

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL,
JAIPUR BENCHES (SMC), JAIPUR
श्री रमेश सी शर्मा, लेखा सदस्य के समक्ष
BEFORE: SHRI RAMESH C SHARMA, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No. 99/JP/2018
निर्धारण वर्ष / Assessment Year: 2006-07

Shri Ram Sharan Gupta, Prop.- M/s Continental Exports, 1 st Floor, Shree Ram Jharokha, Opp. SBBJ, S.M.S. Highway, Jaipur.	बनाम Vs.	I.T.O., Ward 1(2), Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: ACPPG 6881 Q		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by: Shri S.R. Sharma (CA)
राजस्व की ओर से / Revenue by : Shri Rajendra Jha (Addl.CIT)

सुनवाई की तारीख / Date of Hearing : 08/08/2019
उदघोषणा की तारीख / Date of Pronouncement : 19/08/2019

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 03/11/2017 for the A.Y. 2006-07 in the matter of imposition of penalty U/s 271(1)(c) of the Income Tax Act, 1961 (in short, the Act).

2. Rival contentions have been heard and record perused. Facts in brief are that the assessee is an individual deriving income from salary, house property and income from other sources besides he is shareholder

and director in some private companies (closely held companies). The assessee for this year filed original return of income on 31-10-2006 declaring total income of Rs. 9,49,272/-. The A.O. completed assessment u/s 143(3) at Rs. 28,58,680/-. The assessee filed appeal against the assessment order and Ld. CIT (A) allowed relief to the extent of Rs. 26,320/-. I found that the assessee is holding 76.92% shares in Japanwala Jewellers P. Ltd. and holding 44% shares in Suram Holding P. Ltd. and also is director in both companies. M/s Japanwala Jewellers P. Ltd., (JJPL) during the year made payment of Rs. 23,00,000/- to M/s Suram Holding P. Ltd. (SHPL) as share application money which was shown by JJPL in audited accounts under the head advances recoverable as share application money and SHPL shown the same in audited accounts as share application money. Accordingly, the A.O. made addition U/s 2(22)(e) of the Act amounting to Rs. 17.69 lacs. In the quantum appeal, the Id. CIT(A) restricted the addition to the extent of Rs. 10,12,000/-. The A.O. levied penalty with respect to addition upheld by the Id. CIT(A) U/s 271(1)(c) of the Act amounting to Rs. 3,40,640/-. By the impugned order, the Id. CIT(A) has confirmed the action of the A.O. both on the legality of issue of notice U/s 274 r.w.s. 271(1)(c) of the Act as well as on merits, against which the assessee is in further appeal before the ITAT.

3. Before the ITAT, the assessee has taken following additional ground:

“That the A.O.is wrong and bad in law inasmuch as the notice issued by the A.O. U/s 274 r.w.s. 271(1)(c) of the IT Act, 1961 to be bad in law as it did not specify which limb of Section 271(1)(c) of the Act, the penalty proceedings had been initiated i.e. whether for concealment of particulars of income or furnishing of inaccurate particulars of income.”

4. I found that the above ground is purely a legal ground which was left to be included in memo of appeal inadvertently and no new facts are required to be brought on record. Following the judicial pronouncements of Hon'ble Supreme Court in the case of NTPC Ltd. Vs CIT 229 ITR 38 and Jute Corporation of India Ltd. Vs CIT 187 ITR 688 (SC), I accept the additional ground which is purely legal in nature and goes to the root of the issue and for which all the facts are available on record.

5. It was argued by the Id AR of the assessee that in the notice issued U/s 274 r.w.s. 271 (1)(c) dated 08/12/2010 given following reason for initiation penalty:

“Conceal the particulars of income or furnished inaccurate particulars of income.”

He further invited our attention to the notice dated 01/03/2016 issued U/s 274 r.w.s. 271 of the Act, which reads as under:

“Penalty proceedings under above mentioned section of the Income tax Act, were initiated during the course of assessment proceedings in your case for the above-mentioned assessment year and the statutory notice has already been issued to you and duly served upon you. Now there proceedings are to finalized and for that purpose you are again given an opportunity to explain your case and show cause to why penalty under above mentioned section of the Income Tax Act, may not be levied upon you.

Thus, in the penalty notice(s) issued the AO is not certain on which ground the penalty is to be levied.”

6. As per the Id AR any notice issued under section 274, read with Section 271 (1) (c) of the Act should specify under which limb of Section 271 (1)(c) of the Act, the penalty proceedings had been initiated i.e. WHETHER FOR CONCEALMENT OF PARTICULARS OF INCOME OR FURNISHING OF INACCURATE PARTICULARS OF INCOME. In the absence of which no penalty should be levied on the assessee as determination of such limb is sine qua non for imposition of penalty under Section 271 (1) (c) of the Act.

7. Our attention was also invited by the Id AR to the penalty order passed U/s 271(1)(c) dated 16/3/2019 wherein penalty has been finally levied for furnishing inaccurate particulars of income by relying on the various judicial pronouncements. The Id AR contended that no penalty should be imposed in so far as there was variation in the allegation made

in the notice issued U/s 274 vis a vis penalty order passed U/s 271(1)(c) of the Act.

8. As per the Id AR, it is apparent from assessment order and/or penalty notice(s) that the A.O. neither in assessment order nor in penalty notice issued by him has clearly mentioned the limb, on which basis the impugned penalty has been imposed. As verifiable from the record that the AO has simply issued a pre-printed notice without striking off the unnecessary portions of the notice. If the A.O. was of the view that the assessee has concealed the income or furnishing inaccurate particulars of income then he should have deleted or not mentioned the other limb for imposition of penalty i.e. concealing the particulars of income. The above act of the A.O. clearly shows that the entire exercise of initiation of penalty proceedings has been done without application of mind.

9. On merits, it was also contended that no penalty should be levied in respect of addition made on the deemed income and not on the actual income. More so when part of the deemed addition has been deleted by the Id. CIT(A), for which the department is not in further appeal. He further contended that the transaction was between two companies and assessee had nothing to do with it yet due to legal

implication and deeming provision addition got sustained in his hand. The assessee and said companies disclosed all material facts in the return filed. There was neither any concealment of income nor furnishing of any inaccurate particulars thereof. The addition was made under the deeming provisions of section 2(22)(e) which assessee was not well aware even with his sufficient cogency. It is submitted that assessee has made all the necessary disclosure and so rigours of penalty u/s 271 (1) (c) cannot be invoked in case of assessee only because of deeming provisions. It is settled law that any addition made to the income of assessee under deeming provisions of Act no penalty. u/s 271 (1) (c) is exigible as has been held by courts for similar deeming provision u/s 50C of the Act. Reliance was placed on the decision of the ITAT Delhi Bench in the case of I.T.O. Vs. Shri Prakash Narain Singh (ITA No. 2691/Delhi/2013), I.T.O. Vs. Quisotic Health Care (ITA No. 163/Chd/2015) and Rajesh L. Durgani Vs. ACIT, Circle 18(3) Mumbai in support of above contention.

10. Reliance was also placed on the decision of the Hon'ble Apex Court decision in the case of CIT Vs. Reliance Petro Products Ltd. in Civil Appeal No. 2463 of 2010. In this case vide order dated 17.3.2010 it has been held that the law laid down in the Dilip Shroff case 291 ITR 519

(SC) as to the meaning of word 'concealment' and 'inaccurate' continues to be a good law because what was overruled in the Dharmender Textile case was only that part in Dilip Shroff case where it was held that mensrea was an essential requirement of penalty u/s 271(1) (c). The Hon'ble Apex Court also observed that if the contention of the revenue is accepted then in case of every return where the claim is not accepted by the AO for any reason, the assessee will invite the penalty u/s 271 (1) (c). This is clearly not the intendment of legislature. The court further held that making a claim which is not sustainable in law, by itself, will not amount furnishing of inaccurate particulars regarding income of assessee.

11. In view of the above, it was vehemently argued that on the ground of defect in notice as well as on merits penalty so levied was not justified.

12. On the other hand, the Id DR has relied on the orders of the lower authorities and contended that the mere fact that the penalty notice does not mention the reason for initiation of penalty proceedings cannot be a reason for invalidating the penalty proceedings, if the reasons for initiating the penalty are discernible from the assessment order. As per the Id DR, in the instant case under consideration, in the assessment

order, the A.O. has initiated penalty proceedings U/s 271(1)(c) of the Act for furnishing of inaccurate particulars of income. It is further noted from the impugned penalty order under consideration that the penalty was also imposed for furnishing of inaccurate particulars of income. With regards to merit, he argued that it is an undisputed fact that the assessee was a director in Japanwala Jewellers P Ltd. (JPPL) and Suram Holdings P Ltd. (SHPL) and was holding more than 20% of the share capital of both of these companies. Thus, being a director in both the companies i.e. the payer and the payee company, it cannot be said that it was not aware of the transactions for which penalty was levied. Further, the assessee was having the expert advice of the professionals. Therefore, it cannot be held that it was bonafidely not aware of the provisions of Section 2(22)(e) of the Act. Accordingly, penalty was correctly levied by the A.O. and confirmed by the Id. CIT(A).

13. I have heard the rival contentions and carefully gone through the orders of the authorities below and found from the record that the charge levied by the A.O. while issuing notice U/s 274 r.w.s. 271(1)(c) of the Act was vague in so far as notice so issued did not clearly mention the limb on which amount penalty has been initiated i.e. whether for concealment of particulars of income or for furnishing

inaccurate particulars of income, thus, I found that the A.O. has just issued pre-printed notice without striking off the unnecessary portions of the notice. If the A.O. was of the view that the assessee has concealed the income or furnishing inaccurate particulars of income then he should have deleted or not mentioned the other limb for imposition of penalty i.e. concealing the particulars of income. The above act of the A.O. clearly shows that the entire exercise of initiation of penalty proceedings has been done without application of mind. It is the requirement of law that notice under section 274 of the Act should specifically state the grounds mentioned in section 271(1)(c), i.e., whether it is for concealment of income or for furnishing of incorrect particulars of income; only sending printed form where all the grounds mentioned in Section 271 are mentioned would not satisfy the requirement of law. The assessee should know the grounds which he has to meet specifically. Otherwise, the principles of natural justice are violated. On the basis of such proceeding, no penalty could be imposed on the assessee. Therefore, the initiation and imposing of penalty proceedings is wrong, bad in law, invalid and void ab initio in view of judicial pronouncements referred by the Id AR of the assessee. For the reasons that now there is a settled law position on the issue that the notice u/s

271 should be specific on imposing of penalty uis 271 (1) (c) of Income Tax Act, 1961 i.e. concealed particulars of income or furnishing inaccurate particulars of income. Reliance is placed on the decision of Hon'ble Karnataka High Court in the case of CIT Vs. M/s SSA's Emerald Meadows 2015 (11) TMI 1620 wherein at para 3, the Hon'ble High Court has observed as under:

Para "3. If the Tribunal has allowed the appeal filed by the assessee holding the notice issued by the Assessing Officer under section 274 read with Section 271 (1) (c) of the Income Tax Act, 1961 (for short 'the Act') to be bad in law as it did not specify which limb of Section 271 (1) (c) of the Act, the penalty proceedings had been initiated i.e. whether for concealment of particulars of income or furnishing of inaccurate particulars of income. The Tribunal, while allowing the appeal of the assessee has relied on the decision of the Division Bench of this Court rendered in the case of COMMISSIONER OF INCOME TAX – VS – MANJUNATHA COTTON AND GINNING FACTORY (2013) 359 ITR 565.

In our view, since the matter is covered by judgement of the Division Bench of this Court, we are of the opinion, no substantial question of law arised in this appeal for determination by this Court. The appeal is accordingly dismissed."

14. Moreover, the SLP filed by the I.T. department before the Hon'ble Supreme Court has been dismissed. Therefore, Hon'ble Supreme Court has approved the findings made by Hon'ble Karnataka High Court in the case of CIT Vs. SSA's Emerald Meadows (supra) and CIT Vs Manjunatha Cotton & Ginnign Factory & others [2013] 359 ITR 565.

15. The penalty proceedings have been initiated for concealment of particulars of income or for furnishing inaccurate particulars of income. Thereafter the penalty levied by holding that the assessee has furnished inaccurate particulars of income and concealed the income. As there is a variation in the reasons given for initiation of penalty in the show cause notice issued U/s 274 vis a vis reason given in the penalty order passed U/s 271(1)(c) of the Act, penalty so imposed is not sustainable. For the reasons that now there is a settled legal position on the issue that the notice u/s 274 should be specific on imposing of penalty u/s 271(1) (c) of the Act i.e. concealed particulars of income or furnishing inaccurate particulars of income.

16. The same view has been upheld by the Hon'ble Rajasthan High Court in the case of Shevetha Construction Co. Pvt. Ltd. (supra), ITAT Jaipur Bench in the case of Narayana Heights & Towers Vs ITO in ITA No. 1033/JP/2016 and Lal Chand Mittal Vs DCIT in ITA No. 772/JP/2016 order dated 29/12/2011.

17. The ITAT, Amritsar Bench (THIRD MEMBER) in the case of HPCL Mittal Energy Ltd. Vs Add. CIT, Circle-1, Bhatinda (supra) has held that *"when Assessing Officer is satisfied at stage of initiation of penalty proceedings of a clear-cut charge against assessee of concealment of*

particulars of income, but imposes penalty by holding assessee as guilty of other charge (furnishing of inaccurate particulars of income) or an uncertain charge (concealment of particulars of income/furnishing of inaccurate particulars of income), penalty cannot be sustained"

18. 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, I direct the A.O. to delete the same.

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

Order pronounced in the open court on 19th August, 2019

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

जयपुर / Jaipur

दिनांक / Dated:- 19th August, 2019

*Ranjan

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

1. अपीलार्थी / The Appellant- Shri Ram Sharan Gupta, Jaipur.
2. प्रत्यर्थी / The Respondent- The ITO, Ward 1(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. 99/JP/2018)

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar