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No Penalty for concealment of income due to mistake in online tax return filing says Mumbai Tribunal

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Facts

- Mrs. Richa Dubey (taxpayer) was a salaried employee.
- The taxpayer received salary income from its employers amounting to INR 2,148,558 during the assessment year (AY) 2011-12.
- For filing tax return of income, the taxpayer engaged an online tax return filing portal and provided them with relevant documents (i.e. Form 16 issued by the employers). The Form 16 provided information on salary income of the taxpayer and taxes deducted by the employer.
- The taxpayer filed tax return for AY 2011-12 therein claiming a refund of INR 424,500. Subsequently, refund amounting to INR 456,340 was received by the taxpayer.
- The assessing officer (AO) passed the order after making additions to the income of the taxpayer based on the following:
 - The taxpayer declared gross total income of INR 234,882. Hence, there was an understatement of salary income to the extent of INR 1,913,676 (i.e. INR 2,148,558 – INR 234,882).
 - Commission income of INR 85,270 received from broker was not offered for taxation.
 - Saving bank interest income of INR 16,803 was not offered for taxation.
- The order passed by the AO was accepted by the taxpayer and no appeal was preferred to the first Commissioner (Appeals)¹. The AO also initiated penalty proceedings on the taxpayer for concealment of income under the Income Tax Act, 1961² (Act).
- During the penalty proceedings, the taxpayer submitted the following:
 - The online filing portal at the time of filing tax return had submitted incorrect salary information. The taxpayer was pregnant and due to immense work pressure could not verify the contents of her return of income prior to signing the ITR V³ received from the online filing portal.
 - The taxpayer came to know of the mistake committed by online filing portal during assessment proceedings and immediately deposited the wrongly received refund of INR 456,340 into the Government Treasury.
 - The non-reporting of interest income was due to oversight as the details were not available at the time of filing return of income and commission income was not taxable.

¹ First Appellate Authority

² Section 271(1)(c) of the Act

³ ITR V – It is an acknowledgement that the tax return has been successfully submitted with the Income tax department

- The taxpayer has been filing tax returns for many years and no refund has been claimed except the AY in question. The taxpayer has not done anything willfully or intentionally.
- The AO rejected taxpayer's contentions and levied a maximum penalty of 300% of tax so evaded based on following:
 - The return of income (ITR V) was signed by the taxpayer and not the online filing portal. Hence, there was a gross negligence on the part of taxpayer for not verifying the contents of her return of income.
 - The taxpayer has wrongly claimed that she became aware about the mistake only during assessment proceedings as the taxpayer had received the intimation and refund from the income tax department (prior to assessment proceedings).
 - In relation to interest income, the taxpayer was a habitual tax evader as even for past AY, interest income was added to the income of the taxpayer.
 - The taxpayer did not file a revised return rectifying the mistakes in the original tax return nor did the taxpayer appeal against the assessment order.
- The Commissioner (Appeals) confirmed the order of AO as the explanation submitted by the taxpayer was not bona-fide, however directed that penalty be restricted at 100% of the tax so evaded as the AO had failed to justify the reasons for levying maximum penalty of 300% of the tax so evaded.
- Aggrieved by this ruling, the taxpayer approached the Mumbai Tribunal.

Issue before the Tribunal

- Based on the circumstances and facts of the case, whether penalty for concealment of income was justified.

Ruling of the Tribunal

There is no deliberate attempt on taxpayer's part to evade taxes and it is not a fit case to impose penalty on account of the following:

- The revenue was fully aware about the salary income of the taxpayer based on the quarterly return filing (i.e. Form 24Q⁴) by the employers. Further, the Form 16 issued by the employers contained details of the salary income and tax deducted at source. Hence, in normal course it is not possible for a salaried individual to evade taxes by concealing income as mismatch in information furnished in the tax return vis-à-vis information in the Revenue database will be captured by the Revenue.
- In case the taxpayer was a 'habitual tax evader' then the past conduct of the taxpayer would have shown that she has been regularly filing incorrect tax returns and claiming refund of taxes. The return filing information spanning over seven AY's did not reveal such a trend. The conduct of the taxpayer was not mala-fide and the taxpayer has submitted a bona-fide explanation about the error committed by the online tax return filing portal.
- In relation to interest income, as the omission to declare the same was neither intentional nor willful and the amount involved was trivial, penalty will not be applicable.

Comments

The ruling is welcome and recognizes that the tax payer should be not penalized on account of negligence committed by the online tax return filing portal. This is in consonance with a Supreme Court ruling⁵ as well where it was held that 'Concealment' refers to a deliberate act on part of the taxpayer; if bona fide explanation is given by taxpayer with regard to mistake committed then penalty should not arise.

However, the ruling will not have a uniform application in all cases of non-reporting / under reporting of income. In the instant case, the tax payer was able to establish the bona fide by demonstrating the circumstances under which the error was committed.

⁴ Form 24Q – This form has details of salary paid and tax deducted from employees. The said form is required to be submitted on quarterly basis by the deductor.

⁵ T. Ashok Pai v. CIT (2007) 161 Taxman 340 (SC)

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