

आयकर अपीलीय अधिकरण, इन्दौर न्यायपीठ, इन्दौर
**IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE**

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER
AND
SHRI MANISH BORAD, ACCOUNTANT MEMBER**

**ITA Nos.928 & 929/Ind/2016
Assessment Year: 2010-11**

Shri Pankaj Rathore P/o M/s Gwalior Gajak & Sweet House, New market, Bhopal	बनाम/ Vs.	ITO-1(1) Bhopal
(Appellant)		(Revenue)
P.A. No.AFLPR8040R		

Appellant by	Shri Nitin Kausick, Adv.
Respondent by	Shri K.G. Goyal, Sr. DR
Date of Hearing:	16.01.2018
Date of Pronouncement:	31 .01.2018

आदेश / O R D E R

PER KUL BHARAT, J.M:

These two appeals by the assessee pertaining to the A.Y. 2010-11 arising out of the quantum and penalty order respectively . Both were taken up together for the sake of convenience is being disposed of by way of consolidated order.

2. Appeal of the assessee is bared by time for three days. An application seeking condonation of delay is filed along with affidavit in support. The Ld. counsel for the assessee submitted that the delay in filing is not deliberate but was caused by reasonable cause.

The Ld. counsel reiterated the submissions as made in the application seeking condonation of delay. Ld. DR opposed this submission of the assessee.

3. We have heard the rival contentions and perused material on record. After considering the submissions made in the application, we are of the view that there was a reasonable cause for not filing the appeal, therefore, condone the delay of three days and admit the appeal for adjudication.

First, we take up ITA No.928/Ind/2016

The assessee has raised following grounds of appeal:

- “1. That the CIT(A) and the Ld. AO both have erred in not affording the proper opportunity to the assessee for putting up his defence on the facts and circumstances of the case.*
- 2. That the CIT(A) and the Ld. AO both have erred in law and facts.*
 - (a) Because no proper opportunity was afforded to the assessee for putting up his defence on the facts and circumstances of the case.*
 - (b) Because the order of the Ld. O is a bad in law and unjust on facts of the case.*
 - (c) Because determining the income at Rs.5,38,840/- as against the returned income of Rs.1,58,450/-.*
 - (d) Because in making addition of interest of Rs.31,794/-.*
 - (e) Because in not imparting credence to the cash rotation chart prepared by the assessee out of disclosed income to explain rotation of funds and sources of investments/expenditures.*
 - (f) Because they failed to appreciate the various written submissions, documents, evidence, personal books of accounts and also erred in disbelieving the cash account.”*

4. Briefly stated facts are that the case of the assessee was picked up for scrutiny assessment, assessment u/s 143(3) of the Income

Tax Act, 1961 (hereinafter called as 'the Act') was framed vide order dated 17.01.2013. While framing the assessment, the Assessing officer made two additions on account of interest on FDR and Saving Bank Account of Rs.31,794/- and unexplained cash deposit in SB A/c of Rs.3,48,592/-. Against this the assessee filed an appeal before the Ld. CIT(A) who after considering the submissions dismissed the appeal. Now the assessee is in further appeal before this Tribunal.

5. Ground No.1 & 2(a) are against not granting sufficient opportunity of the assessee. The Ld. counsel for the assessee submitted that the assessee was not granted sufficient opportunity by the AO on the contrary Ld. DR opposed this submission.

6. We have heard the rival contentions and we find that the AO has noticed in the assessment order that in response to notices issued by this office, Shri Arvind Kaushik and Shri Nitin Kaushik, attended time to time and filed written reply. Under these facts we do not see any reason to interfere the finding of the AO. Moreover the assessee has not demonstrated as he had requested the AO for grant of time and he was not granted. Hence ground No.1 and 2(a) are dismissed.

7. Ground No.2(b) is with regard to the Assessment order being is bad in law. No submission was made on this ground, hence this ground is rejected.

8. Ground No. 2(c) & 2(d) relates to the unexplained deposits.

The Ld. counsel for the assessee reiterated the submissions as made before the Ld. CIT(A). He submitted that Ld. CIT(A) failed to

appreciate the facts in right prospective. On the contrary Ld. DR supported the order of the Ld. CIT(A).

9. We have heard the rival contentions and perused material on record. Ld. CIT(A) has decided the issue in para 4.5 & 4.6 as under:

“4.5 I have considered the findings recorded by the Ld. AO as per the assessment order, the submission of the appellant, the position of the law and the facts of the case on record. from the facts recorded by the Ld. AO in the assessment order on the basis of the cash flow statement prepared by him, it is seen that the appellant has a shortage of cash of Rs.3,48,595/- for deposit in the bank account. As against the total cash deposited of Rs.29,18,000/- in the bank account, the Ld. AO has worked out the availability of an amount of Rs.25,69,408/- only during the period i.e. from 01.04.2009 to 24.02.2010. Accordingly, the AO made an addition of the balance sum of Rs.3,48,595/- being unexplained cash deposited in the bank account.

4.6 During the appellate proceedings, the Ld. AR claimed that while preparing the cash flow statement, the Ld. AO made a mistake that he deducted the investment of Rs.3,40,000/- as capital contribution in partnership firm. He contended that this amount was not invested during the aforesaid period i.e. from 14.2009 to 24.2.2010, but was invested after 24.2.2010 i.e. on 15.3.2010. He argued that if the said amount of Rs.3,40,000/- is ignored, the cash balance will increase by an equal amount during the above said period and it would have been available for deposit in the bank on or before 24.02.2010. In order to verify the aforesaid claim, the Ld. AR was requested to establish that the amount of Rs.3,40,000/- was deposited with M/s. P.P. Rathore & Co, on 15.03.2010 and not before 24.2.10 as contended, with documentary evidences. However, no such evidence was furnished by the appellant. The ld. AR, through submitted a reply filing copies of the partnership deed and auditor’s report etc. of M/s. P.P. Rathore & Co., but the said documents nowhere reflect that the claimed amount of Rs.3,40,000/- was deposited on 15.3.2010 and not on or before 24.2.2010. Under these circumstances, when the appellant has not been able to furnish any evidence in supported of his claim

to controvert the findings of the Ld. AO recorded by him on the basis of the cash flow statement, I hold that the addition was rightly made by the AO. Accordingly, this ground is dismissed being in fructuous.

These finding on fact by Ld. CIT(A) is not controverted by the assessee by placing any contrary material on record. Hence, there is no merit into grounds raised by assessee. Ground Nos. 2(e) 7 2(f) general assertions without any evidence in support, hence same are dismissed.

10. The appeal of the assessee is dismissed.

Now coming to ITAT No.929/Ind/2016

The assessee has raised following grounds of appeal:

“1. That the CIT(A) has erred in law and on facts in confirming the penalty order when the Ld. AO failed to consider the discuss the facts narrated in the written submission and also the various citations of the Hon'ble Apex Court and the Hon'ble High Courts mentioned therein.

2. That the penalty order is bad and unjust in law and on facts are the Ld. AO could not conclusive establish that the assessee was guilty when the assessee had explained the facts of the case and also submitted the written submission of case supported with the regular books of accounts and various citations in the subject matter.

3. That the penalty levied u/s 271(1)(c) is unwarranted and unjust when the quantum appeal of the assessee was pending in appeal before the Hon'ble CIT(A).”

Apart from these grounds the assessee has taken following additional ground:

1. That on the facts and circumstnces of the case the initiation of proceedings u/s 271(1)(c) of the Income Tax Act is not valid as the AO did not strike off the inappropriate portion of the

notice. The AO ought to hve struck off the inappropriate portion and should have specified whether appellant has concealed the particulars of income or furnishing of inaccurate particulars of income.”

11. At the time of hearing Ld. counsel for the assessee submitted that additional ground may be decided first. The additional ground of the assessee reiterated as under:

Facts giving rise to the appeal are that while making assessment u/s 143(3) the Assessing Officer made addition in respect of the cash deposit and interest on FDR, the AO also initiated penalty proceedings. Subsequently, the penalty was imposed vide order dated 17.07.2013. Against this the assessee preferred an appeal that was dismissed by the ld. CIT(A).

The Ld. counsel for the assessee reiterated the submissions as made in the written submission. He submitted that the AO while invoking provisions of section 271(1)(c) for initiating penalty proceedings, has not specified the charges which is contrary to the settled principles of law. In support of this contentions Ld. counsel for the assessee has placed reliance on the judgment of Hon'ble Supreme Court in the case of CIT vs. SSAs Emrold Medhows 2016 73 Taxman.com 248 (SC) and also judgment of the Hon'ble Karnataka High Court in the case of CIT vs. Manjunatha Cotton & Ginning Factory, (2013) 359 ITR 565. On the contrary Ld. DR opposed the submissions of the assessee.

12. We have heard rival contention and perused material on record. The contention of the assessee is that while initiating the penalty that the AO has not specified the charge. We find merit into these contentions of the assessee as in the assessment order, the AO while recording the satisfaction has stated as under:

“I am satisfied that assessee has furnished inaccurate particulars/concealed income and penalty proceedings u/s 271(1)(c) is separately initiated.”

While issuing notice u/s 271(1)(c) also the AO failed to strike off out of two i.e. concealment or furnishing of inaccurate particulars of income further while imposing the penalty also the AO stated as under:

“In view of the above discussion I am satisfied that the assessee has furnished inaccurate particulars/concealed particulars of his income as mentioned above and is liable for penalty u/s 271(1)(c) of the Income Tax Act, 1961. Amount of tax sought to be evaded works out of Rs.67,622/-. Quantum of minimum and maximum penalty leviable in view of section 271(1)(c) amounts to Rs.67,622/- and Rs.2,02,866/- respectively. I, therefore, levy a penalty of Rs.70,000/- (Rs. Seventy Thousand only) u/s 271(1)(c) of the Income Tax Act, 1961.”

We, therefore, respectfully following the judgment of Hon'ble Karnataka High Court in the case of CIT vs. Manjunatha Cotton & Ginning Factory(supra) quash the penalty order being illegal. Thus, additional ground of the assessee is allowed. The other grounds of the assessee have become infructuous, as the penalty order is quashed, being contrary to settled law.

13. As a result appeal of the assessee is partly allowed.

14. In the result, appellant of assessee in ITANo.928/Ind/2016 is dismissed and ITANo.929/Ind/2016 is allowed.

Order was pronounced in the open court on 31.01.2018.

Sd/-
(MANISH BORAD)
ACCOUNTANT MEMBER

Sd/-
(KUL BHARAT)
JUDICIALMEMBER

Indore; दिनांक Dated : 31 / 01/2018

Patel. P.S./नि.स.

Copy to: Assessee/AO/Pr. CIT/ CIT (A)/ITAT (DR)/Guard file.

By order
Private Secretary/DDO, Indore