

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

श्री भागचंद, लेखा सदस्य, के समक्ष  
BEFORE: SHRI BHAGCHAND, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No. 49/JP/2017  
निर्धारण वर्ष / Assessment Year : 2006-07

Shri Hemraj, Village- Lalya Ka Bas, Post- Mahapura, Tehisl- Sanganer, district- Jaipur (Raj).	बनाम Vs.	Income Tax Officer, Ward 7(2), Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AFRPV 1006 K		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Ms. Garima Khandelwal (CA)  
राजस्व की ओर से / Revenue by : Smt. Poonam Rai (DCIT)

सुनवाई की तारीख / Date of Hearing : 19/04/2017  
उदघोषणा की तारीख / Date of Pronouncement : 19/04/2017

आदेश / ORDER

PER: BHAGCHAND, A.M.

This is an appeal filed by the assessee emanates from the order of the Id. CIT(A)-35, New Delhi, Camp office at Jaipur dated 05/10/2016 for the A.Y. 2006-07. The only issue involved in this appeal is against sustaining the penalty of Rs. 3,83,527/- made U/s 271(1)(c) of the Income Tax Act, 1961 (hereinafter referred as the Act).

2. At the outset of the hearing, the Id AR of the assessee has submitted that in this case the assessment was made U/s 144 of the Act and addition of Rs. 13.00 lacs was made on the basis that the assessee had deposited this amount in cash in the bank account held with Central bank of India. The Assessing Officer treated the amount as unexplained investment U/s 69 of the Act.

3. The assessee filed appeal against the quantum order. The Id. CIT(A) passed an ex parte order without giving an opportunity of being heard to the assessee. The assessee has further filed appeal before the ITAT against the ex parte order of CIT(A). This appeal was registered with ITA No. 404/JP/2013, which was heard by a Single Member Bench on 12/1/2016. In this appeal, there was a delay of 472 days in filing the appeal. The ITAT had not considered the prayer to condone the delay and dismissed the appeal as barred by limitation. The Assessing Officer also made an ex parte order for levying the penalty U/s 271(1)(c) of the Act for Rs. 4.00 lacs.

4. The Id AR submitted that the father of the appellant namely Shri Chagan Lal was a State Government employee and during the relevant period he was posted at Bikaner. He alongwith his three brothers owned agricultural land at village Bhambhoria. All the brothers sold their land to one Shri Ganpat Lal Mandolia vide sale deed dated 26/12/2015 for a sum

of Rs. 1.99 crores. Out of this amount, Rs. 59,84,100/- was received in cash, thus each brother got cash of Rs. 14,96,025/-. At the relevant time, the father of the assessee was posted at Bikaner and he was not having bank account at Jaipur. Father of the assessee instructed the appellant to deposit the amount in his bank account. The father of the assessee was also opened a bank account on 13/1/2006 and the cheques received on the sale of the land were deposited in the bank account, which clearly shows that the amount received in the share of the father was deposited by the assessee in his account and due to ignorance of law, the assessee could not attend in the assessment proceedings before the Assessing Officer and further in appellate proceedings before the Id. CIT(A). Therefore, even where the source was well explained and these facts are not in dispute, then no penalty U/s 271(1)(c) of the Act should be imposed upon the assessee.

5. On the other hand, the Id DR has relied on the orders of the authorities below and also submitted that the assessee was negligent. He had not appeared before the Assessing Officer as well as CIT(A) in the penalty proceedings also. Therefore, his explanation should not be accepted.

6. I have heard both the sides on this issue. The facts regarding the sale of the land by the father and his brothers is undisputed. The facts

regarding receipt of cash of more than Rs. 14.00 lacs is also undisputed. The fact that the father of the assessee was not having bank account at Jaipur during the relevant period is also undisputed. The father of the assessee was in government service and posted at Bikaner during the relevant period is also undisputed. The fact that the father of the assessee sold the land and opened the bank account in Jaipur in the month of January, 2006 and deposited the cheques received on the sale of the land in that account is also undisputed. No cash was deposited in the bank account of father is also undisputed, thus it is well established on the fact that the father of the assessee was having sufficient cash to explain the deposit of Rs. 13.00 lacs in assessee's bank account. The father of the assessee has clearly stated that he had directed his son (assessee) to deposit the cash received on sale of land in his bank account. Only the negligence on the part of the assessee has lended him in the levying the tax on the deposit in his bank account. The ITAT in quantum appeal has not condoned the delay and dismissed the assessee's appeal. Considering all these facts and circumstances, I am of the view that although the assessee was having a reasonable and acceptable explanation for the deposit of cash in his bank account but due to his negligence, the addition was made and same was confirmed by the Id. CIT(A) and the ITAT has dismissed the appeal of the assessee by not condoning the delay. In view

of these factual aspects, I hold that the assessee do not deserve to be visited by the penalty U/s 271(1)(c) of the Act. Therefore, I direct to delete the same.

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

Order pronounced in the open court on 19/04/2017.

Sd/-  
(भागचंद)  
(BHAGCHAND)  
लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 19<sup>th</sup> April, 2017

\*Ranjan

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

1. अपीलार्थी / The Appellant- Shri Hemraj, Jaipur.
2. प्रत्यर्थी / The Respondent- The ITO, Ward 7(2), Jaipur.
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त(अपील) / The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No. 49/JP/2017)

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar