

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

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

आयकर अपील सं./ITA No. 37/JP/2016
निर्धारण वर्ष/Assessment Year: 2005-06

Smt. Smita Bhargava B-85, Ganesh Marg Bapur Nagar, Jaipur	बनाम Vs.	The ITO Ward- 6(4) Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: ABFPB 2570 G		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by: Shri Rohan Sogani, CA
राजस्व की ओर से / Revenue by: Smt. Poonam Rai, DCIT - DR

सुनवाई की तारीख / Date of Hearing : 14/03/2018
घोषणा की तारीख / Date of Pronouncement : 1 /05/2018

आदेश / ORDER

PER BHAGCHAND, AM

The assessee has filed an appeal against the order of the Id.
CIT(A)-2, Jaipur dated 27-10-2015 for the Assessment Year 2005-06
raising therein following ground of appeal.

“In the facts and circumstances of the case and in law the Id. CIT(A) has erred in confirming the action of the AO in imposing penalty u/s 271(1)(c) of I.T. Act, 1961 amounting to Rs. 2,37,219/-. The action of the AO is illegal, unjustified, arbitrary and against the facts of the case. Relief may please be granted by quashing the penalty of Rs. 2,37,219/- imposed u/s 271(1)(c).”

2.1 The Id.AR of the assessee vide application dated 11-09-2017 raised the additional ground of appeal as under:-

“In the facts and circumstances of the case and in law the AO has erred in imposing penalty u/s 271(1)(c)without specifically pointing out in the show cause notice whether the penalty was proposed on concealment of particulars of income or furnishing inaccurate particulars of income . The action of the AO is illegal, unjustified, arbitrary and against the facts of the case. Relief may please be granted by quashing the penalty imposed u/s 271(1)(c)”

2.2 We have heard the rival contentions and perused the materials available on record. From the records, it is noticed that assessee had not participated in assessment proceeding. The assessee had not made any compliances of the notices issued u/s 143(2) and 142(1) of the Act. In the assessment order, it has been clearly mentioned that assessee had furnished inaccurate particulars of income. Thus the assessee was sufficiently noticed about the basis on which penalty was initiated. Hence, in this factual matrix of the case, this additional ground of appeal has no merit which is dismissed.

3.1 Apropos solitary ground of the assessee, the facts as emerges from the order of the Id. CIT(A) are as under:-

“2.3.1 I have perused the facts of the case, the penalty order and the submissions of the appellant. In this case credits of Rs. 7,04,750/- remain unexplained in spite of

adequate opportunity provided to the assessee. In the quantum proceedings before the CIT (A), the assessee had been given adequate opportunity to prove the credits yet the amount of Rs. 2,25,000/- belonging to three creditors could not be proved. Further, while the assessee claimed that Rs. 4,76,000/- is not a borrowing but a transfer of funds but not evidence whatsoever was adduced either in earlier proceedings or before me in the present proceedings. The A.R. in the written submissions before me had submitted a chart showing the date of repayment of three loans from Smt. Sudha Singhvi, Raj Kumar Jain & Mohan Lal Sharma but during the proceedings clarified that these are dates of receipts and not the date of repayment.

2.3.2 The A.R. further claimed that the burden in the quantum proceedings is comparatively light and levy of penalty is not automatic. In the present case credits of an amount of Rs. 7,04,050/- could not be proved by the assessee as genuine during penalty proceedings also. In fact the assessee offered no explanation in the proceedings before the Assessing Officer and did not even attend the proceedings. Before me also, no proper explanation has been offered by the A.R. nor any additional material to substantiate the credits. AO has also placed reliance on the case of CIT vs Prathi Hardware Stores – 203 ITR 641 in which no similar facts the levy of penalty was found to be justified. For an example to be accepted, the basic ingredients have been discussed in 16 Taxman.com 296 Hyderabad in the case of Properties Suryanarayana vs ITO , Ward- 13(1), Hyderabad and are as follows-

“When we examine Part B of Explanation 1 carefully then we are of the view that the words ‘not substantiate’ used in that clause does not mean that is not accepted by the concerned authority, but it means that there is no substance in the claim made by the assessee. The word ‘substantiate’ is opposite to the word ‘vague’ or ‘fanciful’ or ‘without any foundation or basis’. The phrase ‘to prove that such explanation is bona fide’ means that the assessee has to show that circumstances existed

whereby it has made the claim, or that, as in the present case, it had in fact received the money from the creditors but their credentials cannot be established. It has to be proved that failure of the assessee to furnish evidence in support of the claim was beyond his control. Assessee has to prove or furnish evidence that circumstances existed which disabled him to furnish the evidence in support of his claim. The third condition is that all the facts relating to the claim and material to the computation of its total income has been disclosed by him. It means that all the material facts which are relevant for computation of income of the assessee have been disclosed to the department not merely during the assessment proceeding but in the return of income.’’

Seen against the above, no explanation has been offered by the assessee much less explanation which could be substantiated. In view of the above, the assessee has furnished inaccurate particulars of income resulting in concealment of income hence the penalty imposed by the Assessing Officer is confirmed.’’

3.2 During the course of hearing, the Id.AR of the assessee prayed that the Id. CIT(A) has erred in confirming the penalty of the Rs. 2,37,219/- u/s 271(1)(c) made by the AO for which the Id.AR of the assessee filed the written submission. The same has been taken into consideration for adjudication of the solitary ground raised by the assessee.

3.3 On the other hand, the Id. DR supported the order of the Id. CIT(A).

3.4 We have heard the rival contentions and perused the materials available on record. Brief facts of the case are that the assessee filed the

return of income on 01-08-2005 declaring total income of Rs. 1,54,010/- which was assessed at Rs. 29,14,220/- u/s 144 on 19-11-2007. During the year under consideration, the assessee had shown her income from business and profession of trading in optical instruments and interest only. The AO during the course of assessment proceeding found that fresh unsecured loans of Rs. 12,66,000/- were shown in the individual balance sheet and Rs. 9,75,000/- were shown in the balance sheet of her proprietary concern M/s. Nath Contact Lenses and Hearing Aid Centre by the assessee. Further the assessee had claimed interest of Rs. 1,57,300/- on these loans in her proprietary concern. The AO made the addition of Rs. 23,98,300/- as the assessee failed to prove the identity, genuineness and creditworthiness of the depositor of unsecured loan. In addition to the above, the AO made the following additions as the assessee had not furnished the required details.

1. Estimation of trading results	Rs. 2,68,400/-
2. Disallowance of various expenses	Rs. 11,245/-
3. Estimation of Consultancy Receipts	Rs. 82,468/-

The penalty proceedings u/s 271(1)(c) were initiated for filing inaccurate particulars of income in this case. The assessee went in appeal before the

Id. CIT(A) who vide his order dated 13-11-2009 confirmed the following additions made by the AO.

1.	Unexplained cash credit & disallowed interest	Rs. 7,04,750/-
2.	Disallowance of various expenses	Rs. 11,245/-

The assessee was show caused on 14-03-2011 & 23-03-2011 as to why penalty u/s 271(1)(c) of the Act should not be imposed but no reply was filed by the assessee. The AO levied penalty u/s 271(1)(c) of the Act for furnishing of inaccurate particulars of income to the extent of Rs. 7,04,750/- on account of unexplained cash credit and disallowance of interest. The AO thus imposed the penalty of Rs. 2,37,219/- u/s 271(1)(c) of the Act vide order dated 31-03-2011 being 100% tax sought to be evaded. In first appeal the Id. CIT(A) has confirmed the penalty by observing as under:-

“.....Seen against the above, no explanation has been offered by the assessee much less explanation which could be substantiated. In view of the above, the assessee has furnished inaccurate particulars of income resulting in concealment of income, hence the penalty imposed by the Assessing Officer is confirmed.”

In this case, we have gone through the orders of the lower authorities. We have also taken into consideration the written submissions of the assessee,

including the case laws mentioned therein. It is noted that the Id.AR of the assessee could not controvert the findings of the Id. CIT(A). Hence, in the present factual matrix of the case, we concur with the findings of the Id. CIT(A). Thus the appeal of the assessee is dismissed.

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

Order pronounced in the open Court on 01-05-2018.

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

Sd/-
(भागचन्द)
(Bhagchand)
लेखा सदस्य /Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 01 /05/ 2018

*Mishra

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

1. अपीलार्थी / The Appellant- Smt. Smita Bhargava, Jaipur
2. प्रत्यर्थी / The Respondent- The ITO, Ward- 6(4), Jaipur
3. आयकर आयुक्त(अपील) / CIT(A).
4. आयकर आयुक्त / CIT,
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No.37/JP/2016)

आदेशानुसार / By order,

सहायक पंजीकार / Assistant. Registrar