

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. 166/JP/2015  
निर्धारण वर्ष / Assessment Year :2009-10

M/s Utsav Cold Storage Pvt. Ltd., D-155, durga Marg, Bani Park, Jaipur.	बनाम Vs.	I.T.O., Ward 3(2), Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AAACU 9306 N		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by: Shri Hemang Gargieya &  
Shri F. Rehman (Adv.)  
राजस्व की ओर से / Revenue by : Shri Raj Mehra (Addl.CIT)

सुनवाई की तारीख / Date of Hearing : 03/07/2019  
उदघोषणा की तारीख / Date of Pronouncement : 04/07/2019

आदेश / ORDER

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

This is an appeal filed by the assessee against the order of Id.CIT(A)-I, Jaipur dated 05/01/2015 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).

2. At the outset, the Id AR of the assessee placed on record the quantum order passed by the Tribunal dated 11/04/2019 wherein

addition for which penalty has been levied was deleted by the Tribunal and the same has been reported at 199 TTJ (JP) 409.

3. On the other hand, the Id DR has fairly agreed that the addition with respect to which penalty was levied, has been deleted by the Tribunal vide its order dated 11/4/2019.

4. We have considered the rival contentions and carefully gone through the orders of the authorities below as well as order of the Tribunal dated 11/04/2019 and found from the record that the penalty has been levied with respect to the addition of Rs. 1,73,29,681/- on account of addition of long term capital gain. We found that the Tribunal vide its order dated 11/04/2019 in ITA No. 428/JP/2013 deleted the entire addition and restored the income as declared by the assessee in its return of income. As the addition itself has been deleted, the penalty has no legs to stand. The precise observation of the Tribunal was as under:

*“6. We have considered the rival submissions as well as the relevant material on record.*

X X X X

*Thus it is a cardinal principle of tax law as propounded by the Courts that law to be applied which is in force in the relevant assessment year unless and otherwise provided expressly or by necessary*

*implication a clarificatory amendment by insertion of an explanation can be read into the main provision but if a change is brought in the existing law by insertion of a new provision then the same cannot be applied in the case when no such law was in force at the relevant point of time and, therefore, a new tax liability cannot be created by a subsequent amendment in respect of a transaction as well as the return of income filed when such law was not in the Statute book. Hence in the facts and circumstances of the case, we hold that the amended provisions of section 49(1)(iii)(e) cannot be applied in the case of the assessee simply because at the time of filing of the return of income the said provision was not in force. Accordingly, the addition sustained by the Id. CIT (A) by applying the amended provisions of section 49(1)(iii)(e) is not sustainable and liable to be deleted. We order accordingly.”*

5. In view of the above facts and circumstances, we do not find any merit in the penalty so imposed U/s 271(1)(c) of the Act, therefore, we direct the A.O. to delete the same.

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

Order pronounced in the open court on 04<sup>th</sup> July, 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:- 04<sup>th</sup> July, 2019  
\*Ranjan

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

1. अपीलार्थी / The Appellant- M/s Utsav Cold Storage Pvt. Ltd., Jaipur.
2. प्रत्यर्थी / The Respondent- The I.T.O., Ward 3(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. 166/JP/2015)

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar