

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL,
JAIPUR BENCHES,"B" 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. 1354/JP/2018
निर्धारण वर्ष/Assessment Year : 2012-13

M/s. Goyal Salt Pvt. Ltd. K-23, Malivya Marg, C-Scheme Jaipur	बनाम Vs.	The ITO Ward- 6(2) Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AAECG 0234D		
अपीलार्थी /Appellant		प्रत्यर्थी /Respondent

निर्धारिती की ओर से / Assessee by : Shri S.L. Poddar , Advocate
राजस्व की ओर से / Revenue by : Smt. Runi Paul, (JCIT)

सुनवाई की तारीख / Date of Hearing : 26/09/2019
उदघोषणा की तारीख / Date of Pronouncement: 30 /09/2019

आदेश / ORDER

PER: SANDEEP GOSAIN, J.M.

The present appeal has been filed by the assessee against the order of CIT(A)-2, Jaipur dated 31.10.2018 for the assessment year 2012-13 wherein the assessee has raised following grounds.

^1. Under the facts and circumstances of the case, the Id. CIT(A) has erred in confirming the order of the AO passed u/s 271(1)(c) of the I.T. Act, 1961 without striking off the irrelevant portion of the printed show cause notice

dated 25-03-2015 viz" furnished inaccurate particulars of income" or "concealed particulars of such income" is bad in law" which deserves to be quashed.

2. That the order passed by the AO u/s 271(1)© of the I.T. Act, 1961 is void abinito deserves to be quashed as no satisfaction was recorded with reference to concealment of income or furnishing inaccurate particulars of income.

3. In the facts and circumstances of the case the Id. CIT(A) has erred in confirming the penalty of Rs. 2,40,000/-u/s 271(1)(c) of the I.T. Act, 1961."

2.1 Brief facts of the case are that the assessee filed the return of income for the year under consideration declaring loss of Rs. (-)17,41,988/- on 22-09-2012. The return was processed u/s 143(1) of the Act and subsequently after completion of scrutiny proceedings the assessment u/s 143(3) of the Act was completed on the total income of Rs. 1,19,08,010/-.

2.2 Aggrieved by the order of the AO, the assessee preferred appeal before the Id. CIT(A) who after considering the case of both the parties dismissed the appeal of the assessee by confirming the addition made by the AO.

2.3 Now aggrieved by the order of the Id. CIT(A), the assessee has preferred an appeal before the Tribunal. The Tribunal has decided the issue as under:-

- (i) Addition made by the AO and upheld by the Id. CIT(A) of Rs. 79,50,00/- was deleted.
- (ii) Addition made by the AO and upheld by the Id. CIT(A) of Rs. 49,00, 000/- was set aside.
- (iii) Addition made by the AO and upheld by the Id. CIT(A) of Rs. 8,00,000/- was sustained.

Considering the order of the ITAT Jaipur Bench in ITA No.270/JP/2016 dated 20-09-2017 in assessee own case for the Assessment Year 2012-13, the Id. CIT(A) deleted part penalty levied by the AO but sustained penalty levied on the addition of Rs. 8.00 lacs sustained by the ITAT.

2.4 Against this order of sustaining of penalty on the addition of Rs. 8.00 lacs, the assessee has preferred an appeal before us on the ground mentioned hereinabove.

3.1 The Ground No. 1 and 2 raised by the assessee are interrelated and interconnected and relates to challenging the order of the Id. CIT(A) in confirming the order passed by the AO u/s 271(1)(c) of the Act without striking off the irrelevant portion of the printed show cause

notice dated 25-03-2015. We therefore, thought it fit to dispose off these grounds by a common order.

3.2 During the course of hearing, the Id.AR of the assessee submitted that penalty levied by the AO is unlawful, illegal and unjustified. The Id.AR of the assessee has filed the following written submission.

"The levy of penalty is unlawful, illegal and unjustified. The same is assailed on the following grounds: -

1. **Show cause notice issued on 25.03.2015 & 11.08.2015 are routine:** -

The show cause notice issued along with the assessment order was in routine manner and the Learned Assessing Officer has not strike off that under which limb the assessee has committed offence. In the assessment order also the Learned Assessing Officer in last two has mentioned "***Penalty proceeding u/s 271(1)(c) for concealing the particular of income and furnishing inaccurate particulars of income have been initiated separately***".

Therefore it is clear that the very initiation of penalty proceedings are invalid and not sustainable in law. The copy of notice dated 25.03.2015 & 11.08.2015 are scanned as under: -

Office of : ITO, Ward- 6(2), Jaipur

Notice Under Section 174 Read with Section 271(1)© of the Income Tax Act, 1961

File No. 115

dated 15-03-2015

PAN No. AAECH0234D

To

M/s. Gohal Salt Pvt. Limited

K-23, Sapphire Haritage, Malaviya Nagar

C-Scheme, Jaipur (Raj.) 302 001

Sir/Madam

Whereas in the course of proceedings before me for the Assessment Year 2012-13, it appears that you have concealed the particulars of your income or furnished inaccurate particulars of such income.

You are hereby requested to appear before me on 20-04-2015 at 11.00AM and show cause why an order imposing a penalty on you should not be made under section 271(1)© of the Income Tax Act, 1961. If no one attends this office on the said date of hearing, the case shall be decided on the basis of material available on records.

Yours faithfully

SEAL

Sd/-

Office of ITO Ward—6(2),JPR

Place and Time of Attending

20-04-2015 at 11:00

INCOME TAX DEPARTMENT

Office of the
Income Tax Officer, Ward- 6(2),Jaipur

Date: 11-08-2015

To,

PAN: AAECG0234D

Goyal Salt Pvt. Ltd

K-23, Sapphire Heritage, Malviya Nagar

C-Scheme,Jaipur

Sir/Madam

Sub: Penalty proceedings u/s 271(1)© read with section 274 of the Income Tax Act, 1961 for the A.Y. 2012-13 – reg

Penalty proceedings under above mentioned section of the Income Tax Act were initiated during the course of assessment proceeding 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 these proceedings are to be finalized and for the purpose you are again given an opportunity to explain your case and to show cause as to why penalty under above mentioned section of the Income-tax Act may not be levied upon you. You may explain and show cause in writing either personally or through your authorized Representative duly authorized in this behalf on 21-08-2015 at 4.20 PM in my office at Room No. 324, NCRB, Statue Circle, C-Scheme, Jaipur

Please note that no further opportunity will be provided and matter will be decided as per the material available on the records.

Yours faithfully,

Sd/-

(Navindra Saini)

Income Tax Officer, Ward – 6(2), Jaipur

3.3 On the order hand, the Id. DR relied on the orders passed by the Revenue authorities.

3.4 We have heard the rival contentions and perused the materials available on record. On the perusal of the notice dated 25-03-2015 issued by the Revenue authorities u/s 274 read with section 271(1)© of the Act, we noted that Revenue authorities has not struck off inappropriate portion

contained in the notice and has mentioned both limbs contained in Section 271(1)(c) of the Act which shows that notice has been issued in a very routine manner and without application of mind as it nowhere specifies concealed/inaccurate particulars of income on which assessee was required to show cause. Even the said show cause notes issued by the AO does not indicate any ground for levy of penalty for which the assessee could put its defence. In this respect, we rely on the decision of Hon'ble Karnataka High Court in the case of CIT vs Manjunath Cotton and Ginning Factory 359 ITR 565 wherein *it was held that notice u/s 274 of the I.T. Act, 1961 should specifically state whether penalty is being proposed to the imposed or conceal of income or for furnishing of inaccurate particulars of income. In the case of the assessee, the AO has not done so. In view of this the very initiation of penalty proceedings is vitiated. Accordingly, the levy of penalty was not justified.* On the similar ground, ITAT Bangalore Bench in the case of H Lakshminarayna vs ITO (2015) 41 ITR 465, *deleted the penalty on the sole ground that the show cause notice was defective as it did not spell out specifically the ground on which the penalty was sought to be imposed. The ITAT Bangalore Bench further held that such defect was not curable u/s 292BB. In view of these facts, the penalty in the case of the assessee also*

deserves to be deleted. Thus considering the judgement as cited by the assessee (supra), we are of the view that notices issued by the Revenue authorities were not legally and lawfully perfect. The levy of penalty on the basis of such notices is unlawful, illegal and unjustified. Taking into consideration all these facts, circumstances of the case and the case laws relied upon (supra), we allow these grounds of the assessee and delete the penalty levied by the AO and upheld by the Id. CIT(A). Thus Ground No. 1 and 2 of the assessee are allowed.

4.1 The Ground No. 3 of the raised by the assessee relates to challenging the order of the Id. CIT(A) in confirming the penalty of Rs. 2.40 lacs u/s 271(1)(c) of the I.T. Act, 1961.

4.2 During the course of hearing, the Id.AR of the assessee prayed for deletion of penalty confirmed by the Id. CIT(A) for which the Id.AR of the assessee filed the following written submission.

After the order of the Hon'ble ITAT out of total addition of Rs. 1,36,50,000/- only addition of Rs. 8,00,000/- were sustained in respect of share application money by Mr. Amit Kumar Sharma who made application for Rs. 8,00,000/-. The assessee submitted the confirmation, complete address as well as bank statement. But the Learned Assessing Officer as well as the appellate authorities did not consider the evidence furnished regarding creditworthiness and sustained the addition. In this

regard our submission is that the person was in existence. The transaction was also through the proper banking channel. The revenue did not bring any evidence on record that the person was not in existence or the claim of the assessee was not genuine. Only the explanation furnished by the assessee was not accepted because of the evidences furnished by the assessee was not sufficient for determining the creditworthiness of the share applicant. Therefore on such type of addition no penalty is leviable. The number of cases are there where the share holder is found in existence and if share application money was deposited through proper banking channel then penalty u/s 271(1)(c) has been deleted.

It has been held by the INCOME TAX APPELLATE TRIBUNAL MUMBAI BENCH "A", MUMBAI in ITA No. : 6267/Mum/2013 (Assessment year: 2007-08) in the case of DCIT (Appellant) vs. M/s Amore Jewels P Ltd. (Respondent) Date of Order: 04/03/2016 that "**The Explanation 1 to section 271(1)(c) raises rebuttable presumption and once the assessee has furnished all the evidences in support of its explanation and has substantiated his claim then the onus cost upon him is discharged and onus then shifts upon the AO to prove that such an explanation or evidence is false**"

In our case no such enquiry was made by the Learned Assessing Officer to prove that the explanation furnished by the assessee was false. Therefore the finding given in the above case are applicable. The finding given in last para of the order is reproducing herewith as under: -

"All these evidences filed by the assessee has not been rebutted or disputed by the AO. It is a trite law that penalty proceedings are separate and distinct from the assessment proceedings and even if in the quantum proceedings, the matter has attained finality, however in the penalty proceedings, assessee may chose to rely upon the same material to prove that he has not guilty of furnishing of concealment of income. The Explanation 1 to section 271(1)(c) raises rebuttable presumption and

once the assessee has furnished all the evidences in support of its explanation and has substantiated his claim then the onus cost upon him is discharged and onus then shifts upon the AO to prove that such an explanation or evidence is false. Here in this case the AO has failed to rebut the assessee's explanation regarding nature and source of credit by conducting any enquiry or brining any material on record. The degree of burden under section 68 upon the assessee is to prima facie prove the nature of credit and then source which has to be proved by showing the identity, creditworthiness and genuineness of the transaction. Here all these primary ingredient has been discharged. Therefore, on these facts, the finding given by the CIT(A), as above cannot be deviated from and accordingly, the same is confirmed. Accordingly, ground raised by the revenue stands dismissed."

Therefore the facts of the assessee's case is similar and no penalty is leviable.

Likewise in the case of Remex Pharmaceuticals Ltd vs. ACIT in ITA No. 2234/Mum/2013 dated 14.10.2015 the Mumbai Bench has held as under: -

"6. It is well settled proposition that addition made during the course of assessment proceedings would not automatically give rise to penalty under section 271(1)(c) of the Act. During the course of penalty proceedings, the AO is required to examine the entire issue afresh and for that purpose the deliberations made in the assessment order can be taken as a guide. In the instant case, the penalty has been levied u/s 68 of the Act in respect of loan taken by the assessee, since the evidences furnished by the assessee to prove the creditworthiness of the creditor was found to be inadequate. It is also pertinent to note that the addition prescribed u/s 68 of the Act is a legal fiction and the same need not necessarily as a result of concealment of particulars of income. Whether a cash credit addition would fall in the category of concealment of particulars of income or not would depend upon the facts and circumstances of each case.

7. It is pertinent to note that the identity of the creditor and genuineness of the transaction have not been found fault with. We further notice that the Explanations and documents furnished by the assessee to prove the creditworthiness were only found to be inadequate and not found to be false. Under these set of facts, we are of the view that the Explanation 1 to section 271 (1)(c) of the Act would come to the help of the assessee. Hence, on conspectus of the matter, we are of the view that the addition of cash credits confirmed by the ITAT, in the facts and circumstances of the instant case, would not necessitate levy of penalty under section 271(1)(c) of the Act, as the same, in our view, cannot be considered to be concealment of particulars of income. Accordingly, we set aside the order of the Id. CIT(A) on this issue and direct the AO to cancel the penalty levied on the cash credit addition.”

Therefore in the light of above observations the penalty deserves to be deleted. “

4.3 On the other hand, the Id. DR relied on the orders of the Revenue authorities.

4.4 We have heard the rival contentions and perused the materials available on record. From the records, we noticed that while passing the order of penalty, the AO has not carried out any independent investigation and has merely relied upon the decision in quantum assessment proceedings. In this respect, the Id.AR of the submitted that at the time of assessment proceeding the assessee had supplied all the required documents in the shape of bank

account of shareholders which includes copy of PAN, Ration Card and Voter Cards bearing complete addresses. The copies of the return of income alongwith computation of income for the year under consideration and copies of bank statements of the share applicants were also submitted. However, the Coordinate Bench of ITAT had upheld part addition of Rs. 8.00 lacs only by taking into consideration that no documents in respect of creditworthiness of Shri Amit Kumar Sharma were filed. It was also submitted by the Id.AR of the assessee that there was no dispute with regard to the identity of Shri Amit Kumar Sharma or the genuineness of the transactions carried out by Shri Amit Kumar Sharma. The Id.AR further submitted that merely because the additions were upheld then the penalty cannot be automatic. On this aspect, we found force in the arguments of the Id.AR of the assessee and we are of the view that penalty is not automatic merely because the additions were upheld which has been already upheld by the Coordinate Bench in the case of Sonu Khandelwal vs ITO (ITA N01/JP/2015) vide order dated 27-09-2016. However, the Hon'ble Gujarat High Court in the case of CIT vs Baroda Tin Works, 221 ITR 661 had also given verdict on the same principles. ITAT Mumbai Bench in the case of Remex Pharmaceuticals Ltd vs ACIT (ITA No. 2234/Mum/2013 vide order dated 14-10-2015 had also held that even if the assessee could not

succeed with regard to the addition both before the Id. CIT(A) as well as ITAT in the quantum assessment proceeding. Even the AO was required to examine the issue afresh during penalty proceedings and for that purpose the deliberations made in the assessment order can only be taken as a guide. Since in the present case the AO in the penalty proceedings had not examined the entire issue afresh and even otherwise the identity of the creditor and genuineness of the transaction has not been found fault with, therefore, we are of the view that the explanations and the documents relied upon by the assessee to prove the creditworthiness were only found to be inadequate and not found to be false. Under the set of facts, we are of the view that the Explanation to Section 271(1)(c) of the Act would come to help of the assessee. Hence on conspectus of the matter, we are of the view that the addition of cash credit confirmed by the ITAT in the facts and circumstances of the instant case, would not necessitate levy of penalty u/s 271(1)(c) of the Act, as the same in our view cannot be considered to be concealment of income. Accordingly, we set aside the order of the Id. CIT(A) on this issue and direct the AO to delete the penalty. Consequently, the Ground No. 3 of the assessee is allowed.

5.0 In the result, the appeal filed by the assessee is allowed with no order as to cost.

Order pronounced in the open court on 30/09/2019.

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

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

जयपुर / Jaipur

दिनांक / Dated:- 30 /09/2019.

*Mishra

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

1. अपीलार्थी / The Appellant- M/s. Goyal Salt Pvt. Ltd., Jaipur
2. प्रत्यर्थी / The Respondent-The ITO, Ward- 6(2) 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. 1354/JP/2019}

आदेशानुसार / By order,

सहायक पंजीकार / Asstt. Registrar