

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

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

आयकर अपील सं./ITA No. 760/JP/2017
निर्धारण वर्ष/Assessment Year : 2008-09

Shri Bhanwar Lal Gehlot Vinayak Nagar-C, Jaipur Road Madanganj, Kishangarh	बनाम Vs.	The ITO Ward-1 Kishangarh
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AHHPG 5494 J		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by: Shri Manish Agarwal, CA
राजस्व की ओर से / Revenue by : Smt. Poonam Rai, DCIT- DR

सुनवाई की तारीख / Date of Hearing : 10/11/2017
घोषणा की तारीख / Date of Pronouncement : 13 /11/2017

आदेश / ORDER

PER BHAGCHAND, AM

The assessee has filed an appeal against the order of the Id. CIT(A)-, Ajmer dated 23-08-2017 for the assessment year 2008-09 raising therein following grounds:-

“1. On the facts and in the circumstances of the case and in law, the Id. CIT(A) erred in confirming penalty of Rs. 1,63,241/- levied by the AO u/s 271(1)(c) of the I.T. Act, 1961 arbitrarily. Appellant prays penalty so confirmed deserves to be deleted.

2. That the Id. CIT(A) has further erred in confirming penalty levied by the AO in respect of addition, which was already allowed by Hon'ble ITAT i.e. even before passing penalty order, thus penalty levied by AO is not in accordance with law and deserves to be deleted.

2.1 Apropos ground No.1 and 2 of the assessee, the facts as emerges from the order of the Id. CIT(A) is as under:-

“4.2 I have gone through the penalty order, statement of facts and grounds of appeal carefully. It is seen from the penalty order that the AO while completing the assessment had made addition of Rs. 5,95,000/- in respect of short term capital gain not declared by the appellant on sale of agricultural land situated at Tabiji, Ajmer and 50% of agricultural income of Rs. 56,120/- was treated by the AO as income from other sources. The additions made by the AO were confirmed by the CIT (A) vide his order dated 30-04-2014 (Appeal No. 228/2011-12). The appellant has not furnished any written submission during the course of appellate proceedings. As the appellant had not disclosed the short term capital gain of Rs. 5,95,000/- and had claimed the income from other sources of Rs. 28,060/- as exempt income, therefore, I am of the considered view that it is a fit case for levy of penalty u/s 271(1)(c). Accordingly, the penalty of Rs. 1,63,241/- levied by the AO in respect of the addition of Rs. 6,23,060/- is hereby confirmed. “

2.2 At the outset of the hearing, the Id. AR of the assessee prayed that the quantum addition in favour of the assessee has been decided by ITAT, Jaipur, SMC Bench vide its order dated 09-03-2016 in ITA No. 495/JP/2014 for the assessment year 2008-09.

2.2 The Id. DR relied on the orders of the lower authorities.

2.3 The Bench has heard the rival contentions and perused the materials available on record. It is noted that the issue of quantum was decided in favour of

the assessee by ITAT Jaipur , SMC Bench vide its order dated 09-03-2016 in ITA No. 495/JP/2014 for the assessment year 2008-09 by observing as under:-.

“11. In my considered opinion once the admitted factual position in respect of the impugned transaction was that the property in question was held for a brief period of about six months and the assessee has furnished details of various other land purchased in the past as well as in the subsequent year, therefore, prima facie, it is difficult to hold that the assessee was not dealing in land transaction. As defined u/s 2(13) of the Act business includes any trade, commerce or any adventure in nature of trade. At this point it is also worth to mention that the definition as prescribed u/s 2(13) of the Act is a inclusive definition, therefore, all such activities which prima facie appears to be in the nature of trade can be held as business activity. It is also worth to mention that on one hand the AO has rejected the claim of business activity of the assessee and side by side also rejected the sale consideration declared by the assessee by invoking the provisions of section 50C of the Act. Such type of issues always remains controversial and, therefore, it is necessary to decide each case on its own facts. Such type of controversy can also be decided after considering the intention of the assessee and the circumstances of the case so as to examine whether it was in the nature of trade or not. I am of the considered opinion that under the totality of the facts as discussed above, the assessee can be held as a dealer in purchase and sale of land. Reliance is placed on the decision cited by the assessee. As a result, the view taken by the Revenue Authorities is hereby reversed and the grounds raised by the assessee are allowed.”

Taking into consideration the above facts, circumstances of the case and also the order of ITAT, Jaipur , SMC Bench in ITA No. 495/JP/2014 (assessee)for the assessment year 2008-09 as to deletion of addition of Rs. 6,23,060/- in the quantum appeal of the assessee, I direct to delete the penalty of Rs. 1,63,241/-

confirmed by the Id. CIT(A) u/s 271(1)© of the Act. Thus the appeal of the assessee is allowed.

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

Order pronounced in the open court on 13 /11/2017

Sd/-
(भागचन्द)
(Bhagchand)
लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 13/11/ 2017

*Mishra

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

1. अपीलार्थी / The Appellant- Shri Bhanwar Lal Gehlot, Kishangarh
2. प्रत्यर्थी / The Respondent- The ITO, Ward- 1, Kishangarh
3. आयकर आयुक्त(अपील) / CIT(A).
4. आयकर आयुक्त / CIT,
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No. 760/JP/2017)

आदेशानुसार / By order,

सहायक पंजीकार / Assistant. Registrar