

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

श्री रमेश सी शर्मा, लेखा सदस्य के समक्ष
BEFORE: SHRI RAMESH C SHARMA, ACCOUNTANT MEMBER

आयकर अपील सं./ ITA Nos. 1301 & 1302/JP/2018
निर्धारण वर्ष / Assessment Years : 2011-12 & 2012-13

Shri Saurabh Sharma, C-42-43, Kaladeep Gokul Path, Vaishali Nagar, Jaipur.	बनाम Vs.	D.C.I.T., Central Circle-2, Jaipur
स्थायी लेखा सं./ जीआईआर सं./ PAN/GIR No.: CMJPS 2327 B		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

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

सुनवाई की तारीख / Date of Hearing : 20/03/2019
उदघोषणा की तारीख / Date of Pronouncement : 10/04/2019

आदेश / ORDER

PER: R.C. SHARMA, A.M.

These are the appeals filed by the assessee against the composite order of Id. CIT(A)-IV, Jaipur dated 06/09/2018 for the A.Ys. 2011-12 & 2012-13 in the matter of imposition of penalty U/s 271(1)(c) of the Income Tax Act, 1961 (in short the Act).

2. Rival contentions have been heard the record perused. From the record I found that the assessee was credited with the interest by the bank which was not known to him, therefore, interest income could not

be offered in the return filed U/s 139(1) of the Act. Thereafter, the assessee filed return wherein he offered interest of Rs. 1,08,550/- and Rs. 1,38,580 for the A.Y. 2011-12 and 2012-13. On this interest income, the A.O. has levied penalty U/s 271(1)(c) of the Act.

3. With respect to difference in the interest income, not offer in the return filed U/s 139(1) of the Act, the A.O. had levied the penalty of Rs. 11,200/- for the A.Y. 2011-12 and Rs. 28,600/- for the A.Y. 2012-13. By the impugned order, the Id. CIT(A) confirmed the action of the A.O., against which the assessee is in further appeals before the ITAT.

4. It was argued by the Id AR of the assessee that neither in the assessment order nor in the penalty notice issued by the A.O., it has been specified as to whether the charge against the assessee is for concealment of income or for furnishing inaccurate particulars of income. Hence, in the absence of any specific charge against the assessee, penalty confirmed by the Id. CIT(A) is bad in law.

5. It was further contended that not returning the interest income was bonafide mistake of the assessee, accordingly, the penalty was not to be levied.

6. I have considered the rival contentions and carefully gone through the orders of the authorities below. In this case, penalty has been imposed by invoking explanation 5A to Section 271(1)(c) of the Act. Explanation 5A to section 271(1)(c) applies where any money, bullion, jewellery or other valuable article or thing or any incriminating material not recorded in the books of accounts is found. In the present case, the bank interest which is offered for tax is not on account of any incriminating material found in course of search. Further, section 153A provides that a return filed in response to notice u/s 153A would be considered as if such return is a return required to be furnished u/s 139. Therefore, once the assessee suo moto declared any income in the return filed in response to notice u/s 153A without reference to any incriminating material or any money, bullion, jewellery or valuable article or thing found in search, the same cannot be subject matter of penalty under Explanation 5A(ii) of section 271(1)(c). Reliance in this connection is placed on the decision of the Hon'ble Delhi High Court in the case of PCIT Vs Neeraj Jindal (2017) 393 ITR 1 (Del)(HC). I also observe that it was a bonafide mistake of the assessee not to disclose the interest income in so far as it was credited in the passbook but was not known to the assessee. When this mistake was came to his notice,

bank interest income was duly incorporated in the return so filed. Accordingly, it is not a fit case for levy of penalty and therefore, the A.O. is directed to delete the same. I order accordingly.

7. In the result, both the appeals of the assessee are allowed.

Order pronounced in the open court on 10th April, 2019

Sd/-
(रमेश सी शर्मा)
(RAMESH C SHARMA)
लेखा सदस्य / Accountant Member

जयपुर / Jaipur
दिनांक / Dated:- 10th April, 2019

*Ranjan

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

1. अपीलार्थी / The Appellant- Shri Saurabh Sharma, Jaipur.
2. प्रत्यर्थी / The Respondent- The D.C.I.T., Central Circle-2, Jaipur.
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त(अपील) / The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No. 1301 & 1302/JP/2018)

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar