

आयकर अपीलिय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, JAIPUR

श्री कुल भारत, न्यायिक सदस्य एवं श्री विक्रम सिंह यादव, लेखा सदस्य के समक्ष
BEFORE: SHRI KUL BHARAT, JM & SHRI VIKRAM SINGH YADAV, AM

आयकर अपील सं./ITA No. 614/JP/2014
निर्धारण वर्ष / Assessment Year : 2008-09.

Shri Subhash Beniwal, C-41, Raghu Marg, Hanuman Nagar, Khatipura, Jaipur	बनाम Vs.	The Income Tax Officer Ward 3(1), Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN No. ACGPB4847A		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारित की ओर से / Assessee by : Shri N. S. Vyas (C.A)
राजस्व की ओर से / Revenue by : Shri Prithvi Raj Meena (Addl. CIT)

सुनवाई की तारीख / Date of Hearing : 2.03.2017.
घोषणा की तारीख / Date of Pronouncement : 23 /03/2017.

आदेश / ORDER

PER SHRI KUL BHARAT, JM.

This appeal by the assessee is filed against the order of Id. Commissioner of Income Tax (A)-I, Jaipur, dated 22/7/2014 pertaining to the assessment year 2008-09. The assessee has raised the following grounds of appeal :-

1. "That the Authorities below erred in confirming the penalty imposed u/s 271(1)(c) of the IT Act, 1961 amounting to Rs. 10,17,007/- by the ITO, Ward 3(1), Jaipur.
2. That the penalty so confirmed is bad in law as well as on facts.
3. That the petitioner craves to add, alter or amend all or any of the grounds of appeal on or before the date of hearing."

2. Briefly stated the facts are that the case of the assessee was picked up for scrutiny assessment and the assessment under section 143(3) of the Income Tax Act, 1961 (hereinafter referred to as the Act). The Assessing Officer made addition of Rs. 43,90,008/- on account of long term capital gain and also initiated penalty proceedings u/s 271(1)(c) of the Act. Subsequently, the Assessing Officer levied a penalty on this addition of Rs. 10,17,007/- by order dated 22/3/2013. It is also noteworthy that in quantum the addition came to be sustained at the level of Hon'ble High Court. The assessee aggrieved by the penalty order preferred an appeal before Id. CIT (A), who after considering the submissions dismissed the appeal. Now, the assessee is in further appeal before this Tribunal.

3. The Id. Counsel reiterated the submission as made in the written brief. It is submitted that initiation of penalty u/s 271(1)(c) of the Act is illegal as the Assessing Officer in the assessment order initiated the penalty without specifying the charge. The Id. Counsel placed reliance on the judgment of the Hon'ble Karnataka High Court rendered in the case of CIT Vs. Manjunatha Cotton and Ginning Factory 358 ITR 565 (Karn), and also submitted that there is neither concealment nor furnishing of inaccurate particulars as the assessee has placed all material before the Assessing Officer. The Assessing Officer has sought clarification on the material so placed before the assessing officer and he re-computed the gain on the basis that that the assessee entered into the transaction with M/s City Star Hospitality Pvt. Ltd. of purchasing the shares at the premium of Rs. 90/- per shares. However, the same shares were sold within a short span of time to claim short term capital loss. He

submitted that it is an allegation of assessing officer that this transaction was effected to take benefit of set off against the long term capital gain of Rs. 43,00,008/-. He submitted that, that the penalty proceedings and quantum proceedings are two different and distinct proceedings. He submitted merely because the explanation found to be not acceptable would not be a basis for initiating the penalty. He placed reliance on the judgment of the Hon'ble Supreme Court in the case of CIT Vs. Reliance Patroproduct PVT.LTD. 322 ITR 158 (SC).

3.1. On the contrary, Id. Departmental Representatives opposed the submissions.

3.2. We have heard the rival contentions, perused the material available on record and gone through the orders of the authorities below. There is no dispute with regard to the fact that the assessee had placed all materials before the Assessing Officer. Therefore, it cannot be inferred that the assessee concealed the factum of the transaction from the Assessing Officer. The assessee claimed short-term capital loss on sale of shares. This transaction was duly reflected by the assessee. The Revenue's contention is that this transaction is colorable device to avoid liability of capital gain tax on account of sale of long-term capital asset. We find that the Assessing Officer while initiating the proceedings in the assessment order dated 20/12/2010/- has sated as under :-

"Penalty Proceedings u/s 271(1)(c) rws 274 has been initiated separately for concealment of income/furnishings of inaccurate particulars of income."

From the above, it is evident that initiation of proceeding is not specific while imposing penalty in the penalty order dated 22/3/2013. The Assessing Officer, in para 7 stated as under:-

"In view of aforesaid discussion, it is clearly established and satisfied that the assessee has concealed/furnished inaccurate particulars of income to the extent of Rs. 45,00,000/- and he is liable for penalty u/ 271(1)(c) of the Act, 1961."

From the above it is evident that the Assessing Officer has not made any specific charge. We therefore, find merit into the contention of the Id. Counsel for the assessee. The issue is covered by the judgment of the Hon'ble Karnataka High Court in the case of CIT Vs. Manjunatha Cotton and Ginning Factory 358 ITR 565 (Karn) wherein the Hon'ble High Court has held as under :-

"In the light of the what is stated above, what emerges is as under:

- (a) Penalty under section 271(1)(c) is a civil liability.
- (b) Mens rea is not an essential element for imposing penalty for breach of civil obligation or liabilities.
- (c) Willful concealment is not an essential ingredient for attracting civil liability.
- (d) Existence of conditions stipulated in section 271(1)(c) is a sine qua non for initiation of penalty proceedings under section 271.
- (e) The existence of such conditions should be discernible from the assessment order or the appellate authority or the revisional authority.
- (f) Even if there is no specific finding regarding the existence of the conditions mentioned in section 271(1)(c), at least the facts set out in Explanation 1(A) and 1(B) it should be discernible from the said order which would by a legal fiction constitute concealment because of deeming provision
- (g) Even if these conditions do not exist in the assessment order passed, at least, a direction to initiate proceedings under section 271(1)(c) is a sine qua non for the Assessing Officer to initiate the proceedings because of the deeming provision contained in sub-section(1B).
- (h) The said deeming provisions are not applicable to be orders passed by the Commissioner of Income-Tax(Appeals) and the commissioner.
- (i) The imposition of penalty is not automatic.
- (j) The imposition of penalty even if the tax liability is admitted is not automatic.
- (k) Even if the assessee has not challenged the order of assessment levying tax and interest and has paid tax and interest that by itself would not be sufficient for the authorities either to initiate penalty proceedings or impose penalty, unless it is discernible from the assessment order that, it is on account of such unearthing or enquiry concluded by the authorities it

has resulted in payment of such tax or such tax liability came to be admitted and if not it would have escaped from tax net and as opined by the assessing officer in the assessment order.

- (l) Only when no explanation is offered or the explanation offered is found to be false or when the assessee fails to prove that the explanation offered is not bona fide, an order imposing penalty could be passed
- (m) If the explanation offered, even though not substantiated by the assessee, but is found to be bona fide and all facts relating to the same and material to the computation of his total income have been disclosed by him, no penalty could be imposed.
- (N) The direction referred to in Explanation 1(B) to section 271 of the Act should be clear and without any ambiguity.
- (O) If the Assessing Officer has not recorded any satisfaction or has not issued any direction to initiate penalty proceedings, in appeal, if the appellate authority records satisfaction, then the penalty proceedings have to be initiated by the appellate authority and not the assessing authority.
- (P) Notice under section 274 of the Act should specifically state the grounds mentioned in section 271(1)(c), i.e. whether it is for concealment of income or for furnishing of incorrect particulars of income.
- (Q) Sending printed form where all the grounds mentioned in section 271 are mentioned would not satisfy the requirement of law.
- (R) The assessee should know the grounds which he has to meet specifically. Otherwise, the principles of natural justice is offended. On the basis of such proceedings, no penalty could be imposed to the assessee.
- (S) Taking up of penalty proceedings on one limb and finding the assessee guilty of another limb is bad in law.
- (T) The penalty proceedings are distinct from the assessment proceedings. The proceedings for imposition of penalty though emanate from proceedings of assessment, it is independent and separate aspect of the proceedings.
- (U) The findings recorded in the assessment proceedings in so far as "concealment of income" and "furnishing of incorrect particulars" would not operate as res judicata in the penalty proceedings. It is open to the assessee to contest the said proceedings on the merits. However, the validity of the assessment or reassessment in pursuance of which penalty is levied, cannot be the subject matter of penalty proceedings. The assessment or reassessment cannot be declared as invalid in the penalty proceedings."

3.3. It is also undisputed that the assessee had disclosed all the materials before the authorities below and the law is well settled that penalty proceedings and quantum proceedings are two different and distinct proceedings. The claim of the assessee was reiterated on the ground that in quantum the assessee has claimed

short-term capital loss on account of sale of shares. The transaction was doubted, being not genuine by the Assessing Officer. The Hon'ble Supreme Court in the case of M/s Reliance Patroproducts Pvt. Ltd.(Supra) has held as under:-

"It was tried to be suggested that section 14A of the Act specifically excluded the deductions in respect of the expenditure incurred by the assessee in relation to income which does not form part of the total income under the Act. It was further pointed out that the dividends from the shares did not form the part of the total income. It was, therefore, reiterated before us that the assessing officer had correctly reached the conclusion that since the assessee had claimed excessive deductions knowing that they are incorrect, it amounted to concealment of income. It was tried to be argued that the falsehood in accounts can take either of the two forms; (i) an item of receipt may be suppressed fraudulently; (ii) an item of expenditure may be falsely (or in an exaggerated amount) claimed, and both types attempt to reduce the taxable income and, therefore, both types amount to concealment of particulars of one's income as well as furnishing of inaccurate particulars of income. We do not agree, as the assessee had furnished all the details of its expenditure as well as income in its return, which details, in themselves, were not found to be inaccurate nor could be viewed as the concealment of income on its part. It was up to the authorities to accept its claim in the return or not. Merely because the assessee had claimed the expenditure, which claim was not accepted or was not acceptable to the Revenue, that by itself would not, in our opinion, attract the penalty under section 271(c). If we accept the contention of the Revenue then in case of every return where the claim made is not accepted by the Assessing Officer for any reason, the assessee will invite penalty under section 271(1)(c). That is clearly, not the intendment of the Legislature."

In the present case also, the assessee's claim was rejected on the ground that transaction was not genuine. In the light to the above judgment we are of the considered view that the initiation of penalty is not as per law. Therefore, it cannot be sustained. Accordingly we hereby direct the Assessing Officer to delete the penalty.

4. In the result, appeal of the assessee is allowed.

Order pronounced in the open court on 23 /3/2017

Sd/-
(विक्रम सिंह यादव)
(VIKRAM SINGH YADAV)
लेखा सदस्य / Accountant Member
Jaipur

Sd/-
(कुल भारत)
(KUL BHARAT)
न्यायिक सदस्य / Judicial Member

Dated:- 23 /03/2017.

Pooja/

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

1. The Appellant- Shri Subhash Beniwal, Jaipur.
2. The Respondent- The Income Tax Officer Ward 3(1), Jaipur.
3. The CIT(A).
4. The CIT,
5. The DR, ITAT, Jaipur
6. Guard File (ITA No. 614/JP/2014)

आदेशानुसार / By order,

सहायक पंजीकार / Assistant. Registrar

