

Gurbax Singh
2017.07.26 15:21

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**ITA No. 359 of 2016
Date of decision: 13.07.2017**

Rajinder Mohan Lal, House No.570, Sector-10A, Chandigarh.

.....Appellant

Vs.

Principal Commissioner, Income Tax, Chandigarh.

.....Respondent

**CORAM: HON'BLE MR. JUSTICE AJAY KUMAR MITTAL
HON'BLE MR. JUSTICE ANIL KSHETARPAL**

Present: Mr. I.S. Kakkar, Advocate for the appellant.

Ms. Urvashi Dhugga, Senior Standing Counsel for the respondent.

Ajay Kumar Mittal,J.

1. The appellant-assessee has filed the present appeal under Section 260A of the Income Tax Act, 1961 (in short, "the Act") against the order dated 23.5.2016, Annexure A.7, passed by the Income Tax Appellate Tribunal, Chandigarh Division Bench, Chandigarh (in short, "the Tribunal") in ITA No. 813/CHD/2015, for the assessment year 2007-08 claiming following substantial questions of law:-

- (i) "Whether the authorities are right/justified in imposing the penalty under Section 271(1)(c) of the Income Tax Act, 1961 inspite of the fact that the true and full disclosure regarding the gifts received from friends and relatives on the occasion of daughter's marriage of Appellant was made before the authorities?
- (ii) Whether mere disallowance of particular claim for exemption under a statutory provision, would call for initiation and imposition of penalty under Section 271(1)

(c) of the Income Tax Act, 1961 particularly when the complete disclosure of facts/entire income by the Assessee is a matter of record and not disputed?

(iii) Whether the penalty under Section 271(1)(c) of the Income Tax Act, 1961 can be imposed on a debatable issue?

2. Briefly, the facts necessary for adjudication of the controversy involved, as narrated in appeal, may be noticed. The appellant-assessee is an individual. He filed his return of income for the assessment year in question i.e. 2007-08 by declaring total income of ₹ 6,02,730/-. The same was processed at the returned income. However, the case was selected for scrutiny. The assessee had shown rental income of ₹ 5,95,694/- and income from other sources at ₹ 1,07,031/-. During the course of assessment proceedings, it was noticed by the Assessing Officer that the assessee had declared an amount of ₹ 21,07,513/- as an addition under the capital account on account of gifts received from relatives and friends on the occasion of his daughter's marriage. The details in this regard were disclosed by the assessee. The Assessing Officer called upon the assessee to explain as to why the aforesaid gifts be not treated as income under the head "income from other sources" under Section 56(2)(vi) of the Act. The assessee appeared before the Assessing Officer and explained that the gifts were received from the relatives and friends on the occasion of his daughter's marriage. The assessee explained that the said gifts would not fall within the mischief of Section 56(2)(vi) of the Act nor the same could be treated as income from other sources as the aggregate amount as gift was received through banking channel and there was no receipt of cash. According to the assessee, the Assessing Officer during the course of assessment proceedings did not doubt the credit-worthiness of the donors or the receipt of gifts

through the banking channel from his friends and relatives. In spite of that, the addition was made by Assessing Officer contrary to the provisions of Section 56(2)(vi) of the Act. The Assessing Officer also initiated penalty proceedings under Section 271(1)(c) of the Act. The Assessing Officer did not record his satisfaction as to whether the assessee had concealed the particulars of his income or furnished inaccurate particulars of his income. Aggrieved by the order, the assessee filed an appeal before the Commissioner of Income Tax (Appeals) [CIT(A)] which was dismissed vide order dated 19.01.2011, Annexure A.2. Still not satisfied, the assessee filed further appeal before the Tribunal on the issue of addition of amount received in the form of gifts on the occasion of marriage of his daughter. Vide order dated 04.01.2012, Annexure A.3, the appeal was dismissed by the Tribunal. Thereafter, the assessee filed ITA No. 224 of 2012 in this Court. The said appeal was dismissed by this Court vide dated 01.08.2013, Annexure A.4. The Assessing Officer proceeded with the penalty proceedings and levied penalty to the tune of ₹ 7,09,390/- for alleged concealment of income. The assessee challenged the said order before the CIT(A). Vide order dated 22.09.2015, Annexure A.6, the CIT(A) dismissed the appeal. The assessee went in appeal before the Tribunal. Vide order dated 23.05.2016, Annexure A.7, the Tribunal dismissed the appeal. Hence the instant appeal by the appellant-assessee.

3. Learned counsel for the appellant-assessee relied upon judgment of the Apex Court in **CIT Vs. Reliance Petroproducts**, (2010) 11 SCC 762 to urge that penalty could not be levied under Section 271(1)(c) of the Act in the present case as there was no concealment or furnishing of inaccurate particulars by him.

4. We have heard learned counsel for the parties.

5. Admittedly, during the course of assessment proceedings, it was found that the assessee had enhanced the capital account by making an addition of ₹ 21,07,513/- on account of gifts received from various persons on the occasion of marriage of his daughter. The assessee claimed that the said gifts fell under exception contained in Section 56(2)(vi) of the Act. The assessee in order to draw benefit of the exemption under Proviso to Section 56(2)(vi) of the Act was required to prove that the said gifts were received from any relative described thereunder or had been received on the occasion of marriage of the individual i.e. assessee. It has been recorded by the Tribunal that no explanation was offered by the assessee to explain the genuineness of the gifts. He merely gave the name of the donors but did not prove their identity, credit-worthiness and genuineness of the transactions. It was concluded by the Tribunal that since the assessee did not offer any explanation and whatever explanation was offered was not substantiated through any evidence or material on record, explanation 1 to Section 271(1)(c) of the Act was clearly attracted to his case. There was concealment on the part of the assessee so as to levy penalty under Section 271(1)(c) of the Act. Thus, the Tribunal was right in denying benefit under Proviso to Section 56(2)(vi) of the Act and levying penalty under Section 271(1)(c) of the Act. The relevant findings recorded in this regard read thus:-

“Considering the facts of the case in the light of the above discussion and decisions referred to above, it is clear that no fresh evidence or fresh circumstances were produced by the assessee at penalty stage to explain the penalty matter. There is no bonafide explanation on the part of the assessee that gift amount is exempted from tax because assessee is not entitled for any exemption of income under Section 56(2)(vi) of the Income Tax Act. It is a case of no evidence and no explanation offered by assessee to explain the genuineness of the gift in the

matter. Assessee merely gave name of the donors but did not prove their identity, creditworthiness and genuineness of the transaction in the matter and further claim of assessee under Section 56(2)(vi) was found to be wrong and bogus. Since assessee did not offer any explanation and whatever explanation was offered was not substantiated through any evidence or material on record therefore explanation 1 to Section 271(1)(c) of the Income Tax Act is clearly attracted in the case of assessee and will prove deemed concealment on the part of the assessee so as to levy the penalty under Section 271(1)(c) of the Income Tax Act.”

6. Adverting to the judgment relied upon by learned counsel for the appellant-assessee, it may be noticed that in ***CIT Ahmedabad Vs. Reliance Petroproducts Private Limited*** (2010) 322 ITR 158, it was held by the Apex Court that for imposition of penalty on account of concealment of income it must be shown that the conditions under Section 271(1)(c) of the Act must exist. There has to be concealment of particulars of income of the assessee. Secondly, the assessee must have furnished inaccurate particulars of his income. There is no quarrel with this proposition. However, each case has to be decided on its own facts. The situation in the present case being different, the assessee cannot derive any advantage from the said decision. In the present case, the assessee claimed to have received amount in the shape of gifts from his friends and relatives on the occasion of marriage of his daughter. He only disclosed the names of the donors but did not prove their identity, credit-worthiness and genuineness of the transactions. No evidence or satisfactory explanation was given. Thus, the judgment in ***Reliance Petroproducts's*** case does not apply to the facts of the present case.

7. In ***CIT Vs. Zoom Communication Private Limited***, (2010) 327 ITR 510 (Delhi), the Delhi High Court was considering the question of levy

of penalty under Section 271(1)(c) of the Act wherein it had concluded to be case of furnishing of inaccurate particulars of income with malafide intention. Present is the case of furnishing of inaccurate particulars and concealment of income. The appellant could not prove the genuineness of the gifts. Therefore, the ratio of the judgment in *Zoom Communication's* case (supra) applies to the facts of the present case.

8. In view of the above, we find that the view adopted by the Tribunal is a plausible view based on appreciation of material on record and, therefore, does not warrant any interference by this Court. Learned counsel for the appellant-assessee has not been able to show any illegality or perversity in the impugned order. Thus, no substantial question of law arises. Consequently, the appeal stands dismissed.

(Ajay Kumar Mittal)
Judge

July 13, 2017
'gs'
Whether speaking/reasoned
Whether reportable

(Anil Kshetarpal)
Judge
Yes
Yes