

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

श्री विजय पाल रॉव, न्यायिक सदस्य एवं श्री विक्रम सिंह यादव, लेखा सदस्य के समक्ष
BEFORE: SHRI VIJAY PAL RAO, JM AND SHRI VIKRAM SINGH YADAV, AM

आयकर अपील सं./ITA No. 556/JP/2018
निर्धारण वर्ष/Assessment Year : 2013-14.

Shri Uday Singh Palawat, Plot No. 81, Geejgarh Vihar, Hawa Sarak, Jaipur.	बनाम Vs.	The Income Tax Officer, Ward 7(1), Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN No. ADYPP 8296 L		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri P.C. Parwal (CA)
राजस्व की ओर से / Revenue by: Shri J.C. Kulhari (JCIT)

सुनवाई की तारीख / Date of Hearing : 01.08.2018.
घोषणा की तारीख / Date of Pronouncement : 02/08/2018.

आदेश / ORDER

PER VIJAY PAL RAO, JM :

This appeal by the assessee is directed against the order dated 15th March, 2018 of Id. CIT (A)-3, Jaipur arising from the penalty order passed under section 271(1)(c) of the I.T. Act for the assessment year 2013-14. The assessee has raised the following grounds :-

1. Under the facts and circumstances of the case, the order passed u/s 271(1)(c) is illegal and bad in law.
2. The Id. Cit (A) has erred on facts and in law in confirming the levy of penalty of Rs. 9,150/- u/s 271(1)(c) of the IT Act, 1961.
3. The assessee craves to amend, alter and modify any of the grounds of appeal.
4. Necessary cost be allowed to the assessee.

2. The assessee is an individual and derives income from Salary and interest on bank deposits. The assessee filed his return of income on 20.07.2013. During the scrutiny assessment, the AO noted that the assessee has shown interest income of Rs. 3,51,977/- in his return of income. However, as per 26AS the interest income earned by the assessee during the year is Rs. 4,14,719/-. When this discrepancy was pointed out, the assessee accepted the additional income of Rs. 28,348/-. The AO accordingly made an addition of Rs. 28,348/- while completing the assessment and also initiated the proceedings for levy of penalty under section 271(1)(c). The AO finally levied the penalty of Rs. 9,150/- being 100% of tax sought to be evaded in respect of the said amount of Rs. 28,348/-. The assessee challenged the action of the AO levying the penalty under section 271(1)(c) before the Id. CIT (A) but could not succeed.

3. Before us, the Id. A/R of the assessee has submitted that at the time of filing the return, the assessee has declared the interest income as per the record available with the assessee and accordingly the TDS credit was also claimed only in respect of the said income of Rs. 3,51,977/-. Subsequently, as per the Form 26AS, the correct amount of interest was revealed and the AO pointed out the discrepancy in the interest income declared by the assessee and as per the Form 26AS. Thus it was only due to non-availability of correct amount of interest on FDR, the assessee declared the income of Rs. 3,51,977/-. The AO has not disputed the fact that the assessee claimed the TDS credit of Rs. 38,664/- whereas as per the Form 26AS the TDS credit was Rs. 41,492/-. Hence, the Id. A/R has submitted that it is only because of incomplete details and inadvertent mistake on the part of the assessee

which do not fall in the category of either concealment of income or furnishing inaccurate particulars of income. The Id. A/R has further submitted that even otherwise the AO in the show cause notice dated 26.10.2015 issued under section 271(1)(c) has not specified the ground for levy of penalty and therefore, the said notice suffers from illegality in view of the decision of the Hon'ble Karnataka High Court in the case of Manjunatha Cotton & Ginning Factory, 359 ITR 565 (Kar.).

3.1. On the other hand, the Id. D/R has submitted that it is a clear case of concealment of income as the assessee has understated the interest income in the return of income which was detected by the AO and, therefore, the AO is justified in levying the penalty. He has relied upon the orders of the authorities below.

4. We have considered the rival submissions as well as the relevant material on record. The assessee has declared the interest income of Rs. 3,51,977/- and also claimed TDS credit of Rs. 38,664/-. The AO made an addition of Rs. 28,348/- due to the discrepancy found in the interest income declared by the assessee and the interest income appearing in Form 26AS. It is not the case of the assessee that the assessee has not shown the correct income in its books of accounts or the record which belonged to the assessee only but the interest income on the FDR is with the bank and, therefore, the record of interest income and TDS deducted by the bank on the said income is available with the AO which was considered by the AO while making this addition. Therefore, when the entire details of interest income was available in the form 26AS, then the discrepancy of Rs. 28,348/- is only because of the miscalculation of the interest income by the assessee. There was no scope of concealing the said income as it is already available with the department in Form 26AS which was beyond the control of the assessee and, therefore, when the

assessee has explained the reasons of declaring less income which were not found to be malafide, then while considering the explanation of the assessee that the interest income was declared as per the details available with the assessee at that point of time and further the assessee has claimed the TDS only against the said income clearly made out a case of bonafide explanation in terms of clause-B of Explanation-1 to section 271(1)(c). In the case of the assessee, the entire interest income was subjected to TDS and, therefore, in the facts and circumstances of the case, we find that the penalty levied by the AO is not sustainable and the same is cancelled.

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

Order is pronounced in the open court on 02/08/2018.

Sd/-
(विक्रम सिंह यादव)
(VIKRAM SINGH YADAV)
लेखा सदस्य/Accountant Member

Sd/-
(विजय पाल राँव)
(VIJAY PAL RAO)
न्यायिक सदस्य/Judicial Member

Jaipur

Dated:- 02/08/2018.

Das/

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

1. The Appellant-Shri Uday Singh Palawat, Jaipur.
2. The Respondent – The ITO Ward 7(1), Jaipur.
3. The CIT(A).
4. The CIT,
5. The DR, ITAT, Jaipur
6. Guard File (ITA No. 556/JP/2018)

आदेशानुसार/ By order,

सहायक पंजीकार/ Assistant. Registrar

