

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ "ए", चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL, CHANDIGARH BENCH "A", CHANDIGARH

श्री एन.के.सैनी, उपाध्यक्ष एवं श्री संजय गर्ग, न्यायिक सदस्य
BEFORE: SHRI. N.K.SAINI, VP & SHRI , SANJAY GARG, JM

आयकर अपील सं./ ITA Nos. 1081 & 1082/Chd/2018
निर्धारण वर्ष / Assessment Year : 2007-08 & 2008-09

Shri Himanshu Jain # 1138, Sector 21-B Chandigarh	बनाम	ACIT Central Circle-II Chandigarh
स्थायी लेखा सं./PAN NO: ADUPJ7267R		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/Assessee by : Shri Vej Jain, Advocate
राजस्व की ओर से/ Revenue by : Shri Arvind Sudarshan, Sr. DR
सुनवाई की तारीख/Date of Hearing : 03/10/2019
उदघोषणा की तारीख/Date of Pronouncement : 21/10/2019

आदेश/Order

PER N.K. SAINI, VICE PRESIDENT

These two appeals by the Assessee are directed against the separate order each dated 30/06/2018 for the A.Y. 2007-08 and 2008-09 passed by the Ld. CIT(A)-3, Gurgaon.

2. Common issue involved in both these appeals relates to the confirmation of penalty levied by the A.O. under section 271(1)(c) of the Income Tax Act, 1961 (hereinafter referred to as 'Act'), both these appeals were heard together, so, these are being disposed off by this consolidated order for the sake of convenience and brevity.

3. At the first instance, we will deal with the appeal in ITA No. 1081/Chd/2018 for the Assessment Year 2007-08.

4. Facts of the case in brief are that a search and seizure operation under section 132 of the Act was carried out at the residential and business premises of M/s Ind Swift Group of Cases on 26/05/2011. During the course of search certain incriminating materials were found which revealed that transactions of Rs. 25,90,000/- were recorded for the Financial Year 2006-07 relevant to the Assessment Year under consideration. The assessment in this case was completed under section 153A(1)(b) r.w.s 143(3) of the Act, on 31/01/2014 at an income of Rs. 77,12,420/- by making the addition of Rs. 25,90,000/-. The A.O. initiated the penalty proceedings under section 271(1)(c) of the Act and since no reply was furnished from the assessee side. The A.O. passed the ex-parte order and considered the amount of Rs. 25,90,000/- as undisclosed income for which the assessee concealed the particulars of his income.

5. Being aggrieved the assessee carried the matter to the Ld. CIT(A) who also passed the ex-parte order and sustained the penalty levied by the A.O.

6. Now the assessee is in appeal.

7. Ld. Counsel for the assessee submitted that the issue relating to the quantum addition is pending before the Hon'ble Jurisdictional High Court. It was pointed out that the investment in property was in joint name and the assessee purchased the same jointly with Shri C.D. Singla S/o Shri Ami Chand R/o H.No. 357, Sector 6, Panchkula in equal partnership but the A.O. considered the transaction in the hands of the assessee only. It was submitted that the assessee informed the A.O. about the relevant facts and

also stated in response to the show cause notice dt. 24/01/2014 that the said land was in dispute and Court cases were pending at JMFC Rajpura against sellers for non execution of sale agreement. A reference was made to page no. 9 & 10 of the assessee's compilation. He also furnished the copy of the order of Hon'ble Jurisdictional High Court dt. 11/02/2019 in ITA No. 55 – 2018 (O&M) wherein it has been observed that the said O&M was admitted for determination of substantial question of law. It was accordingly submitted that when the substantial question of law has been admitted, the addition itself becomes debatable and the penalty under section 271(1)(c) of the Act is not leviable. Reliance was placed on the judgment of Hon'ble Karnataka High Court in the case of CIT Vs. Dr. Harsha N. Biliangady [2015] reported in 379 ITR 529 (Karnataka).

8. In his rival submissions the Ld. Sr. DR strongly supported the orders of the authorities below.

9. We have considered the submissions of both the parties and perused the material available on the record. On a similar issue the Hon'ble Karnataka High Court in the case of CIT Vs. Dr. Harsha N. Biliangady (supra) held as under:

" Where penalty was imposed in respect of any addition where the High Court has admitted the appeal on substantial question of law, then the sustainability of the addition itself becomes debatable, and in such circumstances penalty could not be levied under section 271(1)(c)."

In the present case the contention of the Ld. Counsel for the Assessee that the substantial question of law relating to the quantum addition is pending before the Hon'ble Jurisdictional High Court therefore we deem it appropriate to set aside this issue

back to the file of the A.O. to be decided the same after the outcome of the decision of the Hon'ble Jurisdictional High Court on quantum addition.

10. The facts relating to the issue raised in ITA No. 1082/Chd/2018 are identical to the facts involved in ITA No. 1081/Chd/2018, therefore our findings given in the former part of this order shall apply mutatis mutandis in this case also.

11. In the result, both the above appeals of the Assessee are allowed for statistical purposes.

(Order pronounced in the open Court on 21/10/2019)

Sd/-
संजय गर्ग
(SANJAY GARG)
न्यायिक सदस्य/ Judicial Member
AG
Date: 21 /10/2019

Sd/-
एन.के.सैनी,
(N.K. SAINI)
उपाध्यक्ष / VICE PRESIDENT

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

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्ड फाईल/ Guard File