons who have either plied the trucks or the names of the known persons of the said family without knowing the exact name of the person whose name was recorded in the RTO office. But one fact remained undisputed that the registration number of the trucks used by the assessee was not denied or objected either by the Assessing Officer or by the RTO office. An another fact also goes in favour of the assessee that as per the list placed on record, five persons have appeared and confirmed the plying of trucks. Some of the persons could not be produced because of the non-availability at that point of time as pleaded by the Id. AR before us. However, there were certain factors which were duly placed on record by the assessee which are important to decide the concealment proceedings and those factors are that the assessee has given - (i) dated of hiring of vehicle, (ii) name of the vehicle owner, (iii) registration number of vehicles, (iv) details of destination of transportation of goods, (v) amount of rent payable in respect of each route, (vi) name of the driver & (vii) signature of the driver. It is pleaded that the assessee happened to be in a position to give all such details, but merely on two reasons the genuineness of the claim of expenditure was doubted by the Revenue Department. In this connection, our attention has been drawn on an Explanation annexed to section 271(1)(c) of the I.T. Act; for ready reference, reproduced below:—

Failure to furnish returns, comply with notices, concealment of income, etc.

271(1) If the [Assessing] Officer or the [Commissioner (Appeals)] [or the Commissioner] in the course of any proceedings under this Act, is satisfied that any person—

(a).....

(b).....

(c) has concealed the particulars of his income or furnished inaccurate particulars of [such income, or]

(d).....

he may direct that such person shall pay by way of penalty,—

(i)....

(ii)

(iii) in the cases referred in clause (c) or clause (d)], [in addition to tax, if any, payable] by him, a sum which shall not be less than, but which shall not exceed [three times], the amount of tax sought to be evaded by reason of the concealment of particulars of his income [or fringe benefits] or the furnishing of inaccurate particulars of such income [or fringe benefits]

Explanation 1:— Where in respect of any facts material to the computation of the total income of any person under this Act,—

- (A) such person fails to offer an explanation or offers an explanation which is found by the [Assessing] Officer or the [Commissioner (Appeals)] [or the Commissioner] to be false, or
- (B) such person offers an explanation which he is not able to substantiate [and fails to prove that such explanation is bona fide and that all the facts relating to the same and material to the computation of his total income have been disclosed by him,]

then, the amount added or disallowed in computing the total income of such person as a result thereof shall, for the purposes of clause (c) of this sub-section be deemed to represent the income in respect of which particulars have been concealed.

8. On careful reading of both the limbs of Explanation-1, we are of the view that in the present **case** this assessee has offered an Explanation which was not altogether false, particularly when all the related facts in respect of the impugned claim of expenditure was on record and that the material for the purpose of the computation of the total income has actually been disclosed by the assessee while filing the return of income. Factually speaking, on the basis of the information, such as, statement of accounts, etc. the proceedings were initiated by the Assessing Officer. Therefore placing reliance on *Reliance Petroproducts (P) Ltd.* (supra), we hereby direct to delete the penalty. Ground is allowed.

9. In the result, the appeal of the Assessee is allowed.

Disclaimer: While every effort is made to avoid any mistake or omission, this casenote/ headnote/ judgment/ act/ rule/ regulation/ circular/ notification is being circulated on the condition and understanding that the publisher would not be liable in any manner by reason of any mistake or omission or for any action taken or omitted to be taken or advice rendered or accepted on the basis of this casenote/ headnote/ judgment/ act/ rule/ regulation/ circular/ notification. All disputes will be subject exclusively to jurisdiction of courts, tribunals and forums at Lucknow only. The authenticity of this text must be verified from the original source.