

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCH 'A' JAIPUR

श्री संदीप गोसाई, न्यायिक सदस्य एवं श्री विक्रम सिंह यादव, लेखा सदस्य के समक्ष
BEFORE: SHRI SANDEEP GOSAIN, JM & SHRI VIKRAM SINGH YADAV, AM

आयकर अपील सं./ITA No. 56/JP/2019
निर्धारण वर्ष /Assessment Year :2016-17

Vaibhav Gattani, 2126, Gattani Bhawan, Gangori Bazar, Jaipur	बनाम Vs.	DCIT, Central Circle-3, Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AXEPG7208H		
अपीलार्थी /Appellant		प्रत्यर्थी /Respondent

निर्धारिती की ओर से / Assessee by : None
राजस्व की ओर से / Revenue by : Sh. Varindar Mehta (CIT)

सुनवाई की तारीख / Date of Hearing : 01/10/2019
उदघोषणा की तारीख / Date of Pronouncement: 03/10/2019

आदेश / ORDER

PER: VIKRAM SINGH YADAV, A.M.

This is an appeal filed by the assessee against the order of Id. CIT(A)-4, Jaipur dated 01.11.2018 wherein the assessee has taken the following grounds of appeal:-

- "1. That the learned CIT(Appeals) has erred in holding that the Assessing Officer was justified in charging interest u/s 234C on the disclosure made for the entire financial year and confirming the action of the Assessing Officer in charging interest u/s 234C in respect of first and second installments also.*
- 2. That charging of interest u/s 234C for the first and second installments of the advance tax is illegal and unjustified as the income was disclosed by the assessee in search proceedings conducted on*

7.1.2016 and hence, interest was payable only for the period after 7.1.2016. The Action of charging interest is unjustified.”

2. None appeared on behalf of the assessee, though the notice has been sent by the Registry informing the assessee of the scheduled date of hearing which is fixed for today. It was accordingly decided to dispose off the matter after hearing the Id DR and material available on record.

3. Briefly stated, the facts of the case are that a search was conducted on 07.01.2016 in the case of K. K. Gattani Group, Jaipur to which the assessee belongs. In his statement recorded u/s 132(4) of the Act during the course of search, the assessee has offered additional income of Rs. 8,05,000/- on account of undisclosed cash seized during the course of search and an amount of Rs. 14,15,00,000/- on account of undisclosed commission income. The assessee filed his return of income on 16.10.2016 declaring total income of Rs. 15,11,35,560/- which includes additional income of Rs. 14,23,05,000/-. The assessment was completed at a total income of Rs. 15,11,52,060/-, interest u/s 234A, 234B & 234C were directed to be charged separately and notice of demand u/s 156 was raised on the assessee.

4. Before the Id. CIT(A), the assessee took the ground that the Assessing Officer has charged interest u/s 234C for the entire year as against for the period starting date of search i.e. 7th January, 2016 to 31st March, 2016. Before the Id. CIT(A), the assessee submitted as under:-

"In this connection, it is submitted that the search had taken place in this case in January, 2016 and the surrender of the income has been made by the assessee on 8.1.2016. When the surrender itself has been made after the due date of installment of advance tax on

15th September and 15th December 2015 there was no question of any payment of advance tax. The assessee could never foresee that he would be surrendering any income in January 2016 and hence, there is no question of payment of any advance tax in respect t of the installments due before January 2016.

It is submitted that the legal dictum "lex non cogit ad impossibilia" means "law cannot compel you to do the impossible". In this case also the assessee could visualize that the he would be surrendering any income in January 2016 and hence, there is no fault on the part of the assessee in payment of advance tax and interest u/s 234C was not payable in respect of shortfall in payment of first and second installments.

Reliance in this regard is placed on the decision of Hon'ble Gujarat High Court in the case of CIT vs. National Dairy Development Board 397 ITR 543 where it was held that if any liability for payment of advance tax arises on account of subsequent amendment brought into statute with retrospective effect, no interest can be charged where there was no shortfall prior to prevailing statutory provision.

Thus, it is very clear that the AO in this case was not justified in charging interest u/s 234C for the entire financial year and interest could have been charged only for the period from 7.1.2016 onwards i.e. the date of search upto 31.3.2016."

5. The Id. CIT(A) however confirmed the action of the AO and the relevant findings of the Id CIT(A), which has been relied upon by the Id DR, reads as under:-

"8. *Basic controversy is like this. The appellant was subjected to search u/s*

132(1) of the act on 7.1.2016. On this date the appellant made certain disclosure which was honored while filing the return of income u/s 153A. The AO has charged interest u/s 234C for the entire FYr. 2015-16. On the other hand the appellant contends that interest u/s 234C should be charged from the date of search when disclosure was made and not for the entire FYr.

8.2 I am in agreement with the AO while charging interest on disclosure made for the entire FYr. as the additional income is reasonably presumed to have been earned over entire FYr. If appellant wish to claim that interest should be charged from the date of search then it is to, prove that entire additional income was earned on the date of search. No evidence is filed or is forth coming for this contention. On the facts and in the circumstances of the case, thus I am of the view that AO is correct in charging interest for the entire FYr. Ground No. 2 is dismissed."

6. We have heard the rival contentions and pursued the material available on record. In the instant case, the limited issue is regarding levy of interest u/s 234C in respect of additional income surrendered by the assessee for the period prior to date of search which was conducted on 07.01.2016. The provisions of section 234C which are relevant for adjudication of present dispute reads as under:-

"234C. (1)[Where in any financial year,—

(a) an assessee, other than ²⁰[the assessee referred to in clause (b)], who is liable to pay advance tax under [section 208](#) has failed to pay such tax or—

(i.) the advance tax paid by such assessee on its current income on o

before the 15th day of June is less than fifteen per cent of the tax due on the returned income or the amount of such advance tax paid on or before the 15th day of September is less than forty-five per cent of the tax due on the returned income or the amount of such advance tax paid on or before the 15th day of December is less than seventy-five per cent of the tax due on the returned income, then, the assessee shall⁷¹ be liable to pay simple interest at the rate of one per cent per month for a period of three months or the amount of the shortfall from fifteen per cent or forty-five per cent or seventy-five per cent, as the case may be, of the tax due on the returned income;

(ii, the advance tax paid by the assessee on the current income on or before the 15th day of March is less than the tax due on the returned income, then, the assessee shall be liable to pay simple interest at the rate of one per cent on the amount of the shortfall from the tax due on the returned income:”

7. In light of above provisions, as far as the payment of advance tax installments due on or before 15th June, 2015, 15th September and 15th December, 2015 are concerned, there was no occasion for assessee to compute and pay advance tax on the undisclosed income found during the course of search on 07.01.2016 as the due date for payment of these three installments fall prior to the action taken by the Revenue by way of search proceedings pursuant to which the assessee surrendered the undisclosed income. However, the advance tax installment due on or before 15th March, 2015 is very much applicable in the instant case and therefore, the matter is remanded back to the file of the Assessing Officer for the limited purposes for computing the interest liability as per clause (ii) of 234C(1)(a) of the Act.

In the result, appeal of the assessee is disposed off in light of aforesaid directions.

Order pronounced in the Open Court on 03/10/2019.

Sd/-
(संदीप गोसाई)
(Sandeep Gosain)
न्यायिक सदस्य / Judicial Member

Sd/-
(विक्रम सिंह यादव)
(Vikram Singh Yadav)
लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 03/10/2019

*Ganesh Kr.

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

1. अपीलार्थी / The Appellant- Vaibhav Gattani, Gangori Bazar, Jaipur
2. प्रत्यर्थी / The Respondent- DCIT, Central Circle-03, 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. 56/JP/2019}

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar

