

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. 964/JP/2018  
निर्धारण वर्ष / Assessment Year : 2003-04

Shri Hira Chand Jain Prop. M/s Gaurav Jain Steel Center, 113, Tripolia Bazar, Jaipur.	बनाम Vs.	The ITO, Ward-1(3), Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: ABXPJ 6901 B		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by: Shri S.R. Sharma (C.A.) &  
Shri Rajani Kant Bhatra (C.A.)  
राजस्व की ओर से / Revenue by : Shri Raj Mehra (ACIT)

सुनवाई की तारीख / Date of Hearing : 23/04/2019  
उदघोषणा की तारीख / Date of Pronouncement: 30/04/2019

आदेश / ORDER

PER: VIJAY PAL RAO, J.M.

This appeal by the assessee is directed against the order dated 11.06.2018 of the Id. CIT(A), Jaipur arising from the penalty order passed U/s 271(1)(c) of the IT Act for the assessment year 2003-04.

The assessee has raised the following ground as under:-

*"1. That the Ld. CIT(A) is wrong and has erred in law in confirming penalty of Rs. 114525/- imposed by the Assessing*

*Officer U/s 271(1)(c) of the Income-tax Act, 1961 is wrong and bad in law it did not specify in which limb of sec. 271(1)(c) of the Income Tax Act, 1961 the penalty proceedings has been initiated, i.e. whether for concealment of income or furnishing of inaccurate particulars of income.*

*2. That without prejudice to the ground No. (1) above on the facts and in the circumstances of the case the Id. CIT(A) is wrong, unjust and has erred in law in confirming penalty of Rs. 114525/- imposed by the Assessing Officer U/s 271(1)(c) of the I.T. Act, 1961."*

2. The assessee is an individual and carrying on business of purchase and sale of utensils in the name and style of M/s Gaurav's Jain Steel Centre. The assessee did not file any return of income U/s 139 of the Act for the year under consideration. A Survey U/s 133A of the I.T. Act was carried out on 13.02.2008 at the shop of the assessee. In the course of survey certain incriminating material was found and impounded disclosing purchase/ sale as well as other vouchers for the financial year 2002-03 onwards. The stock of utensils at the shop on the date of survey was also inventoried and valued by the survey team at Rs. 12,78,794/-. The statement of the assessee was recorded U/s 133A of the Act wherein the assessee surrendered the income for the assessment years 2003-04 to 2007-08. The assessee filed his return of

income for the assessment year under consideration disclosing the total income of Rs. 1,14,913/- which included surrendered income on account of purchase of stock of Rs. 92,300/-. The AO noted that during the survey the assessee has surrendered a total income of Rs. 3,00,000/- for the assessment year 2003-04 and therefore the assessee has declared short income in the return of income. Accordingly, the AO has made the addition of Rs. 3,00,000/- to the total income of the assessee. The assessee accepted the assessment and did not challenge the addition made by the AO. The AO initiated the penalty proceedings U/s 271(1)(c) of the Act and levy the penalty of Rs. 1,14,524/-.

3. Before us, the Id. AR of the assessee has submitted that during the course of survey the alleged document impounded by the Department do not disclose any income of the assessee except on account of stock as on the date of survey. Therefore, the assessee has already declared the additional income of Rs. 92,300/- on account of purchase for the year under consideration while filing the return of income in response to notice U/s 148 of the Act. The AO has made the addition of Rs. 3,00,000/- without having any incriminating material but based on the statement recorded U/s 131A of the Act. The Id. AR of the assessee has submitted that even the AO has not considered the

income disclosed by the assessee in the return of income while making the said addition but the addition was made over and above the income disclosed by the assessee in the return of income. Though the assessee has not challenged the addition made by the AO but the same would not automatically attracts the penalty/s 271(1)(c) of the Act when the said addition is not based on any incriminating material. In support of his contentions, he has relied upon the various decisions including the decision of Hon'ble Supreme Court in case of CIT vs. S. Khader Khan Son 352 ITR 480 whereby the Hon'ble Supreme Court has upheld the decision of Hon'ble Madras High Court reported 300 ITR 157. The Id. AR has thus submitted that the statement recorded U/s 133A has no evidentiary value and therefore, the addition made by the AO on the basis of the surrendered income made U/s 133A of the Act cannot be a basis for penalty U/s 271(i)(c) of the Act. The Id. AR has also relied upon the decision Hon'ble Calcutta High Court in case of Durga Kamal Rice Mills vs. CIT 265 ITR 25 and submitted that when the addition itself is debatable issue then it cannot be said that the assessee has concealed any income or furnished inaccurate particulars of income. The Id. AR has also challenged the validity of initiation of penalty proceedings on the ground that the show cause notice issued by the AO

does not specify the limb whether it is for concealment of particulars of income or furnishing of inaccurate particulars of income. Therefore, in the absence of default of the assessee specified in the show cause notice the initiation of proceeding is bad in law. In support of his contention he has relied upon a series of decisions including the decision of Hon'ble Karnataka High Court in case of CIT vs. Manjunatha Cotton & Ginning Factory 359 ITR 565 as well as the decision of Hon'ble Supreme Court in case of CIT vs. SSA's Emerald Meadows 73 taxmann.com 241. Thus, the Id. AR of the assessee has submitted that the penalty levied by the AO is not sustainable in law and liable to be deleted.

4. On other hand, Id. DR has submitted that the assessee did not file any return of income for the year under consideration prior to the survey conducted on 13.02.2008. Even for the other subsequent assessment years the assessee did not file any return of income. On the basis of the incriminating material found during the survey as well as the stock at the shop of the assessee inventoried by the survey party the assessee disclosed and surrendered income for various assessment years from 2003-04 to 2008-09. The assessee surrendered the income of Rs. 3,00,000/- for the assessment year under consideration. Since,

the assessee has not disclosed income in the return of income, therefore, the AO has made the addition of the said amount. He has relied upon the orders of the authorities below.

5. We have considered the rival submissions as well as the relevant material on record. There is no dispute that during the course of survey proceeding the stock of utensils at the shop of the assessee was inventoried and value at Rs. 12,78,794/-. The other documents found and impounded were also in respect of purchase made by the assessee for the assessment years 2003-04 to 2008-09. As per the impounded documents and stock valuation the unaccounted stock for the assessment year 2003-04 was Rs. 92,300/-. The assessee in the return of income filed in response to notice U/s 148 of the Act has declared the total income of Rs. 1,14,913 comprising of business income of Rs. 22,613/- and the income surrendered on account of unaccounted stock of Rs. 92,300/-. The AO noted that the assessee has not declared the income of Rs. 3,00,000/- as it was surrendered during the course of survey in the statement recorded 133A of the Act. We find that the surrendered made by the assessee of Rs. 3,00,000/- in the statement recorded U/s 133A of the Act is on account of the stock found at the shop which was valued at Rs. 12,78,794/-. The stock was considered as

purchased during the assessment years 2003-04 to 2008-09. Therefore, it is clear that the surrendered was made by the assessee to cover the unaccounted stock as well as business income for these assessment years including the assessment year under consideration. However, as per inventorization of the stock the unaccounted stock for the year under consideration is only Rs. 92,300/- which was duly disclosed by the assessee in the return of income. The Assessing Officer has made the addition of Rs. 3,00,000/- solely on the basis of the statement recorded U/s 133A of the Act. We find that the said addition is not based on any incriminating material found or impounded during the survey but it was only surrendered made by the assessee U/s 133A of the Act. Even otherwise once the assessee has declared the income of Rs. 1,14,913/- then the surrendered made by the assessee included the business income as well as unaccounted stock for the year under consideration. In any case the addition could not be made to exceed surrendered made by the assessee. The addition made by the AO over and above of the return of income is not in terms of the surrendered made by the assessee in the statement recorded U/s 133A of the Act because the assessee surrendered amount of Rs. 3,00,000/- as income for the year under consideration. Since, there was no return of income

filed by the assessee, therefore, the said surrendered made by the assessee in any case includes the business income as well as unaccounted stock of Rs. 92,300/-. Once, the assessee has disclosed the income on account of unaccounted stock as well as business income for the year under consideration then the addition of Rs. 3,00,000/- made by the AO based on the statement of the assessee recorded U/s 133A of the Act would be regarded as without any valid evidence disclosing undisclosed income of the assessee. Therefore, the said addition though accepted by the assessee would not ipso facto lead to the conclusion that the assessee has concealed particulars of income or furnishing inaccurate particulars of income. The Assessing Officer has not substantiated the addition by making reference to any incriminating material or other information to indicate such undisclosed income. Therefore, in the facts and circumstances of the case where the addition made by the AO is purely on the basis of the statement recorded U/s 133A of the Act the same would not attract the penalty U/s 271(1)(c) of the Act. Hence, the penalty levied by the AO is deleted. Since we have deleted the penalty levied by the AO on merits, therefore, we do not propose to not into the legal ground raised by the assessee regarding validity of initiation of penalty.

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

Order pronounced in the open court on 30/04/2019

Sd/-  
( रमेश सी0 शर्मा )  
(Ramesh. C. Sharma)  
लेखा सदस्य / Accountant Member

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

जयपुर / Jaipur

दिनांक / Dated:- 30/04/2019.

\*Santosh.

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

1. अपीलार्थी / The Appellant- Shri Hira Chand Jain, Jaipur.
2. प्रत्यर्थी / The Respondent- ITO, Ward-1(3), 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. 964/JP/2018}

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar