

आयकर अपीलीय 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. 1043/JP/2017
निर्धारण वर्ष/Assessment Year: 2012-13

Shri Virendra Singh Verma H.No. 114-B, Gali No.2, Baldev Nagar, Makadwali Road, Ajmer	बनाम Vs.	The ITO Ward 2(1) Ajmer
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AAPPV 6920 K		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by: Written Submission (A.D. on record)
राजस्व की ओर से / Revenue by: Smt. Poonam Rai, DCIT - DR

सुनवाई की तारीख / Date of Hearing : 20/06/2018
घोषणा की तारीख / Date of Pronouncement : 27 /06/2018

आदेश / ORDER

PER BHAGCHAND, AM

The appeal filed by the assessee emanates from the order of the Id.
CIT(A), Ajmer dated 07-11-2017 for the Assessment Year 2012-13
raising therein following ground of appeal.

“Under the facts and circumstances of the case the Id.
CIT(A) has erred in:-

1. The AO has not been able to identify whether it is of particulars of income or furnishing inaccurate particulars of income.

2. Confirming penalty u/s 271(1)© of Rs. 5,00,000/- without appreciating the facts.”

2.1 Apropos Ground No. 1 and 2 of the assessee, the facts as emerges from the order of the Id. CIT(A) are as under:-

“3.0 During the course of appellate proceedings, the appeal was fixed for hearing on 19-07-2017, 14-08-2017, 28-08-2017, 11-09-2017, 25-09-2017, 9-10-2017 and 7-11-2017. No one has attended on any of the date of hearing and non written submission has been filed. Therefore, the appeal is decided after going through the penalty order, statements of facts and grounds of appeal as under.

4.0 The only ground of appeal is as under:-

“Under the facts and circumstances the AO has erred in levying the penalty u/s 271(1)© of Rs. 5,00,000/-

4.1 This ground of appeal relates to levy of penalty of Rs. 5,00,000/- u/s 271(1)© of the I.T. Act.

4.2 I have gone through the penalty order, statement of facts and grounds of appeal carefully. It is seen from penalty order that the appellant had not filed any return of income u/s 139(1) or 139(4). When the department detected the transaction of sale of the property in which the appellant has earned capital gain, only then, the appellant had filed return of income on 8-10-2014 which was nonest in the eyes of law, as it was neither filed u/s 139(1) nor 139(4). Had the Revenue Authorities not detected, the appellant would not have declared any income to the department. Therefore, I am of the considered view that appellant has concealed the income of Rs. 23,23,310/- earned by him under the head “long term capital gain”. Accordingly, the penalty of Rs. 5,00,000/- levied by the AO in respect of the concealed income of Rs. 23,23,310/- is hereby confirmed.”

2.2 None attended the hearing on behalf of the assessee. However the assessee filed the written submission praying therein to delete the penalty confirmed by the ld. CIT(A) of Rs. 5.00 lacs u/s 271(1)(c) of the Act.

2.3 On the other hand, the ld. DR supported the order of the ld. CIT(A).

2.4 We have heard the ld. DR and perused the materials available on record including the written submission of the assessee. In this case, the Bench noted that the assessee had neither filed any written submission nor attended the hearing before the ld. CIT(A). However, the ld. CIT(A) has confirmed the penalty of Rs. 5.00 lacs u/s 271(1)(c) of the Act based on the materials available before him at the time of hearing the appeal. Since the assessee has filed the written submission before us praying therein to delete the penalty confirmed by the ld. CIT(A), therefore, it will be in the interest of equity and justice to restore the appeal of the assessee to the file of the ld. CIT(A) for afresh adjudication by considering the written submission filed before the Bench. Thus the appeal of the assessee is allowed for Statistical purposes.

3.0 In the result, the appeal of the assessee is allowed for Statistical purposes.

Order pronounced in the open Court on 27-06-2018.

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

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

जयपुर / Jaipur
दिनांक / Dated:- 27/06/ 2018
*Mishra

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

1. अपीलार्थी / The Appellant- Shri Virender Singh Verma, Ajmer
2. प्रत्यर्थी / The Respondent- The ITO , Ward- 2(1), Ajmer
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.1043 /JP/2017)

आदेशानुसार / By order,

सहायक पंजीकार / Assistant. Registrar