

No penalty when bank deposit was disclosed in revised return prior to initiation of reassessment proceedings

Summary – The Mumbai ITAT in a recent case of Murli Dodeja, (the Assessee) held that where assessee declared certain amount deposited in bank by filing a revised return prior to initiation of reassessment proceedings, merely because tax evasion petition was filed against assessee family earlier did not mean that he had concealed income or furnished inaccurate particulars of income and, thus, impugned penalty order passed under section 271(1)(c) was to be set aside

Facts

- The assessee filed original return of income declaring certain taxable income on 9-8-2005. Subsequently, information was received by the Assessing Officer from the ITO, Investigation, Mumbai stating that the members of the assessee family had deposited huge cash in bank accounts and the same were not shown in their returns of income filed with the revenue.
- Notice under section 148 was issued by the Assessing Officer and duly served upon the assessee. The assessee in response to the aforesaid notice submitted that he had already received notice and filed voluntarily revised return of income with Dy. Commissioner, Kalyan and paid the due taxes due along with interest to the credit of Central Government.
- The Assessing Officer noted that the assessee was an individual and had declared income from business and income from other source. It was found by the Assessing Officer that the assessee had deposited cash amounting to Rs. 1,50,000 in his bank Account maintained with 'U' Bank. The assessee submitted before the Assessing Officer that he had voluntarily filed revised return of income much before receipt of any inquiry from the Assessing Officer or notice under section 148.
- The assessee also submitted affidavit stating the facts and circumstances in which he had deposited the cash of Rs. 1,50,000 in his bank account.
- The Assessing Officer took a view that the assessee had filed return of income on 28-1-2011 which was not at all a revised return as per the provisions of section 139(5) of the Act of 1961 as the time limit for furnishing a revised return of income for assessment year 2005-06 had lapsed on 31-3-2007.
- He further opined that assessee's family was under enquiry and investigation in respect of tax evasion petition, from October 2010 and, thus, it could not be said that revised return of income was filed prior to the enquiry and issue of notice under section 148.
- He thus added the amount deposited in bank to assessee's undisclosed income. The Assessing Officer also passed a penalty order under section 271(1)(c).
- The Commissioner (Appeals) confirmed the penalty order.
- On second appeal:

Held

- The assessee filed original return of income on 9-8- 2005. The assessee held bank account with 'U' Bank in which assessee had deposited an amount of Rs. 1.5 lacs in cash which was not declared and disclosed in the return of income originally filed with the revenue on 09-08-2005. It is the contention of the assessee that he relied on the expert advise of his tax-consultant who advised him that the said amount received was not taxable being his share in profits and investment in discontinued family business of properties on realization of funds invested in the properties on family separation.
- The assessee filed so called revised return of income on 28-2- 2011 wherein said cash deposit of Rs.1.50 lacs in 'U' Bank was duly included as income although the prescribed time limit for filing revised return of income as prescribed under section 139(5) of the Act had lapsed long back on 31-03-2007. The said so called revised return of income was also not filed by the assessee with jurisdictional Assessing Officer but with the ITO, Kalyan, but said so called revised return of income was admittedly filed prior to issuance of separate notice under section 148 of the Act by ITO, Kalyan and as well by the jurisdictional Assessing Officer which remained uncontroverted and is an admitted position between the rival parties as notices under section 148 of the Act was issued by the ITO, Kalyan as well jurisdictional Assessing Officer only in the month of March 2012 while the so called revised return of income was filed earlier on 28-02-2011.
- It is the say of the revenue that tax evasion petition was filed against the assessee which was investigated by revenue since September 2010 which is the main reason for the assessee filing so called revised return of income with the Revenue on 28-02-2011. It was the contention of the revenue that very few percentage of the cases are selected for scrutiny and had there been no tax evasion petition filed against the assessee the assessee would not have come forward to file the so called revised return of income on 28-02-2011. Thus, it is the contention of the revenue that the alleged revised return of income filed by the assessee on 28-02-2011 including the said undisclosed income of Rs.1,50,000/- which was deposited in cash in an undisclosed bank account with 'U' Bank would have never come into notice of the revenue and there would have been loss of revenue.
- Merely because tax evasion petition was filed against assessee did not mean that he had concealed income or furnished inaccurate particulars of income and it could not be said with the certainty that the revenue in each of such cases shall proceed against the taxpayer by re-opening the concluded assessment in each and every tax evasion petition filed against the tax-payer. The tax-payer can always come forward and explain and account for its sources of income with the return of income filed with the revenue. The taxpayer can also come forward with an explanation that certain receipts were not included as income in the return of income filed with the revenue as the said receipts do not bear the character of income within the four corners of charging provisions of the Act or the receipt had a character of being an exempt income within statutory provisions of the Act.
- There are also possibilities that the tax evasion petitions could be filed to cause vengeance on the taxpayer with a malice to seek revenge and retribution against the taxpayer. The fate of tax evasion petition hinges on the outcome of an enquiry and investigation conducted by the revenue. The taxpayer may when tax-evasion petition is filed against him also re-visit his financial data for the

relevant period and in order to avoid unnecessary and protracted litigation with revenue come forward to file revised computation of income and pay taxes with applicable interest on some additional disclosure out of caution to avoid litigation. This is a normal and reasonable human conduct which falls within preponderance of human probabilities.

- The assessee in the instant case came forward and filed so called revised return of income on 28-02-2011 *albeit* beyond stipulated time under section 139(5) which expired on 31-03-2007 but before issuance of notice under section 148 by the revenue in the month of March 2012 as well the assessee filed affidavit dated 21-03-2011 explaining facts and circumstances under which the said cash of Rs.1,50,000/- was deposited in his bank account which was not included in the return of income filed with the revenue which shows and proves *bona fide* conduct of the assessee.
- The assessee had submitted that the said receipt of Rs.1,50,000/- which was deposited in cash in bank account with 'U' Bank was advised to be tax-free by his tax-expert advocate for last thirty years. It is also submitted that the assessee being not highly educated person trusted the said advocate tax-expert and did not include the said receipt of Rs.1,50,000/- in the return of income filed with the revenue. The assessee had also filed an affidavit dated 21-03-2011 explaining the facts and circumstances wherein the said income was not included as income in the return of income originally filed with the revenue.
- Revenue could not controvert the contents of the affidavit filed by the assessee to prove that the said affidavit had a false or untrue averments made by the assessee. Keeping in view facts and circumstances of the case, penalty levied under section 271(1)(c) cannot be sustained under the aforestated circumstances as the assessee had come forward with an explanation which is a reasonable and *bona fide* explanation complying with the mandate of section 271(1)(c) of the Act read with *Explanation 1* and hence penalty levied by the Assessing Officer under section 271(1)(c) as confirmed by Commissioner (Appeals) is hereby ordered to be deleted. Thus, the assessee's appeal is allowed.