IN THE INCOME TAX APPELLATE TRIBUNAL
PATNA BENCH, PATNA

BEFORE: SHRI B.R. MITTAL, JUDICIAL MEMBER
AND
SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER

ITA No.145/Patna/2009
Assessment Year : 2005-06

Vijay Kanta Daga **Patna** (Appellant) PAN No.ADVPD 2672B	**Vs.**	**DCIT, Circle-6** **Patna** (Respondent)

Appellant By: **Shri A.K. Rastogi &**
Shri A.K. Aggarwal, Advocates
Respondent By: **Smt. Archana Sinha, Sr.S.C.**

Date of hearing: **20.02.2012**
Date of pronouncement: **24.02.2012**

ORDER

Per B.R. Mittal, Judicial Member:-

The assessee has filed this appeal for the assessment year 2005-06 against the order of the Ld. CIT(A) dated 3.3.2009 confirming the penalty u/s 271(1)(c) of the Income-tax Act in respect of unexplained investment in shares of Rs.1,51,600/-.

2. During the course of assessment proceedings, the assessing officer on examination of bank account of the assessee noticed that the assessee had made payment through cheques towards share application money aggregating Rs.1,51,600/-. However, in the balance sheet the said investment was not shown. In reply, the assessee simply stated that these were application money paid through cheques for public issue of companies but could not explain the source of investment. The assessing officer observed that the source of such investments were corresponding cash deposits in the said bank account namely State Bank of Bikaner and Jaipur, Frasar Road, Patna. Since the assessee could not explain the source, the said amount of Rs.1,51,600/- was treated as unexplained income of the assessee and added to the total income. The assessing officer initiated penalty proceedings u/s 271(1)(c) of the Act. During the penalty proceedings also,

the assessee could not explain the source of investment in the shares of Rs.1,51,600/- and accordingly the assessing officer levied the penalty on account of concealment of particulars of her income.

3. Before the first appellate authority, the assessee contended that she was not maintaining books of accounts which resulted in nondisclosure of said amount in the balance sheet and that the application money for shares are reflected in the bank accounts. Since assessee could not explain the source of investment, the Ld. CIT(A) has confirmed the action of the assessing officer treating the investment in shares to be out of undisclosed and concealed income. Hence assessee is in further appeal before the Tribunal.

4. During the course of hearing, the Ld. A.R. submitted that there is no concealment on the part of the assessee. That there was only a mistake in calculation. Relying on the decision of the Hon'ble Calcutta High Court in the case of Uday Mukherjee Vs. CIT 291 ITR 318 he submitted that mistake in calculation does not amount to concealment and thus penalty is not leviable. Ld. A.R. further submitted that it is on the assessing officer to state whether the penalty is levied for concealment of particulars of income or whether any inaccurate particulars of income had been furnished by the assessee and if no such clear cut finding was reached by the assessing officer, levy of penalty is not justified and placed reliance on the decision of Gujarat High court in the case of New Sorathia Engineering Company Vs. CIT 282 ITR 642. It is relevant to state that the Ld. A.R. has also filed a written submission stating in sum and substance that every concealment does not attract the rigours of section 271(1)(c) of the Act. Ld. A.R. has also filed a copy of the order of the ITAT Hyderabad Bench dated 6.1.2012 in ITA Nos.1852 to 1857/Hyd/2011 in the case of Shri P.B. Ramana Reddy Vs. ITO and submitted that if no incriminating material for concealment is found, penalty is not justifiable. He submitted that penalty should be cancelled.

5. On the other hand, the Ld. D.R. supported the orders of authorities below. She submitted that assessee has not been able to explain the source of investment not only during assessment proceedings but also at the time of penalty proceedings. Ld. D.R. submitted that merely because the amount was paid from bank account, it does not mean that source is explained

particularly when the corresponding cash deposits were made and the source of such cash deposits could not be explained. She submitted that the assessee has concealed particulars of her income and therefore levy of penalty is justified.

6. We have carefully considered the submission of Ld. Representative of the parties and the orders of authorities below. We observe that the assessing officer specifically confronted the assessee at the time of assessment proceedings as well as at the time of penalty proceedings to explain the source of cash deposited in the bank account through which assessee made share application money aggregating Rs.1,51,600/-. The assessee could not explain the source of cash deposits in the bank. Merely because the assessee has stated that there is a calculation mistake by not stating the said amount in the balance sheet does not explain the source of cash deposit in the bank. The cases relied upon by Ld. A.R. at the time of hearing as well as as stated in the written submission are not relevant to the facts of the case before us. Even the case of ITAT Hyderabad Bench dated 6.1.12 relied upon by Ld. A.R. stating that if no incriminating material is found and the concealment is not independently established by the assessing officer penalty cannot be levied, has no applicability to the facts of the case before us. The penalty in this case is levied on account of unexplained cash deposit in the bank and treating it undisclosed income of the assessee. Therefore, it is held that there is concealment of income by the assessee of Rs.1,51,600/-. Hence, we confirm the order of the Ld. CIT(A) by rejecting the grounds of appeal taken by the assessee.

7. In the result, the appeal of the assessee is **dismissed.**

Pronounced in the open Court on **24th February, 2012**

Sd/- Sd/-

(SHAMIM YAHYA)
ACCOUNTANT MEMBER

(B.R. MITTAL)
JUDICIAL MEMBER

VG/SPS
Patna,
Dated 24th February, 2012

Copy to

1 Vijay Kanta Daga, 5-D, Ashiana Palace, Boring Patliputra Road, Patna
2 DCIT, Circle-6, Patna
3 CIT, Patna
4 The CIT(A)-II, Patna
5 The DR, ITAT, Patna
6 Guard file.

By Order

Assistant Registrar
Income Tax Appellate Tribunal
Patna