

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

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

आयकर अपील सं./ITA. No. 822/JP/2018
निर्धारण वर्ष/Assessment Years : 2015-16

Shri Hari Singh Rana M-56, Yogam, Sector-11, 9 th B Main, Jeevan Bima Nagar, Bangalore-560075.	बनाम Vs.	The ACIT, Central Circle-1 Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AAJPR 8806 Q		
अपीलार्थी/ Appellant		प्रत्यर्थी/ Respondent

निर्धारिती की ओर से/ Assessee by : Shri G. M. Mehta (C.A.)
राजस्व की ओर से/ Revenue by : Shri K.C. Meena (JCIT)

सुनवाई की तारीख/ Date of Hearing : 02/01/2019
उद्घोषणा की तारीख/ Date of Pronouncement : 20/03/2019

आदेश / ORDER

PER: VIKRAM SINGH YADAV, A.M.

This is an appeal filed by the assessee against the order of Id. CIT(A)-4, Jaipur dated 23.04.2018 for the Assessment Year 2015-16 wherein the assessee has taken the following grounds of appeal:-

"1. The Ld. CIT(A) has erred in law and in fact in sustaining penalty of Rs. 3,00,000/- under section 271AAB of IT Act without considering the fact that appellant had explained the source and substantiated the manner of Rs. 10,00,000/- seized during the course of search (on 30.10.2014) u/s 132 of IT Act, included the

total amount as his undisclosed income in return of income submitted u/s 139(1) of IT Act in which he claimed the seized amount as payment towards his advance tax liability therefore provisions of Section 271(1)(a) is applicable and not section 271(1A)(a) of IT Act;

(2) Without prejudice to ground No. (1), Id. CIT(A) was not justified in sustaining the penalty of Rs. 3,00,000/- u/s 271AAB of IT Act when the Id. AO did not specify in show cause notice dated 24.12.2016 under which limp of sub-section of section 271AAB of IT Act, the penalty was levied."

2. The Id. AR has contended that during the course of search action which had taken place on 30.10.2014 in case of the assessee, cash of Rs. 10,70,000/- was found out of which Rs. 10 lacs was seized, treating the same as undisclosed income of the assessee. In his return of income filed in response to notice U/s 153A of the Act on 20.09.2015, assessee has included the amount of Rs. 10 lacs so surrendered and claimed it as paid towards his tax liability. While accepting the return of income U/s 143(3) r.w.s 153(B)(1)(b) of the Act, the AO initiated penalty proceedings U/s 271AAB of the Act as per show cause notice dated 24.12.2016 and levied penalty @ 30% on the amount so surrendered ignoring the fact that the assessee had explained the source and substantiated the manner in which it was earned, included the same in his total income as consultancy charges, disclosed the same in his return of income and claimed the seized amount as paid towards his tax liability while filing his return of income before the specified due date, the case of the assessee at the most is covered under clause (a) of Section U/s 271AAB(1) and not under clause (c) of section 271AAB(1) of IT Act.

3. Without prejudice, it was further submitted that the Assessing Officer issued show cause notice dated 24.12.2016 in routine manner without specifying under which clause of Section U/s 271AAB of the Act, the assessee is liable for penalty. It was submitted that there is no application of mind by the Assessing Officer and the assessee was not given an opportunity to explain his case for specific default of levy of penalty in term of clauses (a) to (c) of Section U/s 271AAB(1) of the Act, therefore, the notice issued U/s 271AAB of the Act is a vague notice under law.

4. The Id. DR is heard who has vehemently argued the matter and submitted that it is clear cut case of levy of penalty U/s 271AAB of the Act. The cash was found in imposition of the assessee which clearly falls under the definition of undisclosed income. Further, referring to the finding of the Assessing Officer as well as Id. CIT(A), the Id DR submitted that the case of the assessee clearly falls under clause (c) of Section 271AAB of the Act accordingly, order passed by the authorities below should be sustained.

5. We have heard the rival submissions and perused the material available on record. Undisputedly during search proceedings initiated U/s 132 (1) of the Act, cash amount of Rs. 10,70,000/- was found from the residence and the bank locker of the assessee and it is clearly in the nature of undisclosed income as so defined in the explanation to Section 271AAB of the Act. As regards contention of the Id. AR that the show cause notice lacks application of mind on the part of the Assessing

Officer as it does not state the specific clause of section 271AAB under which the penalty was proposed to be levied by the Assessing Officer, we find that in terms of Section 271AAB of the Act in contrast to the provisions of Section 271(1)(c) of the Act, there is only a single charge which has been specified which is undisclosed income which was found during the course of search in the case of the assessee and once that primary condition/charge is satisfied, then the question of levy of penalty @ 10% under clause (a), 20% under clause (b) and 30% to 90% arises for consideration. Therefore, we do not see any lack of application of mind or any infirmity in the show cause notice so issued by the Assessing Officer under section 271AAB r/w 274 of the Act. Further, while passing the penalty order, the AO has given a specific finding that the penalty is leviable under clause (c) to section 271AAB of the Act, therefore, we do not find any infirmity in the order of the Assessing Officer so far as the legality of the proceedings are concerned.

6. Now coming to the issue as to whether clause (a) of Section 271AAB(1) of the Act is applicable as so contended by the Id. AR or clause (c) of Section 271AAB(1) as invoked by the AO and upheld by the Id. CIT(A). We find that the assessee filed his return of income on 20.09.2015 which was well before the due date of filing of return of income for the impugned assessment year. In the said return of income, the assessee has disclosed Rs. 10 lacs under the head "business income" and has claimed an equal amount as paid as advance tax which was cash seized and subsequently deposited with the Department on 05.11.2014. However while processing the return of

income u/s 143(1), the assessee was denied the credit of Rs. 10 lacs and only on 03.02.2017, the said demand was adjusted from the PD account of the Pr. CIT(Central), Jaipur. As per the Assessing officer, since the adjustment has happened only on 03.02.2017 of the cash lying in the PD Account, the assessee has not paid the tax before the specified due date, the case of the assessee falls under clause (c) of Section 271AAB(1) of the Act. During the course of appellate proceeding before the Id CIT(A), it is noted that the assessee has submitted that cash of Rs. 10 lacs was seized by the search team and thereafter on 05.11.2014, the assessee was asked to come to Income Tax Department, Bangalore and to make a Demand Draft for depositing in the account of Commissioner of Income Tax (Central), Jaipur. The assessee in the company of Inspector of search team along with the seized money went to his own bank on that day, got a Demand Draft prepared of Rs. 10,00,000/- at his own cost and deposited the same in the account of the Department on 5.11.2014 as evidenced by the deposit receipt issued by the bank. Since, the payment was made through a demand draft, prepared by the assessee himself from his own bank account, the assessee was under firm impression that the said amount is paid towards his advance tax liability. Accordingly in the return of income submitted on-line on 20.09.2015, the said amount of Rs. 10 lacs was claimed towards advance tax payment and in support, a letter written to the bank dated 19.09.2014 was also brought to the notice of the Id. CIT(A). It was accordingly submitted that the case of the assessee falls under clause (a) of section 271AAB(1) of the Act. The Id CIT(A) didn't accept the said submission of the assessee and has held that the AO was correct in his decision as the amount of Rs. 10

lacs lying in the PD Account can only be adjusted only with regard to existing liability which has arisen only after processing of return of income on 03.02.2017 and reference was drawn to Section 132B of the Act. It was accordingly held by the Id CIT(A) that the assessee has not paid the tax before the specified due date and the case of the case clearly falls under clause (c) of Section 271AAB(1) of the Act.

7. We have given a careful consideration to the above factual matrix and the rival contentions so advanced by both the parties. Once it is not disputed that an amount of Rs 10 lacs stand deposited in the bank account of the Department on 5.11.2014 and subsequently, the assessee filed his return of income on 20.09.2015 wherein he declares his undisclosed income of Rs 10 lacs and also claims credit for Rs 10 lacs against his tax liability and till the time of filing of return of income, the amount so deposited was not released to the assessee, the amount was in possession of the Department and the intention of the Department was to adjust the said amount against the tax liability towards the surrender so made by the assessee. Even the assessee was under the impression that the amount so deposited is towards his tax liability and the said intention was manifest at the time of filing of return of income. Therefore, merely because such adjustment has actually happened subsequent to processing of return of income u/s 143(1), the assessee cannot be penalized three times the penalty he would have paid otherwise and we, therefore, find that there has been an effective compliance as far as provisions so contained in clause (a) to section 271AAB(1) is concerned. In light of the same, we are of the

considered view that the case of the assessee falls under clause (a) and not under (c) of section 271AAB(1) of the Act.

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

Order pronounced in the open Court on 20/03/2019.

Sd/-

Sd/-

(विजय पाल राव)
(Vijay Pal Rao)

न्यायिक सदस्य / Judicial Member

(विक्रम सिंह यादव)
(Vikram Singh Yadav)

लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 20/03/2019.

*Santosh

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

1. अपीलार्थी / The Appellant- Shri Hari Singh Rana, Bangalore.
2. प्रत्यर्थी / The Respondent- ACIT, Central Circle-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. 822/JP/2018 }

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar