

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

श्री रमेश सी 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. 34/JP/2019
निर्धारण वर्ष / Assessment Year :2009-10

M/s Shri Duli Chand Mali, Gullar Dam, Shikarpura Road, Sanganer, Jaipur.	बनाम Vs.	I.T.O., Ward 7(2), Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AHWPM 8416 D		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by: Shri Krishna Sharma (CA)
राजस्व की ओर से / Revenue by : Shri A.K. Mahla (JCIT)

सुनवाई की तारीख / Date of Hearing : 08/04/2019
उदघोषणा की तारीख / Date of Pronouncement : 09/04/2019

आदेश / ORDER

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

This is an appeal filed by the assessee against the order of Id.CIT(A)-3, Jaipur dated 05/10/2018 for the A.Y. 2009-10 in the matter of imposition of penalty U/s 271(1)(c) of the Income Tax Act, 1961 (in short the Act). In this case, penalty was imposed by the A.O. with regard to denial of claim of deduction U/s 54B and 54F of the Act and unexplained cash of Rs. 19,00,000/- deposited in the bank account.

2. Rival contentions have been heard and record perused. The brief facts of the case are that assessment was completed U/s 143(3) of the

Act in this case on 30/11/2011 assessing the income of the assessee at Rs. 58,59,220/- which included addition made on account of long-term capital gains of Rs. 37,98,969/-, unexplained cash deposits in bank of Rs. 19,00,000/- and interest income of Rs. 14,941/-. Deductions claimed U/s 54B and 54F were denied. The assessee preferred an appeal before the Id. CIT(A), who confirmed the order of the A.O.

3. In the quantum appeal filed by the assessee before the Tribunal, the Tribunal vide its order dated 12/02/2016, allowed the relief with respect to deduction claimed U/s 54F of the Act. However, the issue with regard to cash deposit of 19.00 lacs was restored back to the file of the A.O.. Thereafter the A.O. passed order U/s 143(3)/254 of the Act dated 20/12/2016 and admitted the bank deposit of Rs. 19.00 lacs.

4. We have considered the rival contentions and carefully gone through the orders of the authorities below as well as order passed by the Tribunal in the quantum appeal dated 12/02/2016. From the record we found that the assessee's claim for deduction U/s 54B was declined on the plea that the sale proceeds of agricultural land was invested by the assessee for acquiring agricultural land but in his wife's name and not in his own name. The fact that sale proceeds of land was again invested in agriculture land was not disputed by the A.O. The assessee being an illiterate person was under bonafide belief that reinvestment in agricultural land will make him

eligible for deduction U/s 54B, therefore, invested in the name of his wife. However, the issue with regard to allowing claim of deduction U/s 54B of the Act, even if the investment is not in the name of assessee but in the name of wife/son of the assessee has been decided in favour of the assessee by some of the Hon'ble High Courts. Thus, the issue is a debatable one. Under these facts and circumstances, the penalty U/s 271(1)(c) of the Act cannot be imposed merely because the investment was not in the name of assessee but in the name of wife. Accordingly, we do not find any merit in the penalty imposed with regard to denial of claim filed by the assessee which is debatable one. So far as the penalty with respect to alleged deposit of bank account is concerned, we found that the A.O. himself in the set aside proceedings has deleted the addition. Addition made by declining claim of deduction U/s 54F has already allowed by the Tribunal in assessee's favour. Accordingly, the penalty order has no legs to stand with respect to this addition also.

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

Order pronounced in the open court on 09th April, 2019.

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

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

जयपुर / Jaipur
दिनांक / Dated:- 09th April, 2019

***Ranjan**

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

1. अपीलार्थी / The Appellant- M/s Shri Duli Chand Mali, Jaipur.
2. प्रत्यर्थी / The Respondent- The I.T.O., Ward 7(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. 34/JP/2019)

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar