आयकर अपीलीय अधिकरण "I" न्यायपीठ मुंबई में।

IN THE INCOME TAX APPELLATE TRIBUNAL "I" BENCH, MUMBAI

BEFORE SHRI C.N. PRASAD, JUDICIAL MEMBER
AND SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER

आयकर अपील सं./I.T.A. No.2764/Mum/2015

(**निर्धारण वर्ष /** Assessment Year : 2009-10)

Smt. Nameeta V. Chhabria, 301, Grand Canyon, 87 Pali Hill, Bandra (W), Mumbai – 400 050.	**बनाम**/ v.	Addl. Commissioner of Income Tax – 11(1), Mumbai.
स्थायी लेखा सं./PAN : ADDPC2908F		
(अपीलार्थी /**Appellant**)	..	(प्रत्यर्थी / **Respondent**)

Assessee by :	Mr. Darshan Gandhi
Revenue by :	Mr. R.A. Dhyani, DR

सुनवाई की तारीख /**Date of Hearing : 07-02-2017**

घोषणा की तारीख /**Date of Pronouncement :15-02-2017**

आदेश / O R D E R

PER RAMIT KOCHAR, Accountant Member

This appeal, filed by the assessee, being ITA No. 2764/Mum/2015, is directed against the appellate order dated 20-02-2015 passed by the learned Commissioner of Income Tax (Appeals)- 4, Mumbai (hereinafter called "the CIT(A)"), for assessment year 2009-10, the appellate proceedings before the learned CIT(A) arising from the penalty order dated 30th April, 2012 passed by learned Assessing Officer (hereinafter called " the AO") u/s 271(1)(c) of the Income-tax Act,1961 (Hereinafter called "the Act").

2. The grounds of appeal raised by the assessee in memo of appeal filed with the Income-Tax Appellate Tribunal, Mumbai (hereinafter called "the tribunal") read as under:-

> "The Ld. CIT(A) erred in confirming the order of the Assessing Officer for levy of penalty amounting to Rs. 6,58,573/- u/s 271(1)(c) of the Income Tax Act, 1961."

3. Brief facts of the case are that during the year under consideration, the assessee has shown income from salary, capital gains and other sources. During the course of assessment proceedings u/s 143(3) r.w.s. 143(2) of the Act, the A.O. observed from the capital account of the assessee that the assessee has credited an amount of Rs.19,37,552/- as Management bonus from M/s. Fairdeal Multimedia Pvt. Ltd. but the same was not offered for taxation. The assessee was asked by the AO in quantum assessment proceedings to furnish details of Management bonus and was also asked to justify that why the same was not offered for taxation . The assessee in reply submitted the following during the quantum assessment proceedings:-

> "During the year under consideration I received the management bonus of Rs. 19,37,552/- from Fairdeal Multimedia Pvt. Ltd. The said bonus is an outcome of the terms and conditions agreed into with the foreign company at the time of takeover of Fairdeal Multimedia Pvt. Ltd.. The terms and conditions for eligibility of management bonus was that as per the audited financials of Fairdeal Multimedia Pvt. Ltd. EBIT (earning before interest and Tax) should be more than Rs. 2 crores. If the company achieves that target then I was eligible for the Bonus amount of 8% of EBIT of the company. As such this amount couldn't be determined unless the financials of the Fairdeal Multimedia was finalised. The audit of the Fairdeal Multimedia was completed in the September month and hence the amount was also determined only at the end of the September. Again as the TDS on the management bonus was not paid by the company there was a delay in receiving the TDS certificate by me and by that time my computation was finalised by my accountant and hence this particular of income escaped to be shown in the Taxation. However the entire amount of TDS on this management bonus was deducted and paid by the company and as such there was no tax which has escaped to be paid in this transaction. Moreover the

> said item of income was appropriately disclosed in my balance sheet and I honestly declared the same to the assessing officer at time of the assessment".

The assessee had filed return of income on 26-02-2010 declaring total income of Rs. 2,26,03,878/-. The return of income was filed belatedly u/s 139(4) of the Act, while due date of filing return of income u/s 139(1) of the Act was 31-07-2009. The A.O. added the amount of Rs. 19,37,552/- received by the assessee as Management bonus from Fairdeal Multimedia Pvt. Ltd. to the income of the assessee in quantum assessment proceedings vide assessment order dated 24-10-2011 passed by the AO u/s 143(3) of the Act wherein the assessed income was Rs. 2,45,41,430/- as against returned income of Rs. 2,26,03,878/- . The said assessment order dated 24-10-2011 reached finality as the same was accepted by the assessee and no further appeal was filed by the assessee. The income of Rs. 19,37,552/- received by the assessee as management bonus was offered to tax by the assessee during the course of assessment proceedings by filing revised computation of income and no revised return of income was filed by the assessee. The A.O. invoked provisions of section 271(1)(c) of the Act and levied penalty of Rs. 6,58,573/- u/s 271(1)(c) of the Act vide orders dated 30-04-2012. Notice dated 24.10.2011 u/s 274 r.w.s. 271 of the Act were issued by the AO asking to furnish explanation as to why penalty u/s 271(1)(c) of the Act should not be levied against the assessee. In reply, the assessee submitted as under:-

> "With reference to the above, I have received the above notice and state as under:
>
> I have properly disclosed the facts by submitting revised computation of Total income alongwith full payment of Tax including interest thereon before your honour has asked the question on 11th Oct, 2011 as I have properly declared the income by myself voluntarily by filing revised sheet and paid the entire tax including interest. I have not hide any facts or my income and hence the provisions of the section 271(l)(c) of the income tax liability is not applicable in my case.

> The penalty u/s. 271(1)(c) may be levied if any person has: a) Concealed the particulars of his income or b) Furnished inaccurate particulars of his income. Accordingly concealment implies some deliberate act on the part of the assessee in with holding the true from the authorities, mere omission from the return of an item of receipt does neither amount into concealment nor deliberate furnishing of inaccurate particulars of income unless and until there is some evidence to show or some circumstances found which it can be gathered that the omission was attributable to an intention or desire on the part of the assessee to hide or conceal the income so as to avoid the imposition of Tax thereon, K.C.Builders vs. Asstt CIT (2004) 265 ITR 562/135 Taxman 461(SC).
>
> Concealment refers to a deliberate act on part of assess if explanation given by assessee with regard to mistake committed by him has been treated to be bona fide and it has been found as a fact that he has acted on basis of wrong legal advice question of his failure to discharge his burden in terms of explanation of his failure to discharge his burden in terms of explanation appended to section 271(1)(c) would not arise. T ASHOK PAI vs CIT (2007) 161 TAXMAN 340/292 ITR l1(SC).
>
> Sir I have filed the revised computation of Total computation of Total income and declared the correct income. I have the particulars of my income in my capital account. I have paid the entire tax together with interest much before your honour raised any question of particulars income. Even findings in assessment proceedings are not conclusive if assessee furnished the particulars and declare the income and that assessee has consciously concealed the particulars of his income or has deliberately furnished inaccurate particulars. CIT vs ANWAR ALI (1970) 76 ITR 696 (SC).
>
> Sir in the above circumstances I sincerely request that when I myself has declared the correct income and paid the tax thereon together with interest before your honour raised any question. I should not be penalised."

The A.O. rejected the contentions of the assessee as the income of management bonus of Rs.19,37,552/- was not disclosed in the return of income filed by the assessee, hence, it was observed that the assessee has furnished inaccurate particulars of income as management bonus was taxable. The A.O. accordingly levied penalty u/s 271(1)(c) of the Act being 100% of the tax evaded amounting to Rs. 6,58,573/- on an income of Rs. 19,37,552/- sought to be evaded by the assessee vide penalty order dated 30-

04-2012 passed by the AO u/s 271(1)(c) of the Act wherein learned AO held that the assessee had concealed the particulars of his income by furnishing of inaccurate particulars of income within meaning of Section 271(1)(c) of the Act.

4. Aggrieved by the penalty order dated 30-04-2012 passed by the A.O. u/s 271(1)(c) of the Act, the assessee preferred first appeal before the ld. CIT(A). The assessee , inter-alia , contended that the assessee received management bonus of Rs. 19,37,552/- from M/s Fairdeal Multimedia Private Limited on which tax was deducted at source by the employer at maximum marginal rate of tax but the same was not disclosed in return of income filed with Revenue . The assessee submitted that during course of scrutiny proceedings in quantum assessment, the assessee submitted revised computation of income before being asked by the AO and included said management bonus of Rs. 19,37,552/- in his revised income and also took credit of tax deducted at source by the employer which was deducted at maximum marginal rate on the entire amount of management bonus and hence there was no additional liability to pay tax by the assessee. It was submitted that the assessee had to file revised computation of income during scrutiny proceedings instead of filing revised return of income to include management bonus of Rs. 19,37,552/- in its income before the AO as since the assessee filed original return belatedly u/s 139(4) of the Act on 26-02-2010 as against the due date of filing of return of income u/s 139(1) of the Act which was 31-07-2009, and hence the assessee could not file revised return of income u/s 139(5) of the Act as per provisions of the Act of 1961. The ld. CIT(A) confirmed the penalty order of the A.O. on the ground that the assessee has not disclosed the said management bonus in the return of income filed with the Revenue. It was also observed by the learned CIT(A) that the assessee filed revised computation of income including income from management bonus of Rs.19,37,552/- as income on 21.10.2011 during scrutiny proceedings after being confronted by

the AO on 11.10.2011. The learned CIT(A) referred to large number of cases while sustaining/ confirming order of the AO levying penalty u/s 271(1)(c) of the Act. Thus, the learned CIT(A) confirmed the penalty of Rs. 6,58,573/- levied by the AO u/s 271(1)(c) of the Act by holding that the said penalty of Rs. 6,58,573/- levied by the AO was justifiable and the AO has correctly levied the penalty u/s 271(1)(c) of the Act vide appellate orders dated 20-02-2015 passed by learned CIT(A) wherein appeal of the assessee was dismissed by learned CIT(A).

5. Aggrieved by the appellate order dated 20-02-2015 passed by the ld. CIT(A), the assessee filed appeal before the tribunal.

6. The ld. Counsel for the assessee submitted that the assessee has filed return of income declaring total income of Rs. 226,03,878/- belatedly on 26-02-2010 u/s 139(4) of the Act while due date of filing return of income was 31-07-2009. It was submitted that the assessee is Managing Director of M/s Fairdeal Multimedia Pvt. Ltd. . The assessee became eligible for management bonus from M/s Fairdeal Multimedia Pvt. Ltd. during financial year 2009-10 based upon the performance in the preceding year i.e. financial year 2008-09 which was determined and quantified only in the month of September, 2009 when the financial accounts of M/s Fairdeal Multimedia Private Limited were finalized/audited , hence, the assessee was under a bona-fide belief that the said income from management bonus should be declared as income for the assessment year 2010-11 which is relevant to previous year 2009-10 when the quantification of bonus took place in the month of September 2009. Hence based on the said bonafide belief, the said income of Rs. 19,37,552/- from management bonus was not offered for taxation during the previous year relevant to the impugned assessment year 2009-10. It is submitted that on the income of management bonus of Rs. 19,37,552/-, tax was duly deducted by the employer M/s Fairdeal Multimedia Private Limited at source at

maximum marginal rates and no prejudice was caused to Revenue. It was submitted that the assessee derived no benefit by not declaring the said management bonus as income in the return of income filed for assessment year 2009-10 as the tax was duly deducted at source at the maximum marginal rates. It was submitted that the assessee filed revised computation of income during the course of assessment proceedings u/s 143(3) read with Section 143(2) of the Act, wherein said management bonus of Rs.19,37,552/- was added to income and also credit for tax deducted at source at marginal rate was taken and hence no prejudice is caused to the Revenue as all the due taxes were paid by the employer M/s Fairdeal Multimedia Private Limited while paying the bonus amount of Rs. 19,37,552/-. Thus, it is submitted that it is a bonafide mistake which has happened due to the bonafide belief of the assessee that since the bonus amount has been determined and quantified only in the month of September, 2009 based on finalized audited accounts of employer M/s Fairdeal Multimedia Private Limited for financial year 2008-09 , that the said management bonus will be chargeable to tax in the previous year relevant to the assessment year 2010-11.

The ld. Counsel relied on the following case laws:-

a) Asst. Director of Income Tax (International Taxation) v. Convergys Information Management Group Inc. [2013] 35 taxmann. Com 346 (Mumbai – Trib.), wherein it was held that Mere fact that payer deducted tax at source cannot be a sole reason to conclude that amount is taxable in hands of recipient and, therefore, if recipient does not offer said amount to tax in return of income, it does not necessarily follow that penalty has to be imposed under section 271(1)(c) of the Act.

b) CIT vs. Jyoti Ltd. [2013] 34 taxmann.com 65 (Gujarat), wherein it was held that Where Assessing Officer in order of penalty did not come to a clear finding regarding penalty being imposed on concealment of income or on furnishing inaccurate particulars of income, tribunal was justified in setting aside impugned penalty order

c) CIT v. Shri Samson Perinchery - Income Tax Appeal No. 1154 of 2014 dated 5th January, 2017.(Bom. HC), wherein it was held that order imposing penalty has to be on the ground of which the penalty proceedings had been initiated, and it cannot be on a fresh ground of which tax-payer has no notice

