

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

श्री भागचन्द, लेखा सदस्य एवं श्री कुल भारत, न्यायिक सदस्य के समक्ष  
BEFORE: SHRI BHAGCHAND, AM AND SHRI KUL BHARAT, JM

आयकर अपील सं./ITA No.87/JP/2011  
निर्धारण वर्ष/Assessment Year : 2002-03.

The Income Tax Officer, Behror.	बनाम Vs.	Shri Ramesh Chand Soni C/O Tirupati Automobile. Near Dairy, NH 8, Kotputli.
स्थायी लेखा सं./जीआईआर सं./PAN No. AETPS2050M		
अपीलार्थी/ Appellant		प्रत्यर्थी/ Respondent

आयकर अपील सं./ITA No.1430/JP/2010  
निर्धारण वर्ष/Assessment Year : 2002-03.

Shri Ramesh Chand Soni C/O Tirupati Automobile. Near Dairy, NH 8, Kotputli.	बनाम Vs.	The Income Tax Officer, Ward Behror, Alwar.
स्थायी लेखा सं./जीआईआर सं./PAN No. AETPS2050M		
अपीलार्थी/ Appellant		प्रत्यर्थी/ Respondent

राजस्व की ओर से/ Revenue by: Shri R.A. Verma (Addl. CIT)  
निर्धारिती की ओर से/ Assessee by : Shri Mahendra Gargieya (Advocate)

सुनवाई की तारीख/ Date of Hearing : 06.02.2017.  
घोषणा की तारीख/ Date of Pronouncement : 16.02.2017

आदेश/ ORDER

PER SHRI KUL BHARAT, JM.

These two cross appeals by the revenue and the assessee are directed against the order of Ld. Commissioner of Income Tax (Appeals), Alwar, dated 2/11/2010 pertaining to the assessment year 2002-03. First, we take up revenue's appeal in ITA No. 87/JP/2011. The revenue has raised following grounds of appeals

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1. "That the Ld. CIT(A) has erred in law as well as on the facts and circumstances in restricting the penalty to Rs. 370280/- from Rs. 1382826/- imposed u/s 271(1)(c) of I.T. Act, 61 by A.O.
2. The Department reserve its right to add, alter, modify, delete or amend all or any of the grounds of appeal before or at the time of hearing of appeal."

2. The only effective ground in this appeal is against restricting the penalty of Rs. 3,70,280/- from Rs. 13,82,826/-.

3. Briefly stated the facts are that a survey under Section 133A of the Income Tax Act, 1961 (hereinafter referred to as the Act) was carried out at the business premises of the assessee on 10/8/2001. During the course of survey, the assessee admitted, undisclosed income at Rs. 47 lacs but in the Income Tax return he disclosed only Rs. 27,85,500/-. Subsequently, the assessment was completed under Section 143(3) on 30/3/2005 and assessed the total income at Rs. 78,33,390/- as against declared income of Rs. 30,83,000/-. In appeal, the Ld. CIT (Appeals) confirmed the addition to the extent of Rs. 48,46,227/- including returned income. The Assessing Officer also initiated penalty proceedings and imposed penalty vide order dated 17<sup>th</sup> March, 2008 of Rs. 13,82,626/-. The assessee aggrieved by this, preferred an appeal before Ld. CIT (Appeals) who after considering the submissions partly allowed the appeal thereby the Ld. CIT (Appeals) deleted the penalty in respect of the amount invested in the building. The Ld. CIT (A), however, affirmed the action of the Assessing Officer in respect of the undisclosed Income of Rs. 9,00,000/-. It is observed by Ld. CIT (A) that out of addition of Rs. 14,03,225/-, the addition of Rs. 6,53,225/- was confirmed by the Tribunal. Out of addition of Rs. 4,33,825/-, the Ld. CIT( Appeals) restricted the penalty of Rs. 67,500/- and Rs.

1,41,900/- in respect of the concealed income. Aggrieved by this order, both the revenue and the assessee have filed the appeals before this Tribunal.

4. The Id. D/R supported the order of AO and submitted that the Id. CIT (A) was not justified in restricting the penalty.

5. The Id. Counsel for the assessee reiterated submission as made in the written submissions, he submitted that so far revenue's appeal is concerned, he supported the order of Id. CIT(A).

6. We have heard rival contentions, perused the material available on record and gone through the orders of the lower authorities. There is no dispute with regard to the fact that the AO levied penalty on sum of Rs. 27,48,500/- which was duly disclosed in the return of income on the ground that had survey would have not taken place, the assessee might have not disclosed this income. In our view, this act of AO is contrary to the provisions of law and settled law. Therefore, we do not see any infirmity into the order of Ld. CIT (A). Hence, the appeal of the Revenue is dismissed.

7. Now, we take up the assessee's appeal in ITA No. 1430/JP/2010, wherein the assessee has taken following grounds of appeals.

1. "The Id. AO has erred in imposing penalty under section 271 (1) (c) on addition of Rs. 600000/- on account of repayment of loans. CIT(A) has erred in confirming the same.
2. The Id AO has erred in imposing penalty under section 271(1) (c) on addition of Rs. 300000/-on account of repayment of loans. CIT (A) has erred in confirming the same.
3. The Id. AO has erred in imposing penalty under section 271(1)(c) on addition of Rs. 67,500/- on account of interest earned. CIT(A) has erred in confirming the same.
4. The Ld. AO has erred in imposing penalty under Section 271(10) (c) on addition of Rs. 141900/- on account of sale proceed of old tyres. CIT(A) has erred in confirming the same.
5. Any other ground of appeal at the time hearing."

8. Apropos the ground nos. 1 and 2, Id. Counsel for the assessee reiterated the submissions as made in the written submissions and additional written submission. It is contended that the assessee had filed the return of income declaring income of Rs. 30,83,000/-. The Assessing Officer, however, assessed the income at Rs. 78,33,390 and capital of Rs. 14,66,000/-. The matter travelled up to the stage of Tribunal. The disallowances of addition as sustained by the Hon'ble ITAT have been tabulized by the Assessing Officer at page nos. 1 and 2 of his order. He Submitted that it was contended before the Id. CIT(A) that assessing officer do not appreciate the factual aspect that the assessee in answer to question no. 2 of his statement dated 21/08/2008 has clearly stated that the source of purchases of these trucks was a loan raised from the friends. He submitted that sole reliance of the statement as taken during the course of survey is not correct, on the part of the assessing officer, he further submitted that it is settled position of law that there is no evidential value of statement taken during the survey. He submitted that merely because the assessee had not raised this ground against the addition of Rs. 9,00,000/-, it can not be inferred against the assessee.

9. On the Contrary, the Id. Departmental Representative supported the order of the Ld. CIT(A).

10. We have heard the rival contentions, perused the material available record and gone through the orders of the authorities below. We find that there is no dispute with regard to the fact that qua these two additions same have been sustained till the stage of ITAT and the Id. CIT(A) has given a finding of fact in his order that this was not raised before the Tribunal. Therefore, the addition as made

was the part of the concealed income cannot be disputed. We therefore find no infirmity into the order of the Id. CIT(A), the same is hereby affirmed. Ground no. 1 and 2 of the assessee's appeal are dismissed.

11. Ground no. 3 is against imposition of penalty of Rs. 67,500/-. The Ld. Counsel for the assessee relied upon the submission made before the Id. CIT(A).

12. On the contrary, the Id. D/R supported the orders of the authorities below.

13. We have heard the rival contentions. We find that the Assessing Officer made this addition of Rs. 67,500/- on the basis that the assessee had given a loan of Rs. 5 lakhs to shri Ashok which was not given for the purpose of business. Hence, computed the notional income @ 1.5%. In our considered view, since this issue is debatable with regard to interest rate to be charged, hence imposition of penalty on this addition is not justified. We therefore direct the Assessing Officer to delete the penalty on the amount of Rs, 67,500/-.

14. Ground no. 4, is against sustaining the penalty on the addition of Rs. 1,41,900/- on account of sale proceeds of old tyres. The Ld. Counsel for the assessee relied upon the submissions made before the Ld. CIT(A) and submitted that the Ld. CIT(A) did not judicially appreciate that the assessee having declared the income under section 40A on the estimated basis on the trucks. Under consideration, there was no necessity of making any separate disallowance or addition which is a law well settled.

15. On the Contrary, Id. Departmental Representative supported the orders of the authorities below.

16. We have heard the rival contentions. We are unable to agree with the contention of the Ld. Counsel for the Assessee that merely because the assessee has

been showing income on estimated basis, he was not required to disclose the receipts on account of sale of old tyres. Therefore, we see no infirmity into the order of the Id. CIT(A). This ground of the assessee's appeal is rejected.

17. Ground no. 5 in general in nature and needs no separate adjudication. The appeal of the Assessee is partly allowed.

18. In the combined result, appeal of the revenue is dismissed whereas appeal of the assess is partly allowed.

Order is pronounced in the open court on: 16.02.2017.

Sd/-  
( भागचन्द )  
( BHAGCHAND )  
लेखा सदस्य / Accountant Member  
Jaipur

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

Dated:- 16.02.2017.

POOJA:-

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

1. The Appellant- Income Tax Officer, Behror.
2. The Respondent – Shri Ramesh Chand Soni, Kotpuri.
3. The CIT(A).
4. The CIT,
5. The DR, ITAT, Jaipur
6. Guard File (ITA No. 87/JP/2011)

आदेशानुसार / By order,

सहायक पंजीकार / Assistant. Registrar