

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. 712/JP/2017
निर्धारण वर्ष / Assessment Year : 2009-10

M/s Euro Jewels, 2238, Haldion Ka Rasta, Johari Bazar, Jaipur- 302003	बनाम Vs.	Income Tax Officer, Ward-2(1), Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AAFFE 3220 C		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri Saurabh Harsh (Adv).
राजस्व की ओर से / Revenue by : Shri Rajendra Jha (Addl.CIT)

सुनवाई की तारीख / Date of Hearing : 04/01/2018
उदघोषणा की तारीख / Date of Pronouncement : 10/01/2018

आदेश / ORDER

PER: BHAGCHAND, A.M.

This is an appeal filed by the assessee emanates from the order of the Id. CIT(A)-I, Jaipur dated 31/07/2017 for the A.Y. 2009-10, wherein the assessee has raised only one ground of appeal, which is as under:-

- “1. That on the facts and in the circumstances of the case, the Id. CIT(A) grossly erred in confirming penalty U/s 271(1)(c) of the IT Act to the extent of Rs. 15,450/- as against the amount of Rs. 46,350/- imposed by the Id. Assessing Officer.”

2. The only issue involved in the appeal, is against sustaining the penalty U/s 271(1)(c) of the Income Tax Act, 1961 (in short the Act) of Rs. 15,450/- being 100% of the tax sought to be evaded.

3. While pleading on behalf of the assessee, the Id AR has submitted that the assessment U/s 143(3) of the Act was finalized on 21/11/2011 and a trading addition of Rs. 1,36,400/- was made. The Id. CIT(A) upheld the rejection of books of account and restricted the addition to Rs. 50,000/- only. Thus, the estimated trading addition made by the Assessing Officer itself was not based on any concrete facts and the Id. CIT(A) has just sustained an ad hoc addition of Rs. 50,000/-. Therefore, the assessee should not have been visited by penalty U/s 271(1)(c) of the Act. This fact shows that the assessee has neither furnished inaccurate particulars of income nor it has concealed the income. The books of accounts were audited as per provisions of Section 44AB of the Act. He also submitted that the Id. CIT(A) in assessee's own case while deciding ITA No 63/2012-2013 dated 30/10/2014 for the A.Y. 2006-07 has deleted the penalty in similar circumstances. The Id AR also submitted that in the case of Shri Ravi Kumar Rawat, similar penalty levied was deleted by the Id. CIT(A) while deciding ITA No. 32/2010-11 vide its order dated

01/8/2013 The Id. AR also placed reliance on various other ITAT's decisions including the decision in the case of Shri Shyam Mohan Rawat in ITA No. 04/2012-13 dated 11/11/2014. He also placed reliance on the various decisions of Hon'ble ITAT and Hon'ble High Court, which are as under:-

- a. *Hon'ble Jurisdictional Rajasthan High Court in CIT v. Krishi Tyre Retreading & Rubber Industries in DBITA 542/2008 vide order dated 19.09.2013 has held: Merely because books of accounts of the assessee were rejected or estimated addition was made, in our view, no penalty is leviable.*
- b. *CIT vs. Kailash Crockery House (1999) 235 ITR 544 (Pat)*
- c. *CIT v. Metal Products of India [1984] 150 ITR 714 (P&H)*
- d. *CIT v. Whiteline Chemicals (Guj) (Tax Appeal No. 496/2102) dated 15.01.2013*
- e. *CIT vs. Subhash Trading Company (1996) 221 ITR 110 (Guj)*
- f. *CIT vs. Raj Bans Singh (2005) 276 ITR 351 (All)*
- g. *CIT v. Aero Traders (2010) 231 CTR 524 (Delhi)*
- h. *CIT v. Modi Industrial Corporation (2010) 195 Taxman 68 (P&H)*
- i. *CIT v. Vijay Kumar Jain (2010) 325 ITR 378 (Chattisgarh)*
- j. *Shiv Narain Jamnalal (MP High Court): 7 ITD 795: held that where trading addition has been made by rejecting the books of accounts, no penalty was imposable for such estimated addition.*

Ld. AR pleaded that the penalty should not be imposed automatically merely because some addition has been sustained. He also relied on the following case laws:

- a. *In the case of ACIT v VIP Industries 122 TTJ 289 (Mum) it was held that, where addition is made the penalty shall not automatically follow. In a case of genuine difference between AO and A', penalty cannot be levied. Same view has been taken by Pune bench in the case of Kanbay Software India 122 TTJ 721.*
- b. *In the case of CIT v Sidhartha Enterprises 184 Taxman 460 P&H it was held that it is not necessary that in every case where particulars are inaccurate, penalty must follow. Penalty is imposed only when there is some element of deliberate default and not when there is merely a mistake or bona fide claim.*
4. *The Hon'ble Supreme Court in the case of CIT v. Reliance Petro Products Pvt. Ltd. reported in (2010) 322 ITR 158 (SC) has observed as under:-*

"A glance at the provisions of section 271(1)(c) of the Income-tax Act, 1961, suggests that in order to be covered by it, there has to be concealment of the particulars of the income of the assessee. Secondly, the assessee must have furnished inaccurate particulars of his income. The meaning of the word - "particulars" used in section 271(1)(c) would embrace the details of the claim made. Where no information given in the return is found to be incorrect or inaccurate, the assessee cannot be held guilty of furnishing inaccurate particulars. In order to expose the assessee to penalty, unless the case is strictly covered by the provisions, the penalty provision cannot be invoked. By no stretch of imagination can making an incorrect claim tantamount to furnishing inaccurate particulars. There can be no dispute that everything would depend upon the return filed by the assessee, because that is the only document where the assessee can furnish

the particulars of his income. When such particulars are found to be inaccurate, the liability would arise. To attract penalty, the details supplied in the return must not be accurate, not exact or correct, no according to the truth or erroneous.

Where there is no finding that any details supplied by the assessee in Its return are found to be incorrect or erroneous or false there is no question of inviting the penalty under section 271(1)(c). A mere making of a claim, which is not sustainable in law, by itself, will not amount to furnishing inaccurate particulars regarding the income of the assessee. Such a claim made in the return cannot amount to furnishing inaccurate particulars. ”

4. On the other hand, the Id Sr.DR has relied on the orders of the authorities below.

5. After hearing both the sides and considering the various case laws relied upon and factual aspect of the case, the Bench is of the view that the addition sustained by the Id. CIT(A) itself was an estimated addition and the same has been sustained to the extent of Rs. 50,000/- only on ad hoc. The penalty is not an automatically leviable wherever addition is sustained. Further where the trading additions are made, which has been reduced and sustained on ad hoc basis, no penalty imposable on such estimated addition. Keeping in view these facts and circumstances of the case and the case laws relied upon, the Bench hereby direct to delete the penalty of Rs. 15,450/- sustained U/s 271(1)(c) of the Act.

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

Order pronounced in the open court on 10/01/2018.

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

जयपुर / Jaipur

दिनांक / Dated:- 10th January, 2018

*Ranjan

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

1. अपीलार्थी / The Appellant- M/s Euro Jewels, Jaipur.
2. प्रत्यर्थी / The Respondent- The ITO, Ward-2(1), 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. 712/JP/2017)

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar