

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 No.51/Ind/2017  
Assessment Year: 2008-09**

DCIT-3(1), Indore	<u>बनाम/</u>	M/s. Shri Ritesh Ajmera. 29-30, Paliwal Nagar, Indore
(Revenue )	Vs.	(Appellant)
P.A. No.ACSPA9865D		

**C.O. No.14/Ind/2018  
(Arising out of ITA No.51/Ind/2017)  
Assessment Year: 2008-09**

M/s. Shri Ritesh Ajmera. 29-30, Paliwal Nagar, Indore	<u>बनाम/</u>	DCIT-3(1), Indore
(Revenue )	Vs.	(Appellant)

Appellant by	Mrs. Ashima Gupta, Sr. D.R.
Respondent by	Shri Anil Kamal Garg, A.R.
<b>Date of Hearing:</b>	<b>23.11.2018</b>
<b>Date of Pronouncement:</b>	<b>03.01.2019</b>

**आदेश / O R D E R****PER KUL BHARAT, J.M:**

This appeal by the revenue pertaining to the assessment year 2008-09 and cross objection filed by the assessee against order of the Ld. CIT(A)-I, Indore (M.P.) dated 17.10.2016. Both revenue and assessee have challenged the order of the Ld. CIT(A). The assessee has challenged the legality of the initiation of proceedings and the penalty confirmed in respect of the additions sustained by the Tribunal. Since the assessee has challenged legality of the proceedings, we deem it proper to adjudicate cross objection first on the issue of legality of the proceedings u/s 271(1)(c) of the Income Tax Act, 1961 (hereinafter called as 'the Act'). The assessee has raised following grounds of cross objections:

- 1. That on the facts and in the circumstances of the case, the action of the learned CIT(A) grossly erred, in confirming the penalty imposed by the A.O. is illegal in as much a vague and cryptic show cause notice was issued to the appellant under s.274 without making him aware of the specific charge levelled against him.*

2. (a) That, without prejudice to the above, the learned CIT(A) grossly erred, both on facts and in law, in not considering the material fact that the appellant had neither concealed nor furnished in accurate particulars of his income for the year under consideration and therefore he was not liable for any penalty u/s 271(1)(c) of the Act.

(b) That, without prejudice to the above, the learned CIT(A) grossly erred, both on facts and in law, in not considering the material fact that penalty proceedings are different from assessment proceedings and merely on the basis of certain finding in assessment proceedings, penalty u/s 271(1)(c) cannot be imposed automatically.

3.(a) That, without prejudice to the above, the learned CIT(A) grossly erred, both on facts and in law, in confirming the penalty imposed by the A.O. qua the amount of cash deposits aggregating to Rs.5,00,000/- made by the appellant in his bank account.

(b) That, the learned CIT(A) grossly erred, both on facts and in law, in confirming the penalty imposed by the A.O. qua the amount of alleged unexplained investment of Rs.25,50,000/- in M/s. Phoenix Devcons Pvt. Ltd.

4. That, the cross objector further craves leave to add, alter and/or amend ground of cross objections, as and when considered necessary.

2. Brief facts are that search & seizure operation u/s 132 of the Act were conducted at various premises of assessee society persons and concerns commonly known as 'M/s. Satellite Group' on 15.11.2009. A notice u/s 153A of the Act dated 13.10.2010 was issued and served upon the assessee requiring the assessee to file return of income. In response thereto, the assessee submitted before the A.O. that the return filed originally may be treated as return

filed in response to the notice u/s 153A of the Act. The A.O. thereafter proceeded to make assessment after considering the facts and the material available on record. The A.O. made two additions in respect of unexplained cash deposits in UCO bank of Rs.15 lakhs, unexplained investment in M/s. Phoenix Technology of Rs.2,25,00,000/-. The A.O. initiated the penalty proceedings separately. In quantum proceedings, the matter was travelled up to the stage of the Tribunal and it is reported by the Ld. CIT(A) that a sum of Rs.1,90,00,000/- was deleted out of Rs.2,15,50,000/- in respect of the unexplained investment. Further, the Ld. CIT(A) directed the A.O. to re-compute penalty on an amount of Rs.30,50,000/- sustained by the Tribunal.

3. Aggrieved by this, the assessee is in appeal before this Tribunal. Ground No.1 & 2 are against the legality of notice issued u/s 271(1)(c) of the Act. It is noticed that this

ground was not taken before the Ld. CIT(A). It is submitted by the Ld. Counsel for the assessee that this being the legal ground, the judgement of the jurisdictional High Court in the case of Principal CIT Vs. Kulwant Singh Bhatia in ITA No.9 of 2018 dated 9.5.2018 (M.P.) was not available at the time of the proceedings before Ld. CIT(A). He further submitted that in view of the judgement of the Hon'ble Supreme Court in the case of NTPC Vs. CIT (1998) 229 ITR 353 (SC) the legal ground can be taken up at any stage. Ld. Counsel for the assessee took us through the penalty order. He submitted that the A.O. has not specified the charge for which the penalty has been levied.

4. On the contrary, Ld. D.R. opposed the submissions of the assessee. He submitted that the A.O. has specified the charge in the assessment order.

5. We have heard the rival submissions, perused the materials available on record and gone through the orders

of the authorities below. The grievance of the assessee is that the A.O. has not made any specific charge to the penalty being imposed. We have gone through the records. These grounds were not raised by the assessee before Ld. CIT(A). The Hon'ble jurisdictional High Court in the case of CIT Vs. Tolaram Hassomal 298 ITR 22 (M.P.), wherein the Hon'ble High Court has held as under:

*“8. In view of the foregoing discussion, we do not consider it necessary to examine any other issues, i.e., the questions already framed and decided by the Tribunal though urged by learned counsel for the Revenue on various legal grounds with reference to decided cases of the Supreme Court and the High Courts by contending that none of them are legally sustainable and hence, we answer only additional question of law framed in favour of the Revenue and against the assessee (respondent). As a result, the appeal succeeds and is hereby allowed. The impugned orders of the Tribunal is set aside, so also that of the Commissioner of Income tax (Appeals) which was the subject matter of appeal before the Tribunal in an appeal filed by the assessee. Indeed, this being a consequence of the indulgence granted by the Tribunal to the assessee in permitting them to raise four additional grounds to urge the same has to be given effect to. As a consequence, the Commissioner of Income-tax (Appeals) is now directed to decide the appeal filed by the respondent (assessee) afresh on the merits including on the four additional grounds raised by the assessee. We, however, make it very clear that the Commissioner of Income-tax (Appeals) would not take into consideration any of the findings and the observations made by the Tribunal on any of the issues raised by the assessee, nor the Commissioner of Income-tax (Appeals) will be influenced by any of them. In other words, the Commissioner of Income-tax (Appeals) will decide the appeal strictly in accordance with law on the merits as if there is no finding on any of the issues ever recorded by the Tribunal because once we set*

*aside the order of the Tribunal, then such order is regarded as being not in existence and cannot be looked into for any purpose, nor can be relied on or referred to by any authority much less an authority subordinate to the Tribunal. Needless to observe, the four additional issues urged by the assessee will have to be decided by the Commissioner of Income-tax (Appeals) keeping in view the law laid down by the Supreme Court and the High Courts in several cases holding the field in their right perspective. Let this be done within six months by the Commissioner of Income-tax (Appeals) from the date of appearance. Parties to appear before the Commissioner of Income-tax (Appeals) on April 3, 2006.”*

6. Therefore, respectfully following the same, the additional ground raised in the form of legal in ground Nos.1 to 2(b) of the assessee are restored to the file of the Ld. CIT(A) for considering the same in the light of the judgement of the Hon'ble M.P. High Court in the case of Principal CIT Vs. Kulwant Singh Bhatia (supra).

7. Ground Nos.3(a) & 3(b) are in respect of the penalty confirmed by the Ld. CIT(A). All the cross objections goes to the route of legality of the penalty and hence, we deem it proper that these grounds are also restored to the file of the Ld. CIT(A) to decide it afresh. Ground Nos.3(a) & 3(b) of the assessee's appeal are allowed for statistical purposes.

8. Ground No.4 is general in nature and needs no separate adjudication.

9. Now we take up the revenue's appeal. Revenue has taken up the following grounds of appeal:

1. *Whether in the facts and in the circumstances of the case Ld. CIT(A) was justified in partly allowing the appeal of the assessee considering the appellate order of Hon'ble ITAT.*
2. *Whether in the facts and in the circumstances of the case Ld. CIT(A) was justified in directing the A.O. to re-compute the penalty only on the amount of Rs.30,50,000/-, which was confirmed by the Hon'ble ITAT, whereas Ld. CIT(A) has confirmed the addition of Rs.2,15,50,000/- out of addition of Rs.2,25,00,000/- as unexplained investment and confirmed the addition of Rs.5,00,000/- out of Rs.15,00,000/- as unexplained cash deposits in UCO Bank.*
3. *The appellant reserves the right to add, amend or alter the ground of appeal on or before the date the appeal is finally heard for disposal.*

10. The only effective ground in this appeal is against deleting the penalty to the extent of addition confirmed by the Tribunal and deleting rest of the penalty.

11. Ld. D.R. supported the orders of the A.O. and submitted that Ld. CIT(A) was not justified in deleting the penalty. He submitted that quantum proceedings and penalty proceedings are two different and distinct

proceedings. Ld. CIT(A) ought to have confirmed the penalty.

12. Per contra, Ld. Counsel for the assessee submitted that the addition has been deleted; therefore, there is no question of levy of penalty.

13. We have heard the rival submissions, perused the materials available on record and gone through the orders of the authorities below. There is no dispute with regard to the fact that the addition on which penalty has been levied has already been deleted by the Tribunal in IT(SS)A No.190 to 192/Ind/2013 in assessee's own case, in which the addition of Rs.1,90,00,000/- was deleted out of the total addition of Rs.2,15,50,000/-. Therefore, we do not see any infirmity in the order of the Ld. CIT(A) and the same is hereby confirmed. The grounds raised by the revenue are dismissed.

14. In the result, appeal filed by the revenue is dismissed and the cross objections filed by the assessee are allowed for statistical purposes.

*Order was pronounced in the open court on 03.01.2019.*

Sd/-  
(MANISH BORAD)  
ACCOUNTANT MEMBER

Sd/-  
(KUL BHARAT)  
JUDICIALMEMBER

Indore; दिनांक Dated : 03/01/2019

VG/SPS

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

By order

**Assistant Registrar, Indore**