7. The ld. D.R., on the other hand, relied upon the order of the authorities below.

8. We have considered the rival contentions and also perused the material available on record including the case laws relied upon. We have observed that the assessee is an individual and Managing Director of M/s Fairdeal Multimedia Pvt. Ltd. The assessee has received management bonus of Rs. 19,37,552/- during relevant previous year which is based upon the performance of M/s Fairdeal Multimedia Pvt. Ltd. for the financial year 2008-09, which determination and quantification of bonus was done in the month of September 2009 based on finalized/audited financial accounts of M/s Fairdeal Multimedia Pvt. Ltd. for the financial year 2008-09 which was not offered as income for taxation by the assessee during the previous year relevant to the impugned assessment year 2009-10. We find that the said management bonus of Rs. 19,37,552/- payable to the assessee was quantified and determined only in the month of September, 2009. The said company M/s Fairdeal Multimedia Pvt. Ltd. deducted tax at source on management bonus of Rs. 19,37,552/- payable to the assessee at the maximum marginal rate on the entire amount of bonus. The assessee did not included the said management bonus of Rs. 19,37,552/- in return of income filed by him with the Revenue which return of income was filed belatedly u/s 139(4) on 26.02.2010 while due date of filing of return of income was 31-07-2009. It is

only when pointed out by the A.O. on 11.10.2011, the assessee included the said management bonus of of Rs. 19,37,552/- payable to the assessee in the revised computation of income filed with the AO on 21.10.2011. The assessee has offered an explanation that since management bonus was quantified only in the month of September 2009 by M/s Fairdeal Multimedia Pvt. Ltd. based on their finalized /audited accounts for the financial year 2008-09 which got finalized only in the month of September 2009, the assessee has submitted an explanation that it was under a bonafide belief that the said income is to be included and offered for taxation as income for assessment year 2010-11 and in any case tax was deducted at source at the maximum marginal rate on the said management bonus by employer M/s Fairdeal Multimedia Pvt. Ltd. on behalf of the assessee. In our considered view, this is a case of bonafide mistake which has taken place as the assessee was under bonafide belief that the said management bonus of Rs 19,37,552/- is to be included as income for the assessment year 2010-11 as determination and quantification of the said management bonus was only done in the month of September 2009 based on finalized/ audited accounts of M/s Fairdeal Multimedia Pvt. Ltd. for the financial year 2008-09 which got finalized/audited in September 2009. No prejudice is caused to the Revenue as the entire amount of management bonus of Rs.19,37,552/- was subjected to deduction of tax at source at maximum marginal rate by the employer M/s Fairdeal Multimedia Pvt. Ltd. on behalf of the assessee, and thus the entire due taxes had been deposited to the credit of Central Government albeit by the employer. The ld. D.R. as well the authorities below could not controvert these contentions of the assessee. Considering the facts and circumstances of the case, in our considered view, no penalty u/s 271(1)(c) of the Act can be levied under these circumstances wherein the assessee has come forward with an bonafide explanation . It is a case of bonafide mistake on the part of the assessee and more so Revenue has got tax deducted at source at maximum marginal rate on the entire management bonus amount of Rs. 19,37,552/- albeit paid by the employer on behalf of the assessee. Thus, penalty of Rs. 6,58,573/- levied u/s 271(1)(c) of the Act by the AO and as confirmed by learned CIT(A) is not sustainable keeping in view bonafide explanation offered by the assessee as detailed above and hence penalty of Rs. 6,58,573/- levied by the AO u/s 271(1)(c) of the Act of 1961 as confirmed by learned CIT(A) is hereby ordered to be deleted. We order accordingly.

9. In the result, appeal of the assessee in ITA No. 2764/Mum/2015 for the assessment year 2009-10 is allowed.

Order pronounced in the open court on 15th February, 2017.

आदेश की घोषणा खुले न्यायालय में दिनांकः 15-02-2017 को की गई ।

Sd/-	sd/-
(C.N. PRASAD)	(RAMIT KOCHAR)
JUDICIAL MEMBER	ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated **15-02-2017**

व.नि.स./ R.K., Ex. Sr. PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)- concerned, Mumbai
4. आयकर आयुक्त / CIT- Concerned, Mumbai
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai "I" Bench
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Dy./Asstt. Registrar)

आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai