

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

श्री विजय पाल राव, न्यायिक सदस्य एवं डॉ० अर्जुन लाल सैनी, लेखा सदस्य के समक्ष

BEFORE: SHRI VIJAY PAL RAO, JM & DR. ARJUN LAL SAINI, AM

आयकर अपील सं./ ITA No. 668/JP/2016  
निर्धारण वर्ष/ Assessment Year : 2007-08

Shri Hemant Srivastava, Jaipur	Vs.	ITO Ward-06(1), Jaipur
स्थायी लेखा सं./ जीआईआर सं. PAN/GIR No.: ARBPS 9297 D		
Appellant		Respondent

निर्धारिती की ओर से/ Assessee by : Shri Rajeev Sogani (C.A.)  
राजस्व की ओर से/ Revenue by : Shri P.P. Meena (J.CIT)

सुनवाई की तारीख/ Date of Hearing : 08/11/2017  
उदघोषणा की तारीख/ Date of Pronouncement : 08/01/2018

ORDER

PER: VIJAY PAL RAO, J.M.

This appeal by the assessee is directed against the order dated 25.04.2016 of CIT (A), Jaipur arising from penalty order passed u/s 271(1)(c) of the I.T.Act for Assessment Year 2007-08. The assessee has raised the following grounds:-

*"1. In the facts and circumstances of the case and in law the Id. CIT(A) has erred in confirming the penalty of Rs. 5,50,000/- (or Rs. 3,30,000/-) imposed by Id. AO u/s 271(1)(c) of the Income Tax Act, 1961. The action of the Id. CIT(A) is illegal, unjustified, arbitrary and against the facts of the case. Relief may please be granted by quashing the penalty of Rs. 5,50,000/- (or Rs. 3,30,000/-) imposed under section 271(1)(c).*

*2. The assessee craves her right to add, amend or alter any of the grounds on or before the hearing."*

2. The assessee is proprietor of M/s Silver Inn engaged in the business of manufacturing of gold & silver jewellery as well as handicrafts items. While completing the assessment u/s 143(3) on 24<sup>th</sup> December, 2009, the Assessing Officer made in addition equivalent 25% of unverifiable purchases made from certain parties. The matter in the quantum proceedings was carried to this Tribunal and this Tribunal restricted the addition to 15% of the unverifiable purchases as against 25% disallowance made by the AO. In the meantime, the Assessing Officer has levied the penalty u/s 271(1)(c) vide its order dated 22<sup>nd</sup> March, 2013.

3. The assessee challenged the action of the AO before CIT(A). The Id. CIT(A) though confirmed the levy of penalty however, the order was modified to extent of the relief granted by this tribunal in the quantum proceedings.

4. Aggrieved by the impugned order, the assessee has filed the present appeal before us.

5. The Id. AR of the assessee has submitted that the penalty levied u/s 271(1)(c) is based on the addition made by the AO on estimation basis without giving a finding that the assessee has actually inflated the claim of purchase. Thus, the AR has contended that no penalty can be levied when the income of the assessee was assessed an estimate basis. He has relied upon a decision of Hon'ble Jurisdictional High Court in case of CIT vs. Mahendra Singh Khedla [2012] 252 CTR (Raj.) 453 (Raj HC).

6. On the other hand, Id. D/R supported the orders of the authorities below and submitted that disallowance has been confirmed this Tribunal to the extent of 15% of unverifiable purchases and the same has attained the finality. Therefore, the case of the assessee falls in the ambit of section 271(1)(c).

7. We have considered the rival submissions as well as relevant material on record. There is no dispute that the addition in question was made by the AO @ 25% of unverifiable purchases while completing the assessment u/s 143(3). There is no definite finding by the AO that the assessee has inflated the purchase to the extent of 25% but it was only estimation of the AO to make addition which was subsequently restricted by this Tribunal to 15% of unverifiable purchase. Thus even the addition in quantum proceedings attained the finality it is not based on the finding that the assessee has inflated the purchases and suppressed the income or claim of the assessee was absolutely bogus. The AO has only doubted the purchases from certain parties and made the addition only to the extent of 25% of purchases made from such parties instead of disallowing entire purchases from those parties. When the AO has not given any finding of bogus purchases then the disallowance made by the AO is only based on estimation which was restricted by this Tribunal as reasonable estimated. Accordingly, the

issue of levy of penalty u/s 271(1)(c) of such addition is now covered by the decision of Hon'ble Jurisdiction High Court in case of CIT vs. Mahendra Singh Khedla(supra). The Hon'ble High Court while considering the issue of levy of penalty arising from the addition based on estimation in para 6 to 8 as under:-

“6. We have considered the submissions of learned counsel for appellant and examined the reasons assigned by Appellate Authority as well as Appellate Tribunal for setting aside the penalty order.

7. The appellate authority as well as the appellate Tribunal both considered the matter in detail and by speaking order set aside the penalty levied by Assessing Officer, in the facts and circumstances of the present case. The relevant portion of Para 7 of order of the Tribunal is reproduced as under:-

"Para 7. ....The enquiry conducted by the AO may lead to arrive at the findings as to whether the particulars disclosed are truthful or false or not proved to be satisfactory. In the first case it would be a positive case of no concealment, in second case it would be a positive case of concealment and in third case benefit of doubt will go in favour of the assessee. The case of the assessee falls within third category where the alleged fact of introduction of capital is found to be not proved satisfactorily. Therefore, it is not a case of positive concealment and benefit of doubt goes in favour of the assessee. There is no dispute that trading addition was made on the basis of estimation because the results shown by the assessee was not found satisfactory by the AO. Where an estimated addition was concealment of particulars of income or furnishing inaccurate particulars thereof on the part of the assessee to the extent of amount in difference shown by the assessee and estimated by the department depends upon the facts and circumstances of the case. ....

Under these circumstances when in the present case there was no positive evidence beyond doubt regarding estimated trading addition that the amount in difference between the result shown by the assessee and that estimated by the AO was resultant of concealment of particulars of income or furnishing inaccurate particulars thereof on the part of the assessee, penalty under section 271 (1) (c) of the Act cannot be levied. The AO had rejected the books of account and estimated the trading addition on the basis that the assessee had not maintained site-wise account, no head-wise details of claimed purchases were furnished, no separate head of expenses was maintained, work in progress was not declared, some wages were shown outstanding without complete details of creditors, stock register was not maintained and misc.

expenses on water transportation etc. were not verifiable and purchase vouchers of sand, steel, bajri etc. were self made etc. Assessee explained reasons for the above defects which were not accepted by the AO as not found satisfactory. The AO accordingly made estimation. The circumstances suggest that it may be just and proper case of making estimated trading addition but an inference therefrom cannot be drawn beyond doubt especially keeping in mind the nature of work in not maintaining those books and details supported with proper vouchers etc. that there was concealment of particulars of income or furnishing inaccurate particulars thereof on the part of the assessee to attract the penal provisions. In view of above discussion and keeping in mind the fact and circumstances of the present case, we are of the view that the Id. CIT (A) was justified in deleting the penalty in absence of positive evidence with the department that there was concealment of particulars of income or furnishing inaccurate particulars thereof on the part of the assessee towards the addition in question. The first appellate order on the issue is thus upheld."

8. The above finding of the Tribunal makes it clear that additions made by the Assessing Officer were based on estimation only. A fact or allegation based on estimation cannot be said to be correct only, it can be incorrect also. Therefore, in the facts and circumstances of the case, penalty was wrongly levied by the Assessing Officer. The basis for levying penalty in the present case is only estimation, which is purely a question of fact and there is a concurrent finding of fact recorded by first appellate authority as well as the appellate Tribunal both."

8. In the facts and circumstances as discussed above as well as respectfully following the decision of Hon'ble Jurisdiction High Court in case of CIT vs. Mahendra Singh Khedla (supra) we delete the penalty levied u/s 271(1)(c). The appeal of the assessee is allowed.

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

Order pronounced in the open court on 08/01/2018

Sd/-

(Dr. Arjun Lal Saini)  
Accountant Member

Sd/-

(Vijay Pal Rao)  
Judicial Member

Jaipur

Dated:- 08/01/2018.

\*Ganesh Kumar.

Copy of the order forwarded to:

1. The Appellant- Shri Hemant Srivastava, Jaipur
2. The Respondent- ITO, Ward 6(1), Jaipur
3. CIT
4. CIT(A)
5. DR, ITAT, Jaipur.
6. Guard File {ITA No. 668/JP/2016}

By order

Asst. Registrar