

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

श्री विजय पॉल राव, न्यायिक सदस्य एवं श्री विक्रम सिंह यादव, लेखा सदस्य के समक्ष
BEFORE: SHRI VIJAY PAL RAO, JM & SHRI VIKRAM SINGH YADAV, AM

आयकर अपील सं./ITA No.548/JP/2014
निर्धारण वर्ष / Assessment Year : 2008-09

Shri Uday Kant Mishra, Jaipur	बनाम Vs.	DCIT Central Circle-3, Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN No.: ACSPM8470A		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri Rajeev Sogani
& Shri Rohan Sogani (CA)
राजस्व की ओर से / Revenue by : Shri P.P.Meena (JCIT)

सुनवाई की तारीख / Date of Hearing : 02/11/2017
उदघोषणा की तारीख / Date of Pronouncement: 10/11/2017

आदेश / ORDER

PER:SHRI VIKRAM SINGH YADAV, A.M.

This is an appeal filed by the assessee against the order of Id. CIT(A), Jaipur dated 03.06.2014 wherein the assessee has challenged the confirmation of levy of penalty u/s 271(1)(c) amounting to Rs. 7,41,060/- by the AO in respect of assessment under section u/s 153A r.w.s 143(3) completed for AY 2008-09.

2. The brief facts of the case are that search and seizure operations were carried out on 03.05.2007 at the business and residential premises of the assessee group. The assessee filed his return of income declaring income at Rs. 1,05,32,110/- which includes additional income of Rs 50 lacs declared during the course of search. The assessment u/s 153A r.w.s 143(3) was completed on 24.12.2009 at total income of Rs. 1,26,32,909/- making

additions under section 2(22)(e) towards deemed dividend, unexplained jewellery, interest disallowance under section 14A. Separately, penalty proceedings were also initiated u/s 271(1)(c). Thereafter, after considering the submissions of the assessee, the AO passed an order u/s 271(1)(c) imposing a penalty of Rs. 7,41,060/- on whole of the additions so made during the assessment proceedings.

3. At the outset, Id. AR submitted that the additions towards the unexplained jewellery and disallowance of interest u/s 14A has been deleted in the quantum proceedings by the Hon'ble Bench of the Tribunal vide its order in ITA No. 475/JP/2014 dated 05.09.2017. It was accordingly submitted that no penalty should be levied on such additions which have been deleted in quantum proceedings. Regarding levy of penalty on deemed dividend of Rs. 2,00,000, the Id. AR reiterated the submissions made before the Id. CIT(A). It was further submitted that under identical set of facts wherein additions u/s 2(22)(e) were made in the other group entities and individuals, penalty levied u/s 2(22)(e) was deleted by the Hon'ble Jaipur Bench of the Tribunal in following matters. It was accordingly submitted that penalty levied on deemed dividend may be deleted.

Name of the Assessee	ITA No.	Assessment year	Date of order
Trimurty Buildcon (P) Ltd.	661/JP/2011	2002-03	12-02-2016
	662/JP/2011	2003-04	
	663/JP/2011	2004-05	
	664/JP/2011	2006-07	
	665/JP/2011	2007-08	
	468/JP/2011	2008-09	
Geeta Mishra	667/JP/2011	2007-08	
Abhishek Estate	668/JP/2011	2005-06	

(p) Ltd.			
Trimurthy Farms & Retreats vs. DCIT	666/JP/2011	2005-06	
Trimurthy Colonizers & Builders (P) Ltd	476/JP/011	2002-03	29.06.2016
	476/JP/2014	2003-04	

4. Regarding the first contention of the Id AR that in the quantum proceedings, the Coordinate Bench has deleted the additions towards unexplained jewellery and interest income, we find the same to be correct as apparent from the following findings of the Coordinate Bench in ITA No. 475/JP/2014 dated 05/09/2017 which are as under:

"3.3 We have heard rival contentions, perused the material available on record and gone through the orders of the authorities below. The Id. CIT(A) has not given any reason for denying the benefit/set off to the extent of 250 gms in case of Aditi Mishra and Aanchal Mishra (minor grand-daughters) and partly allowing the benefit to the extent of 250 gms to Smt. Roshni Mishra. We find that the case of the assessee is covered by the CBDT Circular No. 1916 dated 11.05.1994 whereby the CBDT had issued guidelines stating that "In the case of a person not assessed to wealth-tax gold jewellery and ornaments to the extent of 500 gms per married lady, 250 gms per unmarried lady and 100 gms per male member of the family need not be seized." Therefore, following the above guidelines and also judgment of Hon'ble Jurisdictional High Court in the case of Satya Narain Patni (2014) 46 taxmann.com 440 (Raj.), we direct the AO to allow gold jewellery weighing 250 gms [(500 gms- 250 gms allowed by CIT (A)] in the hands of Roshni Mishra (daughter-in-law), 250 gms. each in the hands

of Aditi Mishra and Aanchal Mishra (minor grand-daughter). The grounds of the assessee are allowed."

"4.3 We have heard rival contentions, perused the material on record and gone through the orders of the authorities below. After considering the submissions of the assessee, we find that the assessee was having sufficient own funds as reflected in the capital account of the assessee as on 31.03.2008 so as to make investment for purchase of shares of other companies and generate exempt income. The Id. Counsel for the assessee placed reliance on the various pronouncements of various Hon'ble High Courts in support of his contention. He also drew our attention to the judgment of Hon'ble Jurisdictional High Court in the case of CIT vs. Vijay Solvex Ltd. (2015) 59 taxmann.com 294 (Raj. HC) wherein it has been held as under:-

".....In view of the authoritative pronouncement of the apex Court and other judgments referred supra, in our view, the assessee admittedly had its own funds, as referred to earlier, and admittedly such funds/reserves being substantially higher than, even otherwise, the advances to the debtors, no notional interest of hypothetical interest could have been disallowed on such facts. The revenue has failed to prove nexus. In our view, the Tribunal has correctly appreciated the facts and law."

The Id. D/R could not bring any contrary material to controvert the submissions of the assessee. Therefore, in view of the above discussion and case laws, the order of Id. CIT(A) is quashed. The AO is directed to allow the interest expenses. The grounds of the assessee are allowed."

5. In light of above, where the additions which were the subject matter for levy of penalty has been deleted, there is no basis for levy of penalty and hence, the same is hereby deleted.

6. Regarding the levy of penalty on deemed dividend, it was held by the AO that M/s Trimurty Builders Pvt. Ltd. in which the assessee was a share holder of over 10% shares booked its profit on the last working day of the F.Y 31.3.2007 it has shown profit of Rs. 5,35,787/- out of which Rs. 2 lakh each was advanced to the appellant and to another sister concern. Thus this advance was treated as income by way of the deemed dividend u/s 2(22)(e) which was accepted by the assessee and in absence of any further appeal, has attained finality. It is noted that under identical set of facts, the Coordinate Bench in ITA No. 661/JP/2011 and others dated 12.02.2016 in assessee's group cases has deleted the penalty levied on deemed dividend and the relevant findings are as under:

"4.3 We have heard rival contentions and perused the material on record. The assessee filed the return under section 139 for all the years and disclosed the particulars of shareholding pattern, advances taken and given by the assessee company/individual in return itself. The accumulated profit also has been disclosed. Thereafter assessee filed return under section 153A of the IT Act wherein also all the detailed facts and figures were disclosed in the return. The assessee's case is auditable. The assessee at the time of quantum addition as well as at the time of penalty proceedings has reiterated that these advances are in the course of regular business. It is a running account, said advances later on repaid. This issue is debatable and various courts particularly in the case of Creative Dyeing & Printing (P) Ltd. (supra) wherein it has been held that business transaction is not covered under section 2(22)(e) of the Act. Various other case laws cited by the assessee has also made this issue debatable. The case relied on by the AO i.e. Mak Data P. Ltd. is not applicable as assessee at every stage had filed the explanation before the AO as well as CIT(A) i.e. these transactions were made for the purpose of business and commercial expediency, is

bonafide. Penalty imposed by the AO and confirmed by Id. CIT(A) are not justified. Accordingly we delete the penalty in all the cases."

7. In ITA No. 476 & 477/JP/14 vide its order dated 29.06.2016, the Coordinate Bench under identical set of facts has followed the above decision and has deleted the penalty on addition on account of deemed dividend and the relevant findings are as under:

"2.3 We have heard the rival contentions and perused the material available on record. Undisputedly the facts pattern in the impugned matters are similar to the facts before Co-ordinate Bench in respect of assessee's group companies wherein the penalty on addition on account of deemed dividend u/s 2(22)(e) was deleted. Hence respectfully following decision of the Co-ordinate Bench referred (supra), we hereby delete the penalty in the hands of the assessee for both the years under consideration. "

8. Following the consistent position taken by the Coordinate Benches in assessee's group cases where the penalty levied under section 271(1)(c) has been deleted, the penalty levied in the instant case is hereby deleted as there are no changes in the facts and circumstances of the case.

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

Order pronounced in the open court on 10/11/2017

Sd/-
(विजय पॉल राव)
(Vijay Pal Rao)
न्यायिक सदस्य / Judicial Member

Sd/-
(विक्रम सिंह यादव)
(Vikram Singh Yadav)
लेखा सदस्य / Accountant Member

Jaipur

Dated:- 10/11/2017

*Ganesh Kr

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

1. अपीलार्थी / The Appellant- Shri Udai Kant Mishra, Jaipur
2. प्रत्यर्थी / The Respondent- DCIT, Central Circle-3, 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. 548/JP/2014)

आदेशानुसार / By order,

सहायक पंजीकार / Assistant. Registrar.