

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

श्री विजय पाल रॉव, न्यायिक सदस्य के समक्ष
BEFORE: SHRI SHRI VIJAY PAL RAO, JUDICIAL MEMBER

आयकर अपील सं./ITA No. 144/JP/2017
निर्धारण वर्ष/Assessment Year : 2002-03.

Dr. Mohan Lal Swarnkar, 40,Sindhi Colony, Bank Park, Jaipur.	बनाम Vs.	The ACIT, Circle-7, Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN No. ACZPS 7410 F		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारित की ओर से / Assessee by : Shri Manish Agarwal (CA)

राजस्व की ओर से / Revenue by: Smt. Neena Jeph (JCIT)

सुनवाई की तारीख / Date of Hearing : 16.09.2019.

घोषणा की तारीख / Date of Pronouncement : 30/09/2019.

आदेश / ORDER

PER VIJAY PAL RAO, JM :

This appeal by the assessee is directed against the order dated 21.10.2016 of Id. CIT (Appeals) arising from penalty order passed under section 271(1)(c) of the IT Act for the assessment year 2002-03. The assessee has raised the following grounds of appeal :-

- “ 1. On the facts and in the circumstances of the case and in law Id. CIT (A) erred in confirming levy of penalty of Rs. 6,03,240/- u/s 271(1)(c).
2. That the appellant craves the right to add, delete, amend or abandon any of the grounds of appeal either before or at the time of hearing of appeal.”

2. The assessee is a Doctor by profession and also proprietor of M/s. Jaipur Institute of Medical General & Radiology. The assessee filed his return of income on 31st October, 2002 declaring a loss of Rs. 80,90,669/-. Subsequently, the assessee filed revised return of income declaring loss of Rs. 29,77,789/-. The assessment under section 143(3) was completed on 23rd March, 2005 at a loss of Rs. 4,57,972/- thereby the AO made an addition of Rs. 76,32,697/-. The assessment order was challenged by the assessee before the Id. CIT (A) and vide order dated 13th May, 2008 the Id. CIT (A) deleted the addition and granted part relief. Since the penalty is levied against the addition made by the AO on account of unexplained cash credits, therefore, the addition made by the AO on this account is relevant for these proceedings. The AO made the addition of Rs. 41,00,000/- as unexplained cash credit and the Id. CIT (A) deleted Rs. 31,00,000/- out of Rs. 41,00,000/- and sustained Rs. 10,00,000/-. The interest of Rs. 1,40,634/- which is proportionate to the addition sustained by the Id. CIT (A) was also sustained. Against the order dated 13.05.2008, both assessee as well as department preferred appeals before the Tribunal and this Tribunal vide order dated 29th October, 2010 confirmed the order of Id. CIT (A) sustaining the addition of Rs. 10,00,000/- and restored the matter as regards the remaining amount of Rs. 31,00,000/- which was deleted by the Id. CIT (Appeals) to the file of the AO. In the set aside proceedings, the AO has repeated the addition on account of unexplained cash credit to the extent of Rs. 18,00,000/- and corresponding disallowance of interest of Rs. 28,000/-. Thus the total addition made by the AO in the set aside/remand proceedings was Rs. 18,28,000/-. The penalty proceedings under section 271(1)(c) were initiated in respect of the addition

of Rs. 18,28,000/- and consequently the AO levied the penalty of Rs. 6,03,240/- being 100% of tax sought to be evaded. The assessee challenged the levy of penalty before the Id. CIT (A) but could not succeed.

3. Before the Tribunal, the Id. A/R of the assessee has submitted that all the loan transactions were through account payee cheques reflected in the bank account maintained by the assessee which prove the genuineness of the transaction and identity of the creditor. However, due to lapse of time, assessee was unable to furnish the confirmations and documentary evidence in respect of certain loan creditors. He has further contended that out of the unsecured loans which were disallowed by the AO in the second round, a sum of Rs. 16,00,000/- were repaid during the financial year 2002-03 and details of which were furnished during the quantum proceedings. Thus the Id. A/R submitted that once the transaction was through banking channel and the assessee has also repaid the said amount which was not disputed by the AO while completing the assessment for the assessment year 2003-04, then the addition made for want of furnishing the confirmation and other documentary evidence as well as production of the loan creditor before the AO would not constitute furnishing of inaccurate particulars of income or concealment of particulars of income. All necessary facts and details were furnished by the assessee during the assessment proceedings itself, however, not accepting the claim by the AO would not ipso facto attract provisions of section 271(1)(c) of the Act. This is only in the second round of appeal, the AO has repeated the addition. Otherwise, the Id. CIT (A) in the first round has accepted the claim of the assessee and deleted the addition. Therefore, this is not a bogus or false claim but disallowance was

made due to non compliance or non satisfaction of the AO of the explanation furnished by the assessee. In support of his contention, he has relied upon the decision of Hon'ble Supreme Court in case of CIT vs. Reliance Petroproducts (P) Ltd. 322 ITR 158 (SC) as well as decision of Hon'ble Jurisdictional High Court in case of CIT vs. Smt. Chandralata Goswami, 125 ITR 700 (Raj.). The Id. A/R has also referred a series of decisions on this point. Hence the Id. A/R submitted that the penalty levied by the AO and confirmed by the Id. CIT (A) may be deleted.

4. On the other hand, the Id. D/R has relied upon the orders of the authorities below and submitted that the assessee has failed to discharge his onus to prove the creditworthiness of the creditor and genuineness of the transaction. The AO conducted the due enquiry and issued the summons under section 131, however, out of 12 parties, only 8 parties have responded to the summons. Therefore, the AO has made the addition in respect of the loan creditor in respect of whom the assessee has not filed any confirmation and those parties have not responded to the notice issued by the AO. Thus it is a case of furnishing inaccurate particulars of income attracting the provisions of section 271(1)(c) of the IT Act.

5. I have considered the rival submissions as well as the relevant material on record. The penalty was levied by the AO in respect of the addition made on account of unexplained cash credits which were shown by the assessee as loan taken from various parties. In the original assessment, the AO made addition of Rs. 41,00,000/- out of which the Id. CIT (A) deleted the addition to the extent of Rs. 31,00,000/-. On further appeal by the department against the said relief granted by

the Id. CIT (A) of Rs. 31,00,000/-, the Tribunal remanded the matter to the record of the AO for adjudicating afresh after conducting the enquiry. In the set aside proceedings, the AO accepted the claim of the assessee to the extent of Rs. 13,00,000/- as the loan creditors responded to the notice issued by the AO under section 131 of the Act. However, some of the loan creditors have not responded to the notice issued by the AO, therefore, an amount of Rs. 18,00,000/- was treated by the AO as unexplained cash credit. Thus it is clear that in the first round of litigation the Id. CIT (A) deleted this addition and even in the second round when the matter was remanded by the Tribunal to the record of the AO, the AO accepted part of the claim of the assessee. Thus it is not a case of bogus or false claim but due to non response to the notice issued under section 131 as well as not furnishing the confirmation from these loan creditors, the AO has repeated the addition to the extent of Rs. 18,00,000/- and corresponding disallowance of interest of Rs. 28,000/-. It is also not in dispute that the assessee has claimed to have repaid a sum of Rs. 16,00,000/- in the very next year i.e. financial year 2002-03 relevant to assessment year 2003-04 and the AO has not doubted the said transaction of repayment. Thus in the facts and circumstances of the case when the addition was made only because the explanation of the assessee was not found to be satisfactory and not due to the reason that the claim of the assessee was bogus or absolutely false, the said addition made in the second round of litigation would not ipso facto lead to the conclusion that the assessee has furnished inaccurate particulars of income or concealed particulars of income. Hence in the facts and circumstances of the case as

discussed above, the penalty levied by the AO under section 271(1)(c) is not sustainable and the same is deleted.

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

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

Sd/-
(विजय पाल रॉव)
(VIJAY PAL RAO)
न्यायिक सदस्य / Judicial Member

Jaipur

Dated:- 30/09/2019.

Das/

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

1. The Appellant- Shri Mohan Lal Swarankar, Jaipur.
2. The Respondent – The ACIT, Circle-7, Jaipur.
3. The CIT(A).
4. The CIT,
5. The DR, ITAT, Jaipur
6. Guard File (ITA No. 144/JP/2017)

आदेशानुसार / By order,

सहायक पंजीकार / Assistant. Registrar