

**IN THE INCOME TAX APPELLATE TRIBUNAL
LUCKNOW BENCH "B", LUCKNOW**

**BEFORE SHRI SUNIL KUMAR YADAV, JUDICIAL MEMBER
AND SHRI. A. K. GARODIA, ACCOUNTANT MEMBER**

ITA No.195/LKW/2011
Assessment Year:2006-07

Income Tax Officer 2(2) Kanpur	v.	M/s Indian & Overseas Trading Co. 87/294-295, Acharya Nagar Kanpur
		PAN:AAAFU2776F
(Appellant)		(Respondent)

Appellant by:	Shri. Y. P. Srivastava, D.R.		
Respondent by:	Shri. Abhinav Mehrotra, Advocate		
Date of hearing:	09	07	2014
Date of pronouncement:	25	08	2014

ORDER

PER SUNIL KUMAR YADAV:

This appeal is preferred by the Revenue against the order of the Id. CIT(A) on a solitary ground that the Id. CIT(A) has erred in deleting the penalty of Rs.15.39 lakhs made under section 271(1)(c) of the Income-tax Act, 1961 (hereinafter called in short "the Act").

2. The facts in brief borne out from the record are that the assessee is a partnership firm engaged in the business of manufacturing and trading of bristles and brushes. Return of income was filed on 31.10.2006 showing Nil income and the same was processed under section 143(1) of the Act. A survey was conducted on 23.10.2007 at the premises of the assessee wherefrom books of account and loose papers were impounded. During the course of survey, it was found that assessee has a large list of creditors, from whom purchase of raw bristles were made. During the

course of survey, statement of Shri. Pawan Sood, partner of the assessee-firm was recorded wherein he surrendered certain amounts which included the amounts standing as credits in three sundry creditors. Thereafter assessee filed a revised return on 19.12.2007 including the amount of Rs.45,75,945/- surrendered in respect of sundry creditors as part of total income and paid tax thereon. Thereafter assessment was completed under section 143(3) of the Act. The Assessing Officer initiated penalty on the surrendered amount in respect of sundry creditors. In response to show cause, it was contended before the Assessing Officer that the assessee has made a voluntary surrender during the course of survey proceedings in order to buy peace and filed the return accordingly and paid tax. Therefore, there is no positive detection by the Department either before or at the time of surrender or subsequently. **Therefore, penalty under section 271(1)(c) of the Act should not be levied on the surrendered amount.** The Assessing Officer was not convinced with the explanations of the assessee and he levied the penalty having observed that the assessee has filed appeal against the additions made by the Assessing Officer in the assessment proceedings, therefore, it punctured the theory of agreed surrender.

3. An appeal was preferred before the Id. CIT(A) and the assessee has reiterated its contentions as raised before the Assessing Officer. The Id. CIT(A) re-examined the issue in the light of the fact that **voluntary surrender was made during the course of survey by the assessee.** Being convinced with the explanations of the assessee, the Id. CIT(A) deleted the penalty. The relevant observations of the Id. CIT(A) are extracted hereunder for the sake of reference:-

"6.1 On perusal of the statement of the partner recorded during the course of survey, I find that one of the partners of the appellant had surrendered a sum of Rs.45,75,95/- on account of credit balances

standing in the names of three sundry creditors. Having gone, through the entire statement (supra), case records, assessment order and also the penalty order, it is not at all ascertainable as to what incriminating material had been found (during the course of survey) on which these credit balances had been surrendered by the appellant. The only piece of evidence is the statement recorded (supra). Apparently no adverse/incriminating material was found by the department during the course of the survey which could be construed to have compelled the

assessee to offer those sundry creditors to tax, as such the disclosure made by the assessee is liable to be treated as voluntarily having been made without any compulsion off constraint of exposure to adverse action by the department. It is also seen that even though the appellant during the relevant year had made (combined) purchases of Rs.47,68,670/- from these 3 creditors, the A.O has nowhere doubted the purchases made from these 3 persons. This fact fortifies the conclusion that the department had found no incriminating material in respect of Transactions with these 3 creditors. Thus, the A.O is factually wrong when in the penalty order, he observed:-.....

"On the contrary, the creditors appearing in its balance sheet were never creditors in the first place since no transactions of any sort had been carried out with them, actually they were the ex-employees of the assesseees."

6.2 It is also not the case where the AO had made any independent enquiries or had any other material to show that the appellant had concealed his income or had furnished inaccurate particulars. The addition had been made purely on the basis of voluntary surrender made by the appellant which had been made at the very first instance. In a recent decision, CIT v/s Rokesh Suri [233 CTR 184 (All)], the Hon'ble Allahabad High Court has observed:

"Law help those who are fair in their action and intend to cooperate with the department with open heart. In case after

trying on his best or her part to escape the liability, disclosure is made, it may not be treated as voluntary disclosure to escape the penalty u/s 271(1)(c) of the Act."

6.2.1 Similarly, the Gujarat High Court in the case of CIT V/s. Satyanarain Sikar [238 ITR 855 (FB)] makes the position very clear that when in pursuance to search, incriminating material is found and disclosure is made, that disclosure is liable to be void and not voluntary, but if no incriminating material is found and still disclosure is made, then it will be treated as voluntary.

6.2.2 Further, in the case of CIT v/s Punjab Tyres [(1986) 16,2 ITR 517 (MP)], it was held by the Hon'ble M.P. High Court that:

".....Having heard learned counsel for the parties, we have come to the conclusion that this reference must be answered in the affirmative and against the Revenue..... It has been found by the Tribunal that the assessee agreed to the inclusion of additional amount in the income disclosed by it in the return to purchase peace, in such a case, unless there is evidence showing that the assessee had consciously concealed the particulars of his income, an admission made by the assessee surrendering a particular amount as his income will not by itself justify the imposition of penalty. Learned counsel for the Revenue referred to the decisions in CIT v. P.B. Shah & Co. (Pvt.) Ltd. [1978] 113 ITR 587 (Cal) and CIT V. Krishna & Co. [1979] 120 ITR 144 (Mad). However, in view of the decision of this court in Addl.CIT v. Bhartiya Bhandar [1980] 122 ITR 622 (MP), it must be held that when a surrender is made to purchase peace or for other similar reasons, the surrender cannot amount to an admission, constituting evidence of concealment in penalty proceedings."

6.2.3 It would also be worthwhile to refer to the decision of The Hon'ble ITAT in the case of ACIT v/s Malu Electrodes (P) Ltd. (ITA No.27V Nag/2008), wherein it was observed by the Hon'ble Tribunal:

"Thus, in our opinion, in case of voluntary surrender of an income after certain action on the part of the assessing officer the penalty under section 271(1)(c) of the Act cannot be levied merely on this basis as there could be many reasons for such admission or declaration some of which are present in this case as noted earlier. The natural consequence is that mere fact of agreed addition does not result into a conclusion that the amount agreed to be added as income is concealed income. In our view, even though it may be repetition, in such a case, the assessing officer should further bring some material on record so that it is conclusively established that such surrender, in fact, represented the real income or undisclosed income of the assessee"

3.2.4 In the instant case, as I have pointed out in earlier paragraphs, the assessee has fully cooperated with the department and had made the voluntary disclosure at the very first instance when a normal query was ed by the AO asking to explain the credit entries. There was no incriminating material whatsoever, in possession of the department, atleast nothing has been brought on record.

6.3 Under these facts and circumstances of the case, various judicial pronouncements and for the reason that grounds of surrender of such additional income amount to bona-fide explanation of the assessee, I hold that it is not a fit case for levy of penalty u/s 271(1)(c) of the Act."

4. Aggrieved, the Revenue has preferred an appeal before the Tribunal and has placed heavy reliance upon the order of the Assessing Officer. The Id. D.R. has contended that it is wrong to say that assessee has made a voluntary surrender. He came out with the surrender proposal when he was cornered by the Assessing Officer during the course of assessment proceedings. It was further contended by the Id. D.R. that the

assessee has filed appeal against the additions made by the Assessing Officer therefore it punctured the theory of agreed surrender by the assessee before the Assessing Officer at the time of assessment proceedings or at the time of survey.

5. Per contra, the Id. counsel for the assessee has submitted that the assessee has not challenged the additions made on account of surrender before the Id. CIT(A). He filed an appeal before the Id. CIT(A) on the other additions. In support of this contention, the Id. counsel for the assessee has filed a copy of memorandum of appeal filed before the Id. CIT(A). It was further contended that surrender was made during the course of survey itself. Therefore, it is a voluntary surrender and it cannot be called that the surrender was made when the assessee was cornered by the queries raised by the Assessing Officer.

6. We have heard the arguments advanced by the Id. counsel of the respective parties and carefully perused the orders of the authorities below and the documents placed on record, judgments referred to by the parties. It is evident from the record that surrender was made during the course of survey by the assessee and furnished the return of income declaring additional income and paid the tax thereon. Nothing has been brought out on record by the Assessing Officer that the surrender was made when the assessee was cornered by the Assessing Officer. Though the Assessing Officer has mentioned in the order that the additions, on which penalty was levied, were challenged before the Id. CIT(A), but the facts are otherwise. The assessee has made voluntary surrender on account of sundry creditors and returned the additional income in the return of income filed and paid tax thereon. We have also carefully examined the judgment referred to by the parties and we find that it is a case of voluntary surrender by the assessee during the course of survey. Therefore, penalty under section 271(1)(c) of the Act cannot be levied. We have carefully perused the order

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of the Id. CIT(A) and we find that the Id. CIT(A) has adjudicated the issue judiciously in the light of various judicial pronouncements referred to before him. Since no infirmity has been pointed out in the order of the Id. CIT(A), we confirm the same.

7. In the result, appeal of the Revenue stands dismissed.

Order pronounced in the open court on 25.8.2014.

Sd/-
[A. K. GARODIA]
ACCOUNTANT MEMBER

Sd/-
[SUNIL KUMAR YADAV]
JUDICIAL MEMBER

DATED: 25th August, 2014

JJ:

Copy forwarded to:

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

Assistant Registrar