

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. 740/JP/2017
निर्धारण वर्ष/Assessment Year : 2008-09

Smt. Anuradha Bomb, Prop. M/s K P Exports 514, Hanumanji ka Rasta, Tripolia Bazar, Jaipur.	Vs.	Dy. Commissioner of Income Tax Circle-1, Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: ADMPB 7633 F		
अपीलार्थी/ Appellant		प्रत्यर्थी/ Respondent

निर्धारिती की ओर से/ Assessee by : Shri D. Kumar (Advocate)
राजस्व की ओर से/ Revenue by : Shri Neena Jaif (JCIT)

सुनवाई की तारीख/ Date of Hearing : 22/02/2018
उदघोषणा की तारीख/ Date of Pronouncement : 26/02/2018

आदेश / ORDER

PER: VIJAY PAL RAO, JM

This Appeal by the Assessee is directed against the order dated 10/07/2017 of Ld. CIT(A), Jaipur, arising from the penalty order passed u/s 271(1)(c) of the Income Tax Act, 1961 for the Assessment Year 2008-09. The Assessee has raised the following grounds in this appeal:-

- "1. The Ld. Assessing Authority grossly erred in imposing penalty of Rs. 48,582/- under section 271(1)(c) of the Act and the Ld. Appellate Authority has erred in confirming the same.
2. That further submissions shall be made at the time of hearing.
3. The appellate craves leave to add, amend or alter all or any of grounds of appeal and relief claimed before or at the time of hearing."

2. The assessee is engaged in the business of trading in precious and semi precious gems stones. In the course of assessment proceedings, the Assessing Officer disputed the purchases made by the assessee from four parties amounting to Rs. 7,94,067/-. The AO while framing the assessment U/s 143(3) made addition on account of unverifiable purchase @ 25% which was reduced by the Ld. CIT(A) to 18%. Thus, the additions sustained by the Ld. CIT(A) on account of unverifiable purchases is a subject matter for levy of penalty U/s 271(1)(c) of the Act. The AO levied a penalty of Rs. 48,582/- while passing the order dated 26/03/2015. The assessee has challenged the action of the Ld. CIT(A), but could not succeed.

3. We have heard the Ld. AR as well as Ld. D/R and considered the relevant material on record. At the outset, we note that an identical issue of levy of penalty against the addition made on account of unverifiable purchases by applying the GP Rate of 25% has been considered by this Tribunal in assessee's own case for the Assessment Year 2007-08 vide order dated 15.11.2017 in ITA No. 55/JP/2016 in para 7 as under:-

"7. Having heard the rival submissions and perused the material available on record, we note that the grievance of the Revenue is that the assessee has failed to produce party. It may be noted that when the assessee filed complete details of the party, the Revenue authorities have ample power including issue of summons u/s 131 whereas the assessee has no such power under the Act to bring the party personally

to produce before the AO. It appears from the record that the Revenue authorities did not exercise such power u/s 131 of the Act. When transactions with a particular party are over that party may not be ready to cooperate in giving information which were exactly asked by the Assessing Officer to the assessee which were to collect from the party by the assessee. Under these circumstance, the Revenue authorities have ample power, such power under the Act and if they are not exercising such powers, the assessee cannot be blamed in concealing particulars or furnishing inaccurate particulars of income, therefore the aspect of human probability, tenancy of non cooperation by the parties after business transaction is over, is required to be considered while deciding bona fide aspect of the assessee in penalty matter u/s 271(1)(c) of the Act. In the assessee's case under consideration the Assessing Officer has not given finding based on some contradictory evidence to disprove that explanation offered by the assessee which the assessee is not able to substantiate and fails to prove that such explanation is bona fide and that all the facts relating to the same and material to the computation of his total income have been disclosed by him. The AO applied G.P rate @ 25%.

Considering the factual position explained above and after considering the quantum orders of Revenue authorities, we are of the view that it is not a fit case for levy of penalty u/s 271(1)(c) of the Act , therefore, we quash the penalty order u/s 271(1)(c) of the Act."

3.1 Having regard to the facts and circumstances of the case which are identical to the facts for the Assessment Year 2007-08 and following the order

of this Tribunal in assessee's own case for the Assessment Year 2007-08, we delete the penalty levied U/s 271(1)(c) of the Act.

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

Order pronounced in the open court on 26/02/2018.

Sd/-
(भागचंद)
(Bhagchand)
लेखा सदस्य / Accountant Member
Jaipur
Dated:- 26/02/2018.
Pooja/-

Sd/-
(विजय पाल राव)
(Vijay Pal Rao)
न्यायिक सदस्य / Judicial Member

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

1. अपीलार्थी / The Appellant- Smt. Anuradha Bomb, Jaipur.
2. प्रत्यर्थी / The Respondent-. DCIT, Circle-1, Jaipur.
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. 740/JP/2017]

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar