

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

BEFORE SHRI I. C. SUDHIR, JUDICIAL MEMBER
And
SHRI T. S. KAPOOR, ACCOUNTANT MEMBER

ITA Nos. 4652, 4653, 4654, 4655/DEL/2011
(Assessment Years: 2004-05, 2005-06,, 2006-07, 2007-08)

Pawan Kumar Gupta Vs.
Flat No. 203-206, Second Floor
Hoover Apartments,
Khasra No. 773 & 774, Sant Nagar
Buradi, Delhi.
PAN AAEPG9014E
(APPELLANT)

ACIT
Central Circle-6
New Delhi.

(RESPONDENT)

Assessee by :Shri Ajay Wadhwa, CA
Revenue by :Shri Manoj Kumar Chopra, Sr. DR

ORDER

PER I. C. SUDHIR, JUDICIAL MEMBER:

In all these appeals the assessee has questioned upholding of penalty imposed u/s 271(1)© of the Act by the Ld. CIT(A).

2. The main contention of the Ld. AR is that when no concealment was detected by the revenue and the income declared in the return filed u/s 153A was voluntary which was accepted as such in the assessment made u/s 153A / 143(3) of the Act, there was no question of levy of penalty u/s 271(1)© of the Act. He submitted further that the issue

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raised is fully covered in favour of the assessee in almost similar facts by the following decisions :-

- i) Prem Arora vs. DCIT (2012) 24 Taxman.Com 260 (Delhi)
- ii) Neeraj Lal T. Gale\ (HUF) vs. ACIT (2013) 33 taxman. Com 620 (Mumbai)
- iii) Suman Rajjeja vs. DCIT ITA No. 4411 and 4412/Del/2011 (asstt. years 2-001-02 and 2002-03 order dated 25.5.2012)
- iv) Nutan Gupta vs. DCIT ITA 4728 to 4731/Del/2011 (asstt.years 2001-02 to 2006-07) order dated 24.8.2012
- v) Shri Kiran Shah vs. ACIT ITA Nos. 5919 to 5925/Mumbai/2011 for asstt. yaer 1999-200 to 2005-06 order dated 8.1.2014

3. Ld. DR on the other hand placed reliance on the orders of the authorities below and the decisions relied upon by them. He submitted that it is an admitted fact in all these appeals that only after the search conducted the assessee disclosed its income revealed during the course of search.

4. In view of above submissions and the decisions relied upon, we have considered the orders of the authorities below. The relevant facts are that the Hoover Builders (P) Ltd. was carrying on the business of constructing and sale of flats. The AO observed during assessment proceedings that the assessee had not disclosed the correct income in

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the return filed on 29.9.2004 with ITO ward 12 (4) as he has declared an income of Rs. 2,10,000/- in the asstt. years 2004-05, Rs. 3 lac in the asstt. year 2005-06 Rs. 5,55,746/- and Rs. 2,41,560/- was demanded for asstt. year 2007-08 hence subsequent to the search carried out at the premises of the assessee, the assessee filed its return u/s 153A showing an income of Rs. 3,35,000/- including an income of Rs. 1,25,000/- from undisclosed sources for the asstt. year 2004-05, in asstt year 2005-06 it showed income of Rs. 22 lacs which included an income of Rs. 19 lac from undisclosed sources in asstt. year 2006-07 it showed an income of Rs. 18,62,746/- which included undisclosed income of Rs. 12,75,000/-. In asstt. year 2007-08 it returned income of Rs. 8,18,320/- was accepted in the assessment framed u/s 143(3) and disallowance of Rs. 15,000/- was made out of the payment made to the creditors. In all these years asstt. u/s 153A / 143(3) were framed on the income undisclosed by the assessee in its return of income filed in response to the notice issued u/s 153A of the Act. During the course of appellate proceedings it was explained by the assessee that by Hoover Building (P) Ltd. flats are sold in finished and semi finished conditions. Finished flats are standardised. Some customers had purchased semi finished flats and wanted extra work for finishing. In order to maintain customers relations and good will and also to provide services with the underlying

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objective of selling the flats the said work for the customers on no profit no loss basis has to be undertaken. Money are received from the customers for the purpose of finishing according to their satisfactions and the entire amount is spent for on the said job. This is an additional service which is being provided in order to boost sales of the flats. It was explained that this activity was being carried on by one of the Directors Mr. P.K. Gupta on an individual basis since there was no profit from this activity, no income from the same was shown in the original returns. But now he himself has offered to tax suo moto voluntarily and prior to any query in the matter, net amount appearing in the seized material (receipt less expenses so stated) even though the same amounts are mere scribbling to which no meaning can be described in the absence of any corroborative evidence to support of the same. It was accordingly submitted that the income returned may be accepted without any penal action since the same is voluntary and bonafide and has been declared even though there is no evidence of the same having being earned. Penal proceedings were initiated and the AO levied penalty u/s 271(1)© of the Act on the declared undisclosed income. The Ld. CIT(A) has also justified the action of the AO saying that the case of the assessee falls within the general provisions of section 271(1)(C) as well as within the Explanation 5 thereof. We find that an identical issue

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was raised before Delhi Bench of the Tribunal in the case of Prem Arora vs. DCIT(supra) wherein after discussing related provisions in detail, the Tribunal has come to the conclusion that for the purpose of imposition of penalty u/s 271(1)(c) as a result of search assessments made u /s 153A, original return of income filed u/s 139 cannot be considered. It was held that concealment of income has to be seen with reference to additional income brought to tax over and above the income returned by the assessee in response to notice issued u/s 153A and therefore once return of income u/s 153A is accepted by AO, it can neither be a case of concealment of income nor furnishing of inaccurate particulars of such income. In that case search was conducted on 22.11.2006 and cash was found from possession of the assessee. The assessee has drawn cash flow statement for entire period of 6 years in order to determination of undisclosed income based on seized material for each of six assessment years. The question raised before the Tribunal was as to whether penalty u/s 271(1)(C) cannot be imposed by invoking Explanation 5 in asstt. year 2004-05 in respect of cash found in previous year relevant to asstt. years 2007-08, merely on presumption that assessee might have been in possession of cash throughout period covered by search assessments. It was answered in affirmative i.e. in favour of the assessee. The Tribunal held further that the word 'pending' occurring in

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the second proviso to section 153A and words "all other provisions of this Act shall apply to the assessment made under this section" as occurring in (Explanation I) to section 153A of the Income Tax Act 1961. Similar view has been expressed by the other coordinate benches of the Tribunal in the above cited cases by the Ld. AR. Respectfully following the above decisions we find that the Ld. CIT(A) was not justified in upholding the penalty levied by the AO in the present case wherein returned undisclosed income in response to the notice issued u/s 153A was accepted by the AO in the assessment framed u/s 153A / 143(3) of the Act. We thus while setting aside orders of the authorities below direct the AO to delete the penalty in question levied in the years in appeals. The ground is accordingly allowed in favour of the assessee.

In the result appeals are allowed.

The order is pronounced in the open court on 25th July, 2014.

sd/-
(T.S. KAPOOR)
ACCOUNTANT MEMBER

sd/-
(I.C. SUDHIR)
JUDICIAL MEMBER

Date 25th July, 2014

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Copy of order forwarded to:

1. Appellant
2. Respondent
3. CIT(A)
4. CIT

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5. DR

By Order
Asstt. Registrar, ITAT