

IN THE INCOME-TAX APPELLATE TRIBUNAL “F” BENCH MUMBAI  
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER AND  
SHRI G. MANJUNATHA, ACCOUNTANT MEMBER  
ITA No. 1250/Mum/2019 (Assessment Year 2014-15)

M/s Jasraj Kalianji & Co., 58, Mint Road, Opp. GPO. Fort, Mumbai-400001. <b>PAN: AAAFJ6632K</b>	Vs.	ACIT-17(2) Room No. 123A/134, 1 <sup>st</sup> Floor, Aayakar Bhavan, M.K. Road, Mumbai-400020
Appellant		Respondent

Appellant by : Shri Mukesh Advani (AR)  
Respondent by : Shri Rajeev Gubgotra (DR)  
Date of Hearing : 09.07.2019  
Date of Pronouncement : 17.07.2019

**ORDER UNDER SECTION 254(1) OF INCOME TAX ACT**

**PER PAWAN SINGH, JUDICIAL MEMBER;**

1. This appeal by assessee is directed against the order of Id. Commissioner of Income Tax (Appeals)-28 [the Id. CIT(A)], Mumbai dated 22.01.2019, which in turn arise from the penalty levied under section 271(1)(c) dated 12.06.2017 for Assessment Year 2014-15. The assessee has raised the following grounds of appeal:

The Honourable Commissioner of Income Tax (Appeals)-28 Mumbai, has erred in confirming the penalty levied by the Assessing officer u/s 271 (1)(c) amounting to Rs. 10,41,148/- under the pretext that during the course of survey action which was conducted on the Assessee on 17th October 2013, unaccounted cash amounting to Rs. 30,63,100/- was found which was not recorded in the books of accounts of the Assessee.

Inspite of the fact that the same amount of Rs. 30,63,100/- was offered for tax by the Assessee at the time of filing the Return of Income u/s 139(1) of

Income Tax Act, 1961 for the above mentioned Assessment Year & there is no difference in the Returned Income filed by the Assessee & the Income Assessed by the Assessing Officer u/s 143(3) of the Income Tax Act, 1961, still the learned Commissioner of Income Tax (Appeals)-28 has erred in confirming the penalty of Rs. 10,41,148/- u/s 271(1)(c) of Income Tax Act, 1961.

In light of the above said facts, the Penalty confirmed by the Commissioner of Income Tax (Appeals)-28 amounting to Rs. 10,41,148/- ought to be deleted.

2. Brief facts of the case are that the assessee-firm is engaged in the business of custom house agent providing clearance and forwarding services to its clients. A survey action under section 133A was conducted at the premises of assessee on 17.10.2013. During the course of survey, a cash of Rs. 30,63,100/- was found from the premises of assessee, which was not reflected in the books of account. The assessee surrendered the said amount for taxation during the survey action.
3. The assessee filed its return of income on 30.09.2014 declaring total income of Rs. 2,09,90,708/-. The return of income was selected for scrutiny. No addition/variation in the return of income was made by Assessing Officer while passing the assessment order under section 143(3) on 27.12.2016. However, the Assessing Officer initiated the penalty under section 271(1)(c) for furnishing inaccurate particulars of income and concealment of income. Notice under section 274 r.w.s.

271 dated 28.12.2016 was served upon the assessee. The Assessing Officer has not recorded, if any reply was filed by the assessee. The Assessing Officer recorded that in principle, the assessee has accepted the assessment order and has nothing to say on levy of penalty under section 271(1)(c). The Assessing Officer levied the penalty @ 100% of the tax sought to be evaded. The Assessing Officer worked out the penalty of Rs. 10,41,148/- in its order dated 12.06.2017. On appeal before the Id. CIT(A), the action of Assessing Officer was confirmed. Further, aggrieved by the order of Id CIT(A), the assessee has filed the present appeal before us.

4. We have heard the submission of Id. Authorized Representative (AR) of the assessee and Id. Departmental Representative (DR) for the revenue and have gone through the orders of authorities below. The Id. AR of the assessee submits that during the survey, the assessee voluntarily offered/surrendered Rs. 30,63,100/- and paid the due tax. The assessee while filing return of income included the suo moto income offered/surrendered by assessee. The assessment was completed under section 143(3). No addition in the return of income was made by Assessing Officer. No particulars of income was concealed by assessee nor furnished any inaccurate particulars in the return of income. The Id. AR of the assessee submits that no penalty

was leviable as neither the assessee concealed any particulars of income nor any particulars were found to be inaccurate as the Assessing Officer made no variation in the return of income. In support of his submission, the ld. AR of the assessee relied upon the decision of Hon'ble Delhi High Court in CIT vs. SAS Pharmaceuticals (335 ITR 259), Hon'ble Supreme Court in CIT vs. Reliance Petro Products Pvt. Ltd. (322 ITR 158(SC)), decision of Hyderabad Tribunal in G.S. Arora in ITA No. 1789/Hyd/2013, Pune Tribunal in Anand Suresh Jain in ITA No. 353/PUN/2015 and Nandkishor Tulsidas Katore in ITA No. 2174 to 2180/PN/2014.

5. On the other hand, the ld. DR for the revenue supported the order of lower authorities. The ld. DR further submits that had the survey not conducted at the premises of the assessee, the income of assessee to the tune of Rs. 30,63,100/- would have escaped from the assessment.
6. We have considered the rival submission of the parties and have gone through the orders of authorities below. There is no dispute that a survey was conducted at the premises of assessee on 30.09.2014 i.e. during the relevant period for the Assessment Year under consideration. It is further not in dispute that the assessee during the survey offered the additional income/surrendered Rs. 30,63,100/-. It is further not in dispute that the assessee while filing return of income

included the income surrendered during the survey and paid due tax thereon. The Assessing Officer accepted the return of income without any variation. However, the Assessing Officer initiated the penalty for furnishing inaccurate particulars and concealment of income.

7. The Hon'ble Delhi High court in SAS Pharmaceuticals (*supra*) held that the question is whether the particulars of income were concealed by the assessee or not, would depending upon whether the concealment at reference to the return of income filed by the assessee. The word "in the course of any proceedings under this Act" were pre-faced by the satisfaction of AO or CIT(A). When the survey was conducted, the question of satisfaction of AO or CIT(A) did not arose. It is the AO, who initiated the penalty proceeding and directed the payment of penalty. The AO has not recorded any satisfaction during the course of survey. The decision to initiate the penalty proceeding was taken when making the assessment. Thus, the expression "*in the course of any proceeding under this Act*" could not have the reference to survey proceeding in this case. The concealment of particulars of income or furnish inaccurate particulars of income by the assessee had to be in the return filed by it. No penalty can be imposed unless the condition stipulated in the provisions duly unambiguously unsatisfied. The Hon'ble court further held that unless it is found that there was actual

concealment or non-disclosure of the particulars of income, penalty could not be imposed. When there was no such concealment or non-disclosure as the assessee has made complete disclosure in the return offered/ the surrendered amount for the purpose of tax, no penalty is leviable.

8. The Hyderabad Tribunal in G.S. Arora (supra) while referring the decision of Hon'ble Delhi High Court in CIT vs. SAS Pharmaceuticals (supra) held that as per provisions of the Act in order to attract penalty under section 271(1)(c) either there should be concealment of income or furnishing inaccurate particulars of income, the Assessing Officer accepted the return income in the scrutiny assessment. The question for furnishing inaccurate particulars does not arise on such facts. Moreover return income and assessed income being the same, the computation of penalty also fails. It was further held that Explanation I with reference to the expressing concealed income has deemed the amount concealed income indicates that amount added or disallowed in commutating the total income of such person for the purpose of Clause-(c) of this subsection be deemed to represent the income in respect of which particulars have been concealed. It was further held that there is no presumption that amount unearthed during the course of survey will automatically be considered as concealed income. No

provision/Explanation similar to Explanation-5 was provided in the section to cover survey cases. The income detected/offered in survey cannot be deemed to be concealed income.

9. The Pune Tribunal in Anand Suresh Jain (supra) on similar grounds of appeal and the similar facts has held that additional income offered by assessee in survey action at the business premises, the same does not pertain the nature of additional income referred to in Explanation-5 to section 271(1)(c). The assessee offered the additional income in the return of income, which has been accepted by Assessing Officer per say with minor variation, than in such circumstances, no penalty under section 271(1)(c) is leviable.

10. Considering the above factual and legal discussion, we are of the view that the Assessing Officer was not justified in levying the penalty under section 271(1)(c) of the Act. Hence, ground of appeal raised by assessee is allowed.

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

Order pronounced in the open court on 17/07/2019.

**Sd/-**  
**G. MANJUNATHA**  
**ACCOUNTANT MEMBER**

Mumbai, Date: 17.07.2019

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**Copy of the Order forwarded to :**

**1. Assessee**

**2. Respondent**

**Sd/-**  
**PAWAN SINGH**  
**JUDICIAL MEMBER**

3. The concerned CIT(A)
4. The concerned CIT
5. DR "F" Bench, ITAT, Mumbai
6. Guard File

**BY ORDER,**

**Dy./Asst. Registrar  
ITAT, Mumbai**