

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. 177/JP/2019  
निर्धारण वर्ष / Assessment Year : 2010-11

Shri Vinod Singh, P.No. 13-14, Om Colony, Delhi By Pass, Jai Singh Pura, Khore, Jaipur- 302002.	बनाम Vs.	The ITO, Ward-5(1), Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: ANWPS 6841 C		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by: Shri Yogesh Kumar Sharma (FCS.)  
राजस्व की ओर से / Revenue by : Shri A.K. Mahla (JCIT)

सुनवाई की तारीख / Date of Hearing : 12/04/2019  
उदघोषणा की तारीख / Date of Pronouncement: 20/06/2019

आदेश / ORDER

PER: VIJAY PAL RAO, J.M.

This appeal by the assessee is directed against the order dated 16.11.2018 of the Id. CIT(A), Jaipur arising from penalty order passed U/s 271(1)(c) of the IT Act for the assessment year 2010-11. The assessee has raised the following grounds:-

1. That on the facts and in the circumstances of the case, the Ld. Commissioner Of Income Tax (Appeals) has erred in sustaining the levy of penalty U/S 271(1)(C) . She has not only failed to consider and appreciate the explanation given by the appellant in respect of the bonafide explanation and accurate particulars of Income on each and every time of opportunity of hearing with proper documents and evidence in respect of the section 271(1)(c) read with Explanation-I but has solely limited his order to the findings of appeal whereas the true and correct return/ ITR and all the written submission at the time of hearing submitted and produced all the relevant evidence and declaration of true and correct Income as per the requirement of Income tax Act and its rules.
2. That on the facts and in the circumstances of the case, the Ld. Commissioner Of Income Tax (Appeals) has erred in sustaining the levy of penalty U/S 271(1)(C) . Ld. CIT has not only failed to consider and appreciate the explanation given by the appellant in respect of the addition of Rs 26,91,240/- but has solely limited his order to the findings of appeal orders emanating from the quantum assessment.
3. That the appellant pleaded vehemently of no reasonable opportunity having been provided by the Ld. CIT(Appeals) at the time of confirming of penalty whereas the appellant has produced all the proof as evidence of addition of Rs 26,91,240/- before the Ld. Assessing officer.

4. That the L'd Assessing Officer has failed to appreciate that due to mental peace of appellant, moral ethics, in the public interest and duty to the nation, poor conditions to fight the case on next stage appellant had accepted this addition and appellant had already paid the original income tax on 19/09/2017 of Rs. 7,40,040, moreover the appellant had withdrawal of fund from his children's and family savings such as ICICI PRUDENTAIL LIFE INSURANCE on 24/08/2015 of Rs. 1,21,071 and SBI MUTUAL FUND on 27/08/2017 of Rs. 1,00,000 which was invested to survive of his and his depended members to pay only tax. In this regard, She further failed to appreciate the law laid down in:

*Honorable Supreme Court in case of Sir Shadilal Sugar Mills (168 ITR 705)*

*The Honorable Karnataka High Court in CIT vs. Manjunatha Cotton & Ginning Factory [2013- ITRV-HC-KAR-093]*

*CIT V. Girish Devchand Rajani [2013] 33 taxmann.com 174 (Gujarat)*

- *CIT v. M.M. Gujamgadi (2007) 162 Taxmann 211 (KAR.)*
- *CIT vs. Punjab Tyres (1986) 162 ITR 517 (MP)*
- *CIT vs. Jaswant Rai (1997) 142 CTR (P&H) 49*
- *CIT vs. Mecon Builders & Engineers (2001) 248 ITR 159 (Del)*

which were cited before her.

5. That the L'd Commissioner Of Income Tax (Appeals) has failed to appreciate that the grounds for initiation of penalty U/S 271(1)(C) were never given to the appellant and a blind reliance was placed on the assessment only for levying penalty as in the impugned proceedings.
6. That the L'd Commissioner Of Income Tax (Appeals) has failed to appreciate that as per the dependency of 18 family members upon me, financial crunch, regular death of 4 working brothers, irregular jobs for me, using of family protection fund to deposit Income tax etc., the payment of such Income tax demand regarding penalty would cause genuine hardship to the appellant AND

There is no default in the payment of the Income tax amount on which interest was payable under the said sub-section was due to circumstances beyond the control of the appellant AND

The appellant has already co-operated in each inquiry relating to the assessment or any proceeding for the recovery of any amount due from him.

7. That the order of the L'd Commissioner Of Income Tax (Appeals) is arbitrary, against the facts and circumstances of the case, illegal and be therefore quashed outright."

***8. That the Appellant prays that the penalty of Rs. 6,50,000 made in respect of Section 271(1)(c) be deleted.***

*9. That the appellant prays to leave to add, alter, and amend the aforesaid grounds of appeal at or before the time of hearing of appeal."*

2. The assessee is an individual and filed his return of income on 16.08.2010 declaring total income of Rs. 1,45,250/-. The scrutiny assessment was completed U/s 143(3) of the Act on 19.03.2013. During the assessment proceeding the AO noted that the assessee has deposited cash of Rs. 25,85,000/- in the saving bank account of Standard Chartered Bank, M.I. Road, Jaipur. The AO made an addition of peak balance of Rs. 15,79,000/- as unexplained investment in the bank account and interest on bank deposits of Rs. 28,418/- was also added to the income of the assessee. Further, the AO has also made addition on account of capital gain of Rs. 4,38,579/- and unexplained investment in shares and Mutual Funds of Rs. 5,00,000/-. In the quantum appeal, the Id. CIT(A) has confirmed the addition made by the AO except on account of investment in shares and Mutual Funds which was restricted to Rs. 3,30,000/- as against Rs. 5,00,000/- made by the AO. Subsequently, the AO initiated the penalty proceedings U/s 271(1)(c) of the Act and levied the penalty of Rs. 6,50,000/- in respect of the additions sustained by the Id. CIT(A). The assessee challenged the action of the AO imposing the penalty U/s 271(1)(c) of the Act before the Id. CIT(A) but could not succeed.

3. Before us, the Id. AR of the assessee has submitted that the addition on account of cash deposit in the bank account is based on estimation as the AO has taken the peak balance of bank account therefore, on such addition no penalty U/s 271(1)(c) of the Act can be levied. The Id. AR has relied upon the various decisions and submitted that the assessee has explained the source of cash deposit in the bank as well as investment in shares and Mutual Funds. Further, even though the said explanation was not found to be satisfactory but the same is reasonable bonafide explanation and consequentially no penalty U/s 271(1)(c) of the Act is leviable. He has reiterated its contention raised before the authorities below.

4. On the other hand, the Id. DR has submitted that this is not a case of estimation of income of the assessee but the specific amount was found deposited in the bank and the assessee failed to explain the source of the same. The assessee has shown very meager income in the return of income at Rs. 1,45,245/- therefore, the benefit of withdrawal of money from the bank account by the AO would not be treated as estimation of income. He has relied upon the order of the authorities below.

5. We have considered the rival submissions as well as the relevant material on record. The assessee has not disputed the fact that the total

sum of Rs. 25,85,000/- was found deposited in cash in the bank of the assessee. The AO after allowing the benefit of opening balance and withdrawal has made the addition of Rs. 15,79,000/- being peak balance/credit in the bank account. Therefore, giving the credit of withdrawals from the bank account to arrive the correct deposit made by the assessee without having any source would not amount estimation of income because the unexplained deposit in the bank account has been taken at the peak credit instead of the total deposit. The other additions are interest in the bank deposit is otherwise is not in dispute as the assessee has not included the said amount in the return of income. Except part relief was granted by the Id. CIT(A) regarding the mistake in the amount of investment in Mutual Funds taken by the AO all the additions were sustained by the Id. CIT(A) as well as this Tribunal. The Id. CIT(A) has considered this issue in para 2.3 is as under:-

*"2.3 I have perused the facts of the case, the penalty order and the submissions of the appellant. It is seen that the penalty of Rs. 6,50,000/- was imposed in respect of the following-*

*(1) peak deposit in bank accounts*

*(2) interest on bank deposit*

(3) Profit on share trading

In quantum proceedings these additions were confirmed by the CIT(A)/ITAT. In appellate proceedings, also the appellant has not brought any evidence to prove that the addition made by the Assessing Officer and confirmed in appeal does not tantamount to concealment of income.

The arguments of assessee regarding source of peak deposit have already been discussed by the CIT(A)-2 in quantum proceedings. Appellant has not brought any new evidence in penalty proceeding to prove his claim. Interest on bank deposit was not shown in return of income and profit on share trading was not declared as he claimed bogus expenses as held by CIT(A) in quantum proceedings as under:-

**“Ground No. 1 is under-**

*"That the Ld. Assessing Officer has erred on facts and in law in making the addition of Rs. 15,79,000/- on account of income from undisclosed source under section 68 of Income Tax Act, 1961 by ignoring that Rs.3,50,000/- amount is out of the gift received from family member and rest amount deposited by cash from own saving sources in last years."*

**Conclusion :-** *I have perused the facts of the case, the assessment order and the submissions of the appellant. The assessee has deposited cash of Rs.25,85,000/- in his savings bank account in Standard Chartered Bank, Ml Road, Jaipur. This cash has been deposited on various dates which has been summarized by the Assessing Officer on page 4 of the assessment order. The appellant has withdrawn cash of Rs. 10,12,000/- during the year. The Assessing Officer has added the peak balance of Rs. 13,79,000/- as unexplained investment in the bank account. It has been stated by the assessee, during assessment as well as appeal proceedings that the source of this cash is (a) opening cash balance of Rs. 11,67,593/- and (b) gifts of Rs. 3,50,000/- received in cash from four relatives.*

*As regards, the contention of the appellant that the source of the cash deposits is the opening cash balance of Rs. 11,67,593/-, it is to be ointed out, as under-*

(a) *This opening cash balance is said to have been accumulated from F.Y. 1997-98 to F.Y. 2008-09. It has been stated that the source of this cash balance is job work income from F.Y. 1997-98 to F.Y. 2007-08 and tuition income and gifts in F.Y. 2008-09. This cash balance has been said to have been kept in cash, all these years.*



(b) *The assessee does not maintain any books of accounts or records pertaining to the job work income or tuition income earned by him.*

(c) *The capital account submitted by the assessee shows extremely meager withdrawals for household purposes, as given below-*

<i>Financial Year</i>	<i>Amount of annual withdrawals</i>
1997-98	Rs. 2,300/-
1998-99	Rs. 2,250/-
1999-2000	Rs. 2,350/-
2000-01	Rs. 2,710/-
2001-02	Rs. 4,200/-
2002-03	Rs. 4,000/-
2003-04	Rs. 4,950/-
2004-05	Rs. 4,100/-
2005-06	Rs. 5,000/-
2006-07	Rs. 4,500/-
2007-08	Rs. 5,200/-
2008-09	Rs. 70,000/-

(d) *No return of income has been filed for any of the above years. In other words, this is the first return of income filed by the assessee.*

(e) *The opening cash balance has not been deposited in the bank in one day but has been deposited in smaller lots over several days, spread over the year.*

(f) *No details, whatsoever, have been furnished with respect to gift of Rs. 4,69,115/- received by the appellant in previous year 2008-09.*

*From the above facts discussed above, it is held that the explanation furnished by the assessee regarding the source of the cash deposit to be out of the opening cash balance is neither credible nor substantiated. Hence, the explanation furnished by the appellant is held to be, not satisfactory.*

*As regards the contention of the appellant that the source of the cash deposits is gifts of Rs. 3,50,000/-, received from relatives, it is to be pointed out, as under-*

(a) *Smt. Sunita Tanwar and Smt. Neetu Tanwar who have given cash gifts of Rs. 90,000/- and Rs. 50,000/- respectively, do not file any return of income and do not have any bank account. Their source of income is from sillai work. They do not have any evidence of income from this work. The above facts are not in dispute. It has been stated by the appellant that their income is below the taxable limit. It has been stated by Smt. Sunita Tanwar, before the Assessing Officer that her monthly income is Rs. 500/-per month. In view of the above facts, it is held that these two persons do not have the creditworthiness to gift amounts of Rs. 90,000/- and Rs. 50,000/- to the appellant.*

(b) *Shri Veer Singh has denied giving a gift of Rs. 1,20,000/- to the assessee. However, he stated that he has given a loan to the assessee which has not been returned back. The affidavit submitted by him mentions a gift but it was stated to*



have been signed under the influence of his brother. He does not file any return of income. The amount of Rs. 1,20,000/- given to the appellant is not reflected in his bank account. In view of the above facts, it is held that this person does not have the creditworthiness to gift Rs. 1,20,000/- to the appellant.

(c) Shri Shyam Singh is said to have given a cash gift of Rs. 90,000/-. The amount of Rs 90 000/- aiven to the annellant is not reflected in his bank account. In view of the above facts, it is held that this person does not have the creditworthiness to give a gift of Rs. 90,000/- to the appellant.

2.5.2 In view of the above facts discussed above, it is held that the explanation furnished by the assessee regarding the source of the cash deposits to be out of the cash gifts of Rs.3,50,000/-, is not satisfactory.

2.6 Therefore, the addition made by the Assessing Officer on account of unexplained peak investment of Rs. 15,79,000/- in the bank account, is upheld u/s 69 of the IT. Act. This ground is dismissed.

**Ground No. 2 is as under-**

"That the Ld. Assessing Officer has erred on facts and in law in making the addition of Rs.28,418/- on account of income from bank interest by ignoring that Rs.28,418/- amount is included in tuition income. That the bank interest already included in income declared in income tax return."

**Conclusion :-**

I have perused the facts of the case, the assessment order and the submissions of the appellant. The explanation of the appellant that bank interest of Rs. 28,418/- has been included in the tuition income is not acceptable since it is not supported by any account or any evidence. Therefore, the addition made by the Assessing Officer on account of undisclosed interest income from bank, is upheld. This ground is dismissed.

**Ground No. 3 is as under-**

"That the Ld. Assessing Officer has erred on facts and in law in making the addition of Rs.4,38,579/- on account of capital gain by ignoring that Rs.4,75,000/- amount expenditure against the income."

**Conclusion:-**

4.2 I have perused the facts of the case, the assessment order and the submissions of the appellant. The appellant has stated that against Capital Gains of Rs. 4,38,579/-, it has incurred expenditure of Rs. 2,25,000/- on account of rent and other expenses and an amount of Rs. 2,50,000/- on account of consultancy fees. No evidence with respect to the above expenditure has been submitted. Also, expenditure in the nature of rent and consultancy fees is not allowable as a deduction under the head-Capital Gains. Therefore, the contention of the appellant is not in accordance with the provisions of law and cannot be accepted. This ground is dismissed.

**Ground No. 4 is as under-**

"That the Ld. Assessing Officer has erred on facts and in law in making the addition of Rs.5,00,000/- on account of investment on assumptions and presumption by ignoring that Rs.72,000/- (investment in mutual fund) amount sources."

**Conclusion :-** *have perused the facts of the case, the assessment order and the submissions of the appellant. The Assessing Officer has made an addition of Rs. 5,00,000/- on account of unexplained investment in shares and mutual funds. Out of this, an amount of Rs. 3,30,000/- pertains to investment in shares and the balance amount has been estimated by the Assessing Officer to be investment in mutual funds. The appellant has stated that investment in mutual funds amounts to only Rs. 72,000/- which has been made by ECS from the above referred bank account in Standard Chartered Bank. Since the cash deposits in this bank account have already been taxed, investments made out of these cash deposits of Rs. 72,000/- in mutual funds cannot again be taxed. Also, the appellant has stated that the total investment in mutual funds is Rs. 72,000/- and not Rs. 1,70,000/-. This contention of the appellant is acceptable. Therefore, addition made by the Assessing Officer to the tune of Rs. 1,70,000/- on account of investment in mutual funds, is directed to be deleted. As regards, the peak investment in shares of Rs. 3,30,000/-, the appellant has not furnished any explanation regarding the source of investment. Therefore, the addition made by the Assessing Officer on account of unexplained investment in shares of Rs. 3,30,000/- is upheld. This ground is partly allowed."*

Considering all these facts, I find that Assessing Officer correctly imposed penalty under section 271(1)(c). Ground of appeal is dismissed.

In view of the above facts and circumstances of the case, when the addition was made on account of unexplained deposits, unexplained investment, income from interest on deposit and income from share trading not disclosed in the return of income clearly attracts the provisions of Section 271(1)(c) of the Act. Accordingly, we do not find any reasons to interfere with the impugned order of the Id. CIT(A).

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

Order pronounced in the open court on 20/06/2019.

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:- 20/06/2019.

\*Santosh.

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

1. अपीलार्थी / The Appellant- Shri Vinod Singh, Jaipur.
2. प्रत्यर्थी / The Respondent- ITO, Ward 5(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. 177/JP/2019}

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar