

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

श्री विजय पाल राव, न्यायिक सदस्य एवं श्री भागचंद, लेखा सदस्य के समक्ष
BEFORE: SHRI VIJAY PAL RAO, JM & SHRI BHAGCHAND, AM

आयकर अपील सं./ITA No. 559/JP/2014
निर्धारण वर्ष/Assessment Year : 2005-06

Shri Rajendra Kumar Choudhary, Hamir Colony, Opp. Railway Station, Madanganj, Kishangarh-305801.	बनाम Vs.	Income-tax Officer, Ward- Kishangarh.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AAKPC 5942 K		
अपीलार्थी/ Appellant		प्रत्यर्थी/ Respondent

निर्धारिती की ओर से/ Assessee by : Shri S.L. Poddar & Isha Kanungo (Adv.)
राजस्व की ओर से/ Revenue by : Shri R.A. Verma (Add'l CIT)

सुनवाई की तारीख/ Date of Hearing : 30/01/2018
उद्घोषणा की तारीख/ Date of Pronouncement : 02/02/2018

आदेश/ ORDER

PER: VIJAY PAL RAO, JM

This Appeal by the Assessee is directed against the order dated 30.06.2014 of Ld. CIT(A), Ajmer arising from penalty order passed u/s 271(1)(c) of the Income Tax Act, for the Assessment Year 2005-06. The assessee has raised the following grounds of appeal:-

- "1. Under the facts and circumstances of the case the Penalty order passed by Assessing Officer U/s 271(1)(c) is bad in law and void-ab-intio.
2. That the Ld. CIT(A) has erred in confirming the penalty of Rs. 1,01,391/- levied by the Ld. Assessing Officer without considering the facts of the case and reply of the assessee.
3. That the assessee craves your indulgence to add, amend or alter all or any grounds of appeal at the time of, the hearing of the appeal."

2. The assessee filed his return of income on 12.12.2015 declaring income of Rs. 1,33,931/-. Subsequently, the AO received AIR information and found that the assessee has deposited Rs. 19,51,090/- in Saving Bank Account of the assessee with IDBI Bank. The AO proposed to reopen the assessment by issuing a notice u/s 148 on 03.04.2008. There was no compliance made by the assessee of the notice issued u/s 148. However, in response to the notices issued u/s 142(1) the assessee has offered an additional income of Rs. 3,23,943/-. The AO while completing the reassessment made the assessment of the entire amount of Rs. 19,51,090/- deposited in the bank account. On appeal, the Ld. CIT(A) accepted the income offered by the assessee to the extent of Rs. 3,23,943/- by applying a GP Rate of 16.61% on the undisclosed turnover found deposited in the bank account. The AO consequently levied the penalty u/s 271(1)(c) in respect of the addition sustained by the Ld. CIT(A) of Rs. 3,23,943/- vide order dated 23.3.2012 passed u/s 271(1)(c) of the Act. The assessee challenged the action of the AO, levying the penalty of Rs. 1,01,391/- before the Ld. CIT(A). However, the Ld. CIT(A) was not impressed with the contention and explanation of the assessee and confirmed the penalty levied by the AO.

3. Before us, the Ld. AR of the assessee submitted that the assessee is a small time commission agent in the line of retail business of marbles. The assessee itself has declared the additional income of Rs. 3,23,943/- on

account of deposits in the bank account. He has further contended that the addition on which the penalty has been levied by the AO is passed on estimation of income by the Ld. CIT(A) by adopting the GP Rate of 16.61%. Therefore, no penalty can be levied on the addition based on estimation of income. In support of his contention, he has relied upon the decision of Hon'ble jurisdictional High Court in the case of CIT vs. Krishi Tyre Retarding and Rubber Industries 263 CTR 484 as well as the decision in the case of CIT vs. Mahendra Singh Khedla 71 DTR 189. The next contention of the Ld. AR is that when the assessee itself has offered the said income to tax and there is no difference between the income offered by the assessee and income assessed by the AO, then the penalty cannot be levied u/s 271(1)(c) of the Act. He has relied upon the decision of the Hon'ble Delhi High Court in the case of CIT vs. SAS Pharmaceuticals 335 ITR 259 and submitted that the Hon'ble High court has held that when the assessee disclosed the income in return of the income subsequent to the survey, the penalty cannot be levied on surmises, conjectures and on the possibilities, that the assessee would not have offered the same if no survey had been carried out. Thus, the Ld. AR has contended that the penalty levied by the AO may be deleted.

4. On the other hand, Ld. D/R has submitted that it is the case of concealment of income. The assessee has not disclosed the bank account while filing his original return of income but only when the Assessing Officer

received the AIR information about the deposits made in the IDBI Bank the assessee surrendered the income during the course of assessment proceedings. Therefore, the assessee has intentionally not disclosed the deposits made in the bank account maintained with IDBI Bank and also not disclosed his correct turn over. Hence, it is a clear case of concealment of particulars of income and therefore the penalty levied by the AO is justified.

5. We have considered the rival submissions as well as relevant material on record. The assessee filed its original return of income on 12.12.2005 declaring income of Rs. 1,33,931/-. There is no dispute that the assessee did not disclose his bank account maintained with IDBI Bank wherein a cash deposited of Rs. 19,51,090/- was made during the year under consideration. Only during the reassessment proceedings u/s 147 read with section 143(3) the assessee surrender the extra income of Rs. 3,23,943/-. Thus, it is not a case of surrender and disclosure of income in the original return of income but only when the AO reopened the assessment on the basis of the material disclosing the cash deposits in the bank account of the assessee which was not disclosed by the assessee along with the original return of income, the assessee came forward to offer the extra income of Rs. 3,23,943/- Therefore, the decisions relied upon by the Ld. AR are not applicable in the case of the assessee, as it is not the voluntarily surrender of the assessee in the original return of income. Though, the Ld. CIT(A) has deleted the addition made by

the AO and accepted the surrendered made by the assessee however, the reasoning for accepted the surrender given by the Ld. CIT(A) was that this income of Rs. 3,23,943/- is equivalent to GP Rate 16.61% on the undisclosed turn over being the deposits made in the bank account. Hence, the Ld. CIT(A) has not made any separate addition but the addition made by the AO was deleted by giving this reasons. It is a clear case of surrender of the income which was not disclosed by the assessee in the original return of income and therefore the technical objection raised by the Ld. AR of the assessee cannot be accepted. The Ld. CIT(A) while passing the impugned order considered this issue in para 3.3 as under:-

"3.3 I have considered the contentions of the appellant as well as penalty order. It is seen that assessee's contention that assessee has voluntarily disclosed the income to purchase peace of mind has been adequately dealt with by the as reproduced above in Para 3.1. Though the AO had reopened the case in view of the AIR information received by the AO regarding cash deposits of Rs. 19,51,090/- assessee's account, assessee did not filed any return in response to notice u/s 148. So the above IDBI bank account in which cash of Rs. 19,51,090 was deposited was not disclosed in the original return and no return was filed in response to notice u/s 148. In view of the findings of the AO and above discussion, it cannot be said that assessee has voluntarily offered the additional income for tax.

As regarding the assessee's contention that the addition has been made on the estimate basis, it may be mentioned that in the original balance sheet filed along with the return of income on 12.12.2005, the assessee

had not shown the saving bank account in the IDBI bank in his return of income. In fact assessee had not filed any return even in response to notice u/s 148 including above bank account. During reassessment proceedings, the assessee merely filed the computation offering the additional income of Rs. 3,23,943/- as other income. The CIT(A) in the quantum appeal has accepted this other income as being income from unaccounted turnover of the assessee of Rs. 19,50,500 based on the transactions shown in the above bank account. As such, it is apparent that the transactions shown in the IDBI bank account were not shown by the assessee in the original return and the Ld. CIT(A) has considered the same to be unaccounted turnover of the assessee liable to tax on the income @16.61% as shown by the assessee himself in the computation filed during the reassessment proceedings.

In view of above, it is apparent that the above transactions as well as additional income shown by the assessee during reassessment proceedings cannot be held to be merely a estimate without any basis. In fact, the AO has made the addition based on the incriminating bank account of the assessee and income has been accepted by the assessee himself on the above transactions. The said income was not shown in the original return.

The case laws relied upon by the assessee are on their own facts and are distinguishable as in those cases the income has been enhanced merely after rejecting books of accounts u/s 145(3) or no incriminating material was found to make the addition.

In view of above discussions and findings of the AO, the penalty levied by the AO is confirmed."

5.1 The facts recorded by the Ld. CIT(A) has not disputed by the assessee excepted the contention that the assessee's bank account was used by other persons which in the absence of any supporting evidence cannot be accepted as a bonafide explanation at this stage. Hence, in the facts and circumstances of the case, we do not find any error or illegality in the orders of the authorities below in levy the penalty u/s 271(1)(c) of the Act.

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

Order pronounced in the open court on 02/02/2018.

Sd/-

(भागचंद)

(Bhagchand)

लेखा सदस्य / Accountant Member

Sd/-

(विजय पाल राव)

(Vijay Pal Rao)

न्यायिक सदस्य / Judicial Member

Jaipur

Dated:- 02/02/2018.

Pooja/-

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

1. अपीलार्थी / The Appellant- Shri Rajendra Kumar Chaudhary, Kishangarh.
2. प्रत्यर्थी / The Respondent- ITO, Ward- Kishangarh.
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.
6. गार्ड फाईल / Guard File [ITA No. 559/JP/2014]

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar