

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

श्री रमेश सी० शर्मा, लेखा सदस्य एवं श्री विजय पाल राव, न्यायिक सदस्य के समक्ष
BEFORE: SHRI RAMESH. C. SHARMA, AM & SHRI VIJAY PAL RAO, JM

आयकर अपील सं./ITA No. 508/JP/2018
निर्धारण वर्ष / Assessment Year : 2013-14

Shri Prakash Raj Bhansali, A-60, Shanti Path, Tilak Nagar, Jaipur.	बनाम Vs.	The ITO, Ward-2(1) Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AAYPB 1352 J		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by: Shri H.M. Singhvi (C.A.)
राजस्व की ओर से / Revenue by : Shri Rajendra Singh (JCIT)

सुनवाई की तारीख / Date of Hearing : 18/02/2019
उदघोषणा की तारीख / Date of Pronouncement: 05/03/2019

आदेश / ORDER

PER: VIJAY PAL RAO, J.M.

This appeal by the assessee is directed against the order dated 31.01.2018 of the Id. CIT(A), Kota arising from the penalty order passed U/s 271(1)(c) of the I. T. Act for the assessment year 2013-14. The assessee has raised following grounds:-

"1. That the Learned AO went wrong in initiation of proceedings by issue of notice u/s 274 without striking the specific limb in the

notice for concealment of particulars of income or furnishing inaccurate particulars of income which is bad in law.

2. That on the facts and circumstances the Learned CIT(Appeal) went wrong in confirming the penalty U/s 271(1)(c) for Rs. 1500000/- which is bad in law, and on facts.

3. That the appellant craves leave to add, alter, amend or withdraw any grounds of appeal before or at the time of hearing.”

2. Ground no. 1 is regarding validity of penalty order passed U/s 271(1)(c) of the Act on the ground of defective initiation of proceedings by issuing noticed U/s 274 of the Act. The Id. AR of the assessee has submitted that the Assessing Officer while issuing show cause notice U/s 274 of the Act has not specified the limb whether the assessee has concealed the particulars of income or furnished inaccurate particulars of income. The AO has also not strike off the irrelevant part of the notice U/s 274 of the Act. He has referred to the notice dated 22.03.2016 issued U/s 274 r.w.s 271(1)(c) of the Act and submitted that the AO has proposed to levy the penalty on uncertain charges of concealment particulars of income or furnishing inaccurate particulars of income. Therefore, initiation of penalty is not valid and consequently the impugned order passed by the AO is liable to be quashed. In support of his contention, he has relied upon the decision of Karnataka High Court in case of **CIT vs. Manjunatha Cotton & Ginning**

Factory 359 ITR 565 as well as in case of **CIT vs. SSA's Emerald Meadows** 73 taxmann.com 241 and submitted that the Hon'ble Karnataka High Court has followed the earlier decision in case of CIT vs. Manjunatha Cotton & Ginning Factory (supra). The S.L.P. filed by the Revenue against the decision of the Hon'ble Karnataka High Court in case of CIT vs. SSA's Emerald Meadows has been dismissed by Hon'ble Supreme Court reported in 73 taxmann.com 248. The Id. AR has relied upon the decision of Hon'ble Supreme Court in case of **Shri T. Ashok Pai vs. CIT** 292 ITR 11 and submitted that the Hon'ble Supreme Court has held that concealment of income or furnishing inaccurate particulars of income carry different connotations. Therefore, the AO is required to make specific charges on which the penalty was intended to be imposed. He has also relied upon the decision of Hon'ble Bombay High Court in case of **CIT vs. Samson Perinchery** 392 ITR 4. The Id. AR has then referred to various decisions of the Coordinate Bench of the Tribunal on the point that penalty order passed by the AO based on different charges in the show cause notice is not valid.

3. On the other hand, Id. DR has submitted that the AO in the assessment order has recorded the satisfaction that it is a clear case of concealment of particulars of income and furnishing inaccurate

particulars of income. Therefore, there was no uncertainty of charges at the time of recording the satisfaction in the assessment order. Further, the Assessing Officer while passing the impugned order U/s 271(1)(c) of the Act has again specified the charges as furnishing inaccurate particulars of income. Therefore, merely because show cause notice contains both charges without striking off the irrelevant part will not vitiate the penalty proceedings. He has relied upon the orders of the authorities below.

4. We have considered the rival submissions as well as relevant material on record. In the case in hand, the Assessing Officer has made addition on account of long term capital gain of Rs. 72,20,436/- arising from sale of land by the assessee. It is pertinent to note that the assessee filed return of income electronically on 01.10.2013 and thereafter a revised e-return was filed on 18.11.2013 wherein the assessee apart from claiming the loss has claimed exemption U/s 10 in respect of the income arising from sale of agricultural land. The Assessing Officer conducted an enquiry from the concern Teshildar and found that the land in question does not fall in the exclusion clause of Section 2(14) of Income-tax Act and therefore, it was treated as capital asset by the AO. In response to the notice issued U/s 142(1) the

assessee offered the long term capital gain to tax. Thus, it is manifest from the record that before the case of the assessee was taken up for scrutiny by issuing notice U/s 143(2) on 04.09.2014. The assessee has already declared the transfer of sale of land in question for a consideration of Rs. 85,53,355/- in the revised return of income filed on 18.11.2013. Thus, it is a claim of exemption made by the assessee in respect of the income derived from sale of the agricultural land. The AO held that the land in question is not excluded from the definition of the capital asset as it is within the municipality limits as per report of the Teshildar and consequently the gain arising from the sale transaction was assessed to tax as long term capital gain. The AO has considered the full value consideration at Rs. 83,49,000/- U/s 50C as against the actual sale consideration declared by the assessee at Rs. 83,48,000/-. The increased of Rs. 1,000/- by the AO in the full value consideration does not amount either concealment of particulars of income or furnishing inaccurate particulars of income. So far as the claim of the assessee for exempt U/s 10 of the Income Tax Act the said claim was rejected by the AO based on the report of the Teshildar and held that the land in question falls within the prescribed limits of municipality area. Once, the assessee has disclosed the sale transaction and sale

consideration in the return of income the case of the assessee would not fall in the category of concealment of particulars of income. However, the Assessing Officer at the time of recording the satisfaction in the assessment order has stated in para 9 as under:-

"9. Since the assessee has concealed particulars of his income and furnished inaccurate particular of income for which penalty proceedings u/s 271(1)(c) of the Act is initiated, separately.

With the above discussion the total income of the assessee is computed as under:-

			<i>Rupees</i>
<i>1.</i>	<i>Total income as declared by the assessee in the ITR dated 18/11/2013</i>		<i>Nil</i>
<i>Add:</i>	<i>I) Undisclosed long term capital gains, as discussed above</i>	<i>72,20,436/-</i>	<i>72,20,436/-</i>
		<i>Total</i>	<i>72,20,436/-</i>
		<i>Rounded off</i>	<i>72,20,440/-</i>

Assessed at Rs. 72,20,440/- prepared & issued ITNS-150 forming part of this order. Charges interest as per the rules. Allowed credit for TDS/prepaid taxes after verification. Issued notice of demand u/s 156 and necessary challan.

The assessee has concealed particulars of his income and furnished inaccurate particular of income for which penalty proceedings u/s 271(1)(c) of the Act are initiated, separately."

Therefore, the AO recorded the satisfaction that it is a case of concealment of particulars of income and furnishing inaccurate particulars of income. The satisfaction recorded by the AO in the assessment order will not impact the impugned order so far as it is not giving the correct charge or breach committed by the assessee in view of the provisions of Section 271(1)(B) of the Act. However, the AO in the show cause notice issued U/s 274 r.w.s. 271(1)(c) has stated as under:-

"Whereas in the course of proceedings before me for the Assessment year 2013-14, it appears that you have concealed the particulars of your income or furnished inaccurate particulars of such income."

Therefore, the AO was not certain about the charge whether it is a concealment of particulars of income or furnishing inaccurate particulars of income. Since, only one addition was made by the AO by disallowing the claim of exemption of agricultural land, therefore, the possibility of more than one default is ruled out. The Assessing Officer while passing the penalty order U/s 271(1)(c) of the Act has held that the assessee has furnished inaccurate particulars of income. Therefore, the Assessing Officer has finally given a definite finding that the assessee is guilty of furnishing inaccurate particulars of income. Hence, the case of the

assessee does not fall in the category where the initiation of penalty proceedings is on one charge and levy of penalty on another charge or in the case whether the initiation of penalty is on uncertain charges but levy of penalty is on wrong charges. Therefore, in view of the decision of the Third Member of Amritsar Bench in the case of **HPCL Mittal Energy Ltd. vs. ACIT 97 taxmann.com 3**. once, the AO has initiated the penalty on uncertain charges which is made good with definite finding while passing the penalty order then it is a valid penalty order. the relevant findings of the Third Member of the Tribunal of Amritsar Bench in case of HPCL Mittal Energy Ltd. vs. ACIT (supra) in para 21 to 23 is as under:-

"21. Apart from the above three situations in which the AO has clear-cut satisfaction, there can be another fourth situation as well. It may be when it is definitely a case of under-reporting of income by the assessee for which an addition/disallowance has been made, but the AO is not sure at the stage of initiation of penalty proceedings of the precise charge as to 'concealment of particulars of income' or 'furnishing of inaccurate particulars of income'. In such circumstances, he may use slash between the two expressions at the time of initiation of penalty proceedings. However, during the penalty proceedings, he must get decisive, which should be reflected in the penalty order, as to whether the assessee is guilty of 'concealment of particulars of income' or 'furnishing of inaccurate particulars of such income'. Uncertain charge at the time of initiation of penalty, must necessarily be substituted with a conclusive default at the time of passing the

penalty order. If the penalty is initiated with doubt and also concluded with a doubt as to the concealment of particulars of income or furnishing of inaccurate particulars of such income etc., the penalty order is vitiated. If on the other hand, if the penalty is initiated with an uncertain charge of 'concealment of particulars of income/furnishing of inaccurate particulars of income' etc., but the assessee is ultimately found to be guilty of a specific charge of either 'concealment of particulars of income' or 'furnishing of inaccurate particulars of income', then no fault can be found in the penalty order.

22. *In Manu Engineering Works (supra), the Hon'ble Gujarat High Court noticed that the charge at the stage of initiation of penalty proceedings as well in the penalty order was uncertain and the expression used at both the stages was concealment of particulars of income and/or furnishing of inaccurate particulars of such income. It struck down the penalty by holding that the assessee must have been found to be guilty of a certain charge in the penalty order. It, however, did not find anything amiss with the initiation of penalty on such uncertain charge, which is vivid from the following observations : —*

'We find from the order of the IAC, in the penalty proceedings, that is, the final conclusion as expressed in para. 4 of the order: "I am of the opinion that it will have to be said that the assessee had concealed its income and/or that it had furnished inaccurate particulars of such income". Now, the language of "and/or" may be proper in issuing a notice as to penalty order or framing of charge in a criminal case or a quasi-criminal case, but it was incumbent upon the IAC to come to a positive finding as to whether there was concealment of income by the assessee or whether any inaccurate particulars of such income had been furnished by the assessee.'

23. *It is thus evident that uncertain charge at the stage of initiation of penalty proceedings can be made good with a clear-cut charge in*

the penalty order. In any case, existence of a clear-cut charge in penalty order is a must so as to validate any penalty order.”

Accordingly, the following the above cited decision the ground raised by the assessee is dismissed.

5. **On merits:-** Once, it is a claim of the assessee for exemption U/s 10 of the Act and the AO has also not disputed the primary facts disclosed in the return of income as well as capital asset in question is an agricultural land but only on the investigation conducted by the AO through concerned Teshildar it was found that the land in question does not fall in the exclusion clause of Section 2(14) of the Act. Therefore, it is a highly debatable issue and the claim of the assessee is based on the primary facts of agricultural income would be regarded as bonafide claim. Hence, the claim of exemption though rejected by the AO would not Ipso facto amount to furnishing inaccurate particulars of income. The claim of the assessee was neither found to be bogus nor absolutely impermissible but as per provisions of Section 2(14) and particularly the issue whether the land sold by the assessee will be treated as agricultural land or a capital asset in terms of section 2(14) of the Act was subjected to the outcome of the enquiry conducted by the AO. Therefore, the said claim made under the provisions of the Act is

disallowed by the AO would not attract the penalty provisions of Section 271(1)(c) of the Act. The Hon'ble Supreme Court in case of CIT vs. Reliance Petroproducts Pvt. Ltd. 322 ITR 158 has held that where the information given by the assessee is not found to be incorrect the assessee cannot be held guilty of furnishing inaccurate particulars of income for the purpose of levying the penalty U/s 271(1)(c) of the Act. The Hon'ble Supreme Court has also observed that merely making a wrong claim does not amount to furnishing inaccurate particulars of income in the absence of finding that any detail supplied by the assessee is incorrect or false. Accordingly, in view of the facts and circumstances of the case the penalty levied by the AO U/s 271(1)(c) of the Act is not sustainable and the same is deleted.

In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open court on 05/03/2019.

Sd/-
(रमेश सी० शर्मा)
(Ramesh. C. Sharma)
लेखा सदस्य/Accountant Member

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

जयपुर/Jaipur
दिनांक/Dated:- 05/03/2019.
*Santosh.

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

1. अपीलार्थी / The Appellant- Shri Prakash Raj Bhansali, Jaipur.
2. प्रत्यर्थी / The Respondent- ITO, Ward-2(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. 508/JP/2018}

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar