



Penalty is to be levied for default in payment of self-assessment tax while filing original return of income even though the taxpayer has filed a revised return of income and paid the tax

Background

Recently, the Ahmedabad Special Bench of the Income-tax Appellate Tribunal (the Tribunal) in the case of Claris Life Sciences Limited¹ (the taxpayer) held that penalty under Section 221(1) of the Income-tax Act, 1961 (the Act) is attracted for default in the payment of self-assessment tax due under Section 140A of the Act while filing the original income tax return even though the taxpayer subsequently filed a revised return of income and paid the tax. Just because the revised return substitutes the original return for the purposes of adjudication on claims made in the return, it does not mean that revised return also substitutes the original return for legal purposes, including penal consequences in respect of defaults committed in respect of the original return.

Facts of the case

- The taxpayer is a public company filed its return of income on 30 September 2008 declaring a taxable income of INR446.93 million. The total tax due, as per the return of income, was INR168.40 million which included income tax of INR151.91 million and interest thereon amounting to INR16.49 million. The tax deducted at source (TDS) was INR2.69 million, and the remaining amount of tax liability has been paid as self-assessment tax under Section 140A of the Act. However, this claim was found to be incorrect by the Assessing Officer (AO).
- The AO informed that the payment of INR 165.71 million as claimed by the taxpayer is not being reflected in the income tax department software. The taxpayer was requested to furnish proof of payment of INR165.71 million. Subsequently, a letter which has been filed with the AO whereby the taxpayer accepted that the amount was not actually paid by the taxpayer and stated that on account of the financial stringency and liquidity crunch, at the time of filing of the return of income, the company could not make payment of self-assessment tax. In the same letter, the taxpayer submitted that certain apparent mistakes and omissions were found and in respect of which revision of accounts was under process for filing of the revised return of income.
- On 21 May 2009, the taxpayer filed revised return of income declaring total income of INR375.71 million and paid the admitted self-assessment tax liability of INR147.62 million in respect of income-tax and INR1.96 million in respect of fringe benefit tax. On these facts, the AO imposed a penalty of INR 5 million on account of non-payment of self-assessment tax liability under Section 140A of the Act while filing the original income-tax return.
- Aggrieved, the taxpayer carried the matter before the Commissioner of Income-tax (Appeals) [CIT(A)] but without any success. Aggrieved, the taxpayer filed an appeal before the Tribunal.

¹ Claris Life Sciences Limited v. DCIT (ITA No.498/Ahd/2011) – Taxsutra.com

- The taxpayer, during the appellate proceedings, relied on the Lucknow Tribunal's decision in the case of Shri Shakti Credits Limited², wherein it was held that penalty cannot be levied in a case where the taxpayer has not paid tax at the time of filing the original income-tax return but, subsequently, pays at the time of filing the revised return within the prescribed time. The division bench of the Tribunal expressed reservations on the correctness of the decision of Shri Shakti Credits and was of the view that the matter needs to be reconsidered by a larger bench.
- Accordingly, a Special Bench was constituted to adjudicate on a limited issue of whether a taxpayer is liable to a penalty in a case where the taxes due are not paid while filing the original return but are, subsequently, paid at the time of filing the revised return within the prescribed time limit, under the Act.
- The common thread in various decisions is that in all these cases, there were variations between the claims made in the original income tax return vis-à-vis the revised returns of income and the question before the Courts was as to which set of claims, made in the original return or made in revised returns, should be considered by the AOs. There is a unanimity in all these decisions that the claims made in revised return alone could be considered by the AO. However, aspects considered in all these decisions are not relevant in deciding the issue before the present case. The claims made in an income tax return is one thing and all the actions connected with the original income tax return becoming a legal nullity quite another thing.

Special Bench Tribunal's decision

- On a perusal of Sections 140A(1) and 221(1) of the Act it indicates that the lapse, referred to in Section 140A(1) of the Act, is the failure 'to pay such (admitted) tax together with interest payable under any provision of this Act for any delay in furnishing the return or any default or delay in payment of advance tax, before furnishing the return' and the lapses punishable under Section 221(1) are the lapses in respect of 'default in making a payment of tax'.
- The default triggering the penal liability under Section 221(1) of the Act is the default in making payment of tax, and the default in payment is a tax is with reference to the filing of the income-tax return. Viewed thus, the default is committed at the point of time when a return of income is filed without making payment of the admitted tax liability. Therefore, the taxpayer committed default in not paying the admitted tax liability when it filed the original income tax return, without payment of admitted tax liability.
- The question then arises as to what is the impact of filing a revised income tax return. To the extent, it pertains to the assessment proceedings, undoubtedly in as much as it is the validly filed revised return is the starting point for the assessment of income, the original income-tax return ceases to be relevant. However, substitution of income-tax return is only for the purposes of assessment of income. All the judicial precedents³ cited by the taxpayer at the bar are distinguishable to the facts of the present case.
- Just because revised return substitutes the original income tax return for the purposes of adjudication on claims made in the income tax return does not mean that revised income tax return also substitutes original income tax return for all legal purposes, including penal consequences in respect of defaults committed in respect of the original income tax return. The observations made in this context cannot be viewed on standalone basis as a complete exposition of law on the question which did not even come up for consideration before Their Lordships. The Tribunal referred the decision of the Supreme Court in the case of Sun Engineering Works Pvt Ltd⁴.
- The Tribunal also referred the words of guidance provided by the Supreme Court in the case of Mumbai Kamgar Sabha⁵ wherein it was observed that a ruling of a superior Court is binding law. The Supreme Court observed that it is not of scriptural sanctity but of ratio-wise luminosity within the edifice of facts where the judicial lamp plays the legal flame. Beyond those walls and de hors the milieu the Supreme Court cannot impart eternal vernal value to the decisions, exalting the precedents into a prison house of bigotry, regardless of the varying circumstances and myriad developments. Realism dictates that a judgment has to be read, subject to the facts directly presented for consideration and not affecting the matters which may lurk in the dark.

² ACIT v. Shri Shakti Credits Limited [2014] 66 SOT 175 (Lucknow)

³ Beco Engineering Co Ltd v. CIT [1984] 148 ITR 478 (P&H), Niranjan Lal Ram Chandra v. CIT [1982] 134 ITR 352 (All), CIT v. Shri Someshwar Sahkari Sakar Kharana Ltd [1989] 177 ITR 443 (Bom), CIT v. Arun Textile [1991] 192 ITR 700 (Guj), and CIT v. Mahendra Mills [2000] 243 ITR 56 (SC)

⁴ CIT v. Sun Engineering Works Pvt Ltd [1992] 198 ITR 297 (SC)

⁵ Mumbai Kamgar Sabha v. Abdulbahi Faizullbhai (AIR 1976 SC 1455)

- It is, therefore, indeed duty of every subordinate judicial forum to apply the ruling of the superior Courts in such a manner so as to enforce the true legal principles emerging from the same, by putting the words and expression used in the ruling in the right perspective and by taking a holistic legal view of the matter. Such an exercise is not to be viewed as diluting the law laid down in a ruling, but as a cerebral judicial exercise and a call of duty in judicial offices.
- The taxpayer had undoubtedly committed the default in not making payment of admitted tax liability under Section 140A(1) of the Act at the point of time when the income-tax return was filed, and it is in default in respect of which penalty is imposable under Section 221(1) of the Act.
- Even if we accept that penalty under Section 221(1) read with Section 140A(1) requires an event-based trigger, rather than a time based trigger, nothing really turns on this plea of the taxpayer since the event triggering the penal consequences under Section 221(1) read with Section 140A(1) of the Act is non-payment of admitted tax liability at the time of filing original income tax return on 30 September 2008 and subsequent revision of income tax return with due payment of admitted tax liability, for the detailed reasons set out above, does not obliterate the default at the time of filing original return of income.
- The payment of admitted tax liability, while filing a revised return of income under Section 139(5), does not affect the lapse committed at the time of filing the original return of income, even though claims made in such original income tax return stand supplanted by the claims made in the revised income tax return. Accordingly, the taxpayer is covered by the scope of the penalty under Section 221(1) of the Act in a case in which the though the taxpayer has not paid the admitted tax liability under Section 140A of the Act, while filing the original return of income, the taxpayer subsequently pays the tax on the revised return of income, at the time of filing the revised return of income.
- The Special Bench clarified that whether the penalty under Section 221(1) read with Section 140A(1) is actually leviable on the facts of a particular case or not will depend on the facts of that case and depending on, *inter alia*, the factual finding as to whether or not the default of the taxpayer was for good and sufficient reasons something with which the Special Bench is not really concerned due to inherently limited scope of the question before the special bench.

Our comments

Section 221(1) of the Act provides that where the taxpayer is in default in making payment of tax, he/she shall in addition to the amount of tax arrears and the amount of interest, liable to pay the penalty. However, the proviso relaxes the rigour by providing that if the taxpayer proves that there were good and sufficient reasons that had led to the default in depositing the tax, then no penalty shall be levied by the AO under Section 221(1) in the hands of the taxpayer.

The issue with respect to levy of penalty under Section 221 for non-payment of self-assessment tax under Section 140A of the Act while filing a return of income has been a matter of debate before the Tribunal. In various cases⁶, the Tribunal has held that having regard to the proviso to Section 221(1) of the Act, the penalty order passed against the taxpayer was to be set aside where the taxpayer had failed to pay self-assessment tax within the prescribed time period due to a severe financial crunch. On the other hand, in various cases⁷, the Tribunal has held that where the taxpayer had not shown sufficient cause for non-payment of tax within the stipulated time, the penalty levied by AO under Section 221 read with Section 140A(3) was to be confirmed.

In the instant case, the Special Bench observed that whether the penalty under Section 221(1) read with Section 140A(1) is actually leviable or not will depend on the facts of the case and depending on, *inter alia*, the factual finding as to whether or not the default of the taxpayer was for good and sufficient reasons.

The Special Bench was constituted to adjudicate limited issue and accordingly confirmed the penalty on the taxpayer on the basis that the revised return of income does not substitute original return of income for all legal purposes, including penal consequences in respect of defaults committed in respect of the original return of income.

⁶ Life Time Realty (P.) Ltd. v. DCIT [2017] 163 ITD 553 (Mum), ACIT v. Rakesh Kumar Garg [2015] 64 taxmann.com 367 (Del), Jehangir Lentini Estates (P.) Ltd. v. ITO [2014] 44 taxmann.com 463 (Mum)

⁷ Hope Micro Credit Finance (P.) Ltd v. ACIT [2014] 47 taxmann.com 422 (Coch), JCIT v. Viral Laminates (P.) Ltd. [2006] 5 SOT 160 (Ahd)

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