

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. 442/JP/2017
निर्धारण वर्ष/Assessment Year : 2007-08.

Smt. Meena Jain, D/o Late Shri Kailash Chand Jain, Jain Bhawan, Station Road, Kota (Raj.)-324002.	बनाम Vs.	The Income Tax Officer, Ward-2(1), Kota.
स्थायी लेखा सं./जीआईआर सं./PAN No. ADFPJ 2098 H		
अपीलार्थी/ Appellant		प्रत्यर्थी/ Respondent

निर्धारिती की ओर से/ Assessee by : Shri Devang Gargieya (ITP)
राजस्व की ओर से/ Revenue by : Shri Rajendra Singh (JCIT)

सुनवाई की तारीख/ Date of Hearing : 14.09.2017.
घोषणा की तारीख/ Date of Pronouncement : 15.09.2017

आदेश/ ORDER

PER SHRI KUL BHARAT, JM.

This appeal by the Assessee is directed against the order of Ld. CIT (A)-22,
Alwar dated 28/04/2017 pertaining to A.Y. 2007-08.

The assessee has raised the following grounds of appeal:-

- "1. The impugned penalty order u/s 271(1)(c) of the Act dated 25.03.2013 is bad in law and on facts of the case, for want of jurisdiction and various other reasons and hence, the same kindly be quashed.
2. Rs. 6,98,330/- : The Ld. CIT(A) erred in law as well as on the facts of the case in confirming the impugned penalty u/s 271(1)(c) of the Act of Rs. 6,98,330/-. The penalty so imposed & confirmed being totally contrary to the provisions of law and facts kindly be deleted in full.
3. That the show cause notice issued u/s 274 r/w 271(1)(c) of the Act, is quite vague and did not at all specify which limb of section 271(1)(c) of the Act, the penalty proceedings had been initiated i.e., whether the concealment particulars of income of furnishing of inaccurate

particulars of income. The impugned penalty based on such a notice being contrary to the provisions of law & facts kindly be quashed.

4. The appellant prays your honour indulgences to add, amend or alter of or any of the grounds of the appeal on or before the date of hearing."

2. Briefly stated the facts are that, the case of the assessee was reopened for assessment and the assessment was framed under section 147 read with 148 of the Income-Tax Act, 1961 (hereinafter referred to as the Act) vide order dated 31/03/2007. While framing the assessment, the AO also initiated penalty proceedings u/s 271(1)(c) of the Act. Subsequently, the penalty was imposed vide order dated 25/03/2013. The Assessing Officer has recorded the followings facts as under:-

- "9. *The assessee filed his written reply on 19.02.2013 in response to show cause notice issued by this office vide No. ITO/W-2(1)/KTA/2012-13/839 dated 08.02.2013 stating therein that under the circumstances it is request your good self that as we have declared all particulars and paid tax accordingly should not be considered a concealment of income and it is request to drop the proceedings. However, an appeal was pending before the Hon'ble ITAT, Jaipur Bench Jaipur vide ITA No. 144/JP/2011 and therefore, it is request your good self to kept in abeyance till the disposal of appeal.*
10. *Reply of the assessee considered carefully but found no substance therein. Penalty cannot be kept in abeyance looking to the instruction of the Central Board of Direct Taxes which are that penalty proceedings must be decided within one year from the end of F.Y. in which CIT(A)'s order has been received. Being a time barring case as on 31.03.2013 penalty is being decided on merits.*

3. On appeal Ld. CIT(A) confirmed the penalty. Now, the assessee is in further appeal before this Tribunal.

4. At the outset, Ld. Counsel for the assessee submitted that assessment order dated 31/3/2007 by which the impugned penalty proceeding were initiated, was set aside by the Tribunal in ITA No. 1144/JP/2011. Therefore, he submitted that the present proceedings would not survive as the quantum order has been set aside.

5. Ld. D/R did not oppose this submission of the Ld. Counsel for the assessee. He conceded the fact that the Tribunal has set aside the assessment order to the file of the AO for afresh consideration.

6. We have heard the rival contention, We find that identical issue was came up before the ITAT in ITA No. 1144/JP/2011 in assessee's own case has held as under:-

"5.4 In Revenue's appeal also, the action of the Ld. CIT(A) is challenged for entertaining the additional evidence i.e. valuation report without following the due process of law u/r 46A and giving opportunity of being heard to the assessee. The Ld. Counsel for the assessee proposed that in these circumstances if the bench so finds appropriate, the assessee has no objection if the reassessment proceedings are set aside and the matter is restored back to the file of the AO to decide the same afresh by providing reasonable opportunity of being heard on this issues. Thus, in view of the foregoing facts and circumstances, it is to be ascertained from the record whether the reasons were provided to the assessee and any objection in this behalf was filed by the assessee has been decided or not. Besides as the validity of the reasons is to be examined along with the merits. Both the parties are aggrieved on merits. Both the parties are aggrieved on merits of part retention of the addition and part relief of the addition. In consideration of the entirety of facts and circumstances of the case, we find merit in the proposition of the Ld. Counsel for the assessee to set aside the matter back to the file of the AO to decide these issues in respect of the validity of 148

proceedings and merits of the case denovo after providing adequate opportunity of being heard to the assessee. Thus the appeal of the Revenue and C.O. of the assessee are allowed for statistical purposes."

6.1 In view of the above, the penalty order is set aside and the issue of levy of penalty is restored to the file of the Assessing Officer to be decided afresh. Grounds raised in this appeal are allowed for statistical purpose.

7. In the result, appeal of the assessee in ITA No. 442/JP/2017 is allowed for statistical purpose.

Order is pronounced in the open court on Friday, the 15th day of September 2017.

Sd/-

(भागचन्द)
(BHAGCHAND)

लेखा सदस्य / Accountant Member
Jaipur

Dated: 15/09/2017

Pooja/

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

1. The Appellant- Smt. Meena Jain , Kota.
2. The Respondent – The ITO, Ward-2(1), Kota.
3. The CIT(A).
4. The CIT,
5. The DR, ITAT, Jaipur
6. Guard File (ITA No. 442/JP/2017)

Sd/-

(कुल भारत)
(KUL BHARAT)

न्यायिक सदस्य / Judicial Member

आदेशानुसार / By order,

सहायक पंजीकार / Assistant. Registrar