

Concealment penalty was justified as confiscated cash was disclosed in return after issuance of scrutiny notice

Summary – The Ahmedabad ITAT in a recent case of Dilip Aakaram Gayakwad, (the Assessee) held that where though huge cash was confiscated, assessee filed his return without addressing cash detected, and when scrutiny notice was issued, filed revised return and offered cash receipts as undisclosed income, penalty was to be levied under section 271(1)(c)

Facts

- The cash belonging to the assessee individual was seized by the Custom Department, which was requisitioned by the Income-tax Department under section 132A. Subsequent to the aforesaid event, the assessee filed return of income under section 139(1) but without declaring the amount detected. The case was selected for scrutiny assessment. A notice under section 143(2) was issued. After the issuance of aforesaid notice, the assessee filed revised return. The aforesaid revised return also included an amount which was confiscated. The assessee claimed that such amount was received from seven persons by way of loan and that he was not in a position to furnish confirmation of unsecured loans claimed to be received from seven parties during the year under consideration. Another amount of Rs. 4.5 lakhs was also offered under section 41(1) in the revised return on the ground that certain liabilities ceased to exist as payable.
- The Assessing Officer refused to accept the revised return on the ground that the assessee did not pay taxes due on the additional income declared in the revised return and, thus, he held the revised return as defective under section 139(9). Thus, the Assessing Officer proceeded on the basis of original return and found that the cash credits appearing in the books of account were devoid of any explanation towards identity, creditworthiness and genuineness of such credits. Thus, the onus which rest upon the assessee to prove the nature and source of credits was not discharged. The Assessing Officer, consequently, imposed penalty on such unexplained credits. Similarly, brought forward outstanding liabilities were also assessed as offered in the revised return and penalty thereon was also imposed.
- On appeal, the Commissioner (Appeals) also confirmed the action of the Assessing Officer.
- In instant appeal the assessee contended that the assessee *suo motu* filed the revised return and declared the additional income which was assessed and on which the penalty has been imposed. The assessee was entitled to file the revised return when the mistake in the original return came to his notice. He submitted that in view of voluntary declaration of unexplained cash credits in the revised return, there was no justification for the Revenue to invoke penal provisions of section 271(1)(c).

Held

- The penalty has been imposed for two additions; viz., (1) towards unexplained cash credit stated to have been received in cash from seven parties of the quantum assessment under section 143(3)(2)

and addition under section 41(1) towards existing liability no longer than payable to the extent of Rs. 4.51 lakhs. The assessee has called into question the imposition of penalty under section 271(1)(c) on the aforesaid quantum additions in the present appeal.

- The first item of addition noted above shall be addressed first. On close scrutiny of the facts in totality, it is found that the entire action of the assessee is systematic and a concerted action. In this case, cash to the tune of Rs. 53.01 lakhs was confiscated by Custom Authorities on 3-1-2012. It is pertinent to note that the assessee as on 1-4-2011 holds meagre cash of Rs. 31,425 only as per its balance sheet. As the facts are traverse, it becomes manifest that to justify the source of cash seized, the assessee has conveniently introduced the name of seven mysterious persons as purportedly having granted huge amount of cash as loan in defiance of all statutory restrictions and prohibitions. The assessee in spite of having been saddled with the charge of unaccounted cash continued to remain defiant and filed a return without addressing the cash detected. However, immediately on receipt of notice under section 143(2) it came to realize that he was left with no escape route and, consequently, he offered these apparently unexplained cash entries receipts as income of the assessee in the garb of voluntary disclosure by way of revised return. It is difficult to believe this act of assessee as a mere correction of omission or mistake under section 139(5) of the Act which was claimed to have been discovered after the filing of the original return. Needless to say, the leeway available to an assessee under section 139(5) to file the revised return is not plenary but is dictated by the discovery of omission or any wrong statements in the original return. Thus, it seeks to enable the assessee to correct the error caused due to *bona fide* inadvertence or mistake.
- A case of wilful concealment or false statement cannot be rectified under section 139(5) of the assessee. In the instant case, the assessee even after having been found to be in possession of huge cash did not come with clean hands before the revenue while filing the original return of income. It is only after the issuance of notice under section 143(2), the assessee realized so-called omission/mistake in the original return and came out in open to file the revised return. The entire story of introducing unidentified cash loans was to simply justify the cash found by the Custom Authorities and to get away without paying taxes on such undisclosed income if the case is not subjected to scrutiny. Having been left with no viable alternative, the assessee sought to merrily offer the aforesaid cash loans as income of the assessee seeking to give it a colour of voluntary disclosure. In essence, left with no alternative, the assessee has grudgingly offered unidentifiable cash loans as undisclosed income which in any case was unexplained. The entire act of seeking refuge of section 139(5) was to escape clutches of potent provisions of section 271(1)(c). One is flummoxed by such act of hide and seek indeed. No credible possibility is found in the explanation offered by the assessee. Accordingly, the order of the Assessing Officer or the Commissioner (Appeals) is declined in so far as penalty on addition towards unexplained cash credits are concerned, is to be upheld.
- As regards penalty on addition under section 41(1) is concerned, there is merit in the case of the assessee. A liability which was existing on the record has been brought to tax under section 41(1). It

is a case of a mere journal entry involved in transferring a liability of earlier years to the income by invoking a deeming fiction. The revenue has merely relied upon the declarations made by the assessee on this score without bringing on record any material to prove that the existing liabilities so transferred under section 41(1) as income were not *bona fide* or genuine at the first instance. In the absence of such finding, there is no culpability *per se*. Thus, penalty imposed on this ground cannot be sustained in law.