

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. 927/JP/2018
निर्धारण वर्ष / Assessment Year: 2011-12

Smt. Santosh Raghuvanshi, Prop.-M/s Vishal Traders, 4-K-8, Vaishali Nagar, Ajmer (Raj).	बनाम Vs.	D.C.I.T., Circle-1, Ajmer.
स्थायी लेखा सं./ जीआईआर सं./ PAN/GIR No.: AEEPR 2402 R		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by: Shri Subhash Porwal (CA)
राजस्व की ओर से / Revenue by : Shri Manmohan Kandpal (ACIT)

सुनवाई की तारीख / Date of Hearing : 19/11/2019
उदघोषणा की तारीख / Date of Pronouncement : 20/11/2019

आदेश / ORDER

PER: R.C. SHARMA, A.M.

This is an appeal filed by the assessee against the order of Id.CIT(A), Ajmer dated 17/05/2018 for the A.Y. 2011-12 in the matter of imposition of penalty U/s 271(1)(c) of the Income Tax Act, 1961 (in short, the Act).

2. In this appeal, the assessee is basically aggrieved for levy of penalty of Rs. 67,100/- U/s 271(1)(c) of the Act.

3. Rival contentions have been heard and record perused. The facts in brief are that an income tax survey in terms of 133A was held on 15/10/2010 on assessee premises and during the course of survey proceedings, the assessee due to non completion of books of accounts had surrendered, a sum of Rs. 25,48,246/- for excess stock. The assessee filed his return of income for the A.Y. 2011-12 on 29/09/2011 declaring total income of Rs. 24,65,220/-.

4. The assessment was made by the A.O. after making addition of Rs. 12,98,246/-. During the course of appeal out of quantum addition of Rs. 12,98,246/- addition of Rs. 10,81,373/- was deleted by the Id. CIT(A), Ajmer vide appeal No. 416/2013-14 dated 01/12/2015.

5. The A.O. levied penalty against the addition of Rs. 2,16,873/- upheld by the Id. CIT(A) in quantum appeal, assessee filed appeal before the Id. CIT(A) against the penalty order. The Id. CIT(A) has rejected the assessee's appeal for levy of penalty U/s 271(1)(c) vide his order for appeal No. 92/2017-18 dated 17/05/2018 stated as per para 4.3 that "I have gone through the penalty order, statement of facts, grounds of appeal and written submission carefully. It is seen that an addition of Rs. 12,98,246/- (Rs. 2548246.00 – Rs. 12,50,000.00) was

made by the A.O. on account of excess stock found during the course of survey, which was not disclosed by the assessee while filing return of income. The addition was reduced to Rs. 2,16,872/- vide CIT(A), Ajmer order dated 01/05/2015. Thus, it is clear that the assessee had not disclosed unexplained investment of Rs. 2,16,873/- made by her in the stock. Therefore, the penalty of Rs. 67,100/- levied by the A.O. in respect of the addition of Rs. 2,16,873/- made on account of the unexplained investment made in the stock, is hereby confirmed.”

6. I have considered the rival contentions and carefully gone through the orders of the authorities below and found from the record that during the course of assessment proceedings, the A.O. has not given the finding that the working given by the assessee was wrong or inaccurate. During the course of assessment proceedings also, the A.O. has not been able to prove that the evidence submitted by the assessee for working out the valuation of the stock, found during survey, was false or fabricated. It is also clear from the record that the assessee has not challenged the quantity of stock found during the course of survey. She has merely filed a revised valuation of the stock found during the survey which is based on the purchase bills filed by the assessee. All these clearly states that the assessee had not malafide intention to conceal the

particulars of income. The assessee had merely to purchase mental peace had stated a higher lump sum figure without reconciliation towards excess stock for completion of survey proceedings. Later on, after proper reconciliation the actual surrender towards excess stock was made in his return of income.

7. It is settled position in law that the assessment proceedings and penalty proceedings are two independent and separate proceedings. Therefore, mere addition to the declared income during assessment proceedings would not ipso facto lead to an imposition of penalty upon the party. The imposition of penalty U/s 271(1)(c) of the Act can only take place where there has been either concealment of income or filing of inaccurate particulars of income on the part of the respondent and the explanation is not found satisfactory.

8. Furthermore, where the assessee commits any "Bonafide Mistake" than "Deliberate Mistake" and the bonafide mistake as committed is also based on expert advice, it cannot be alleged as "Concealment" or "Inaccurate Particulars" and no penalty can be levied U/s 271(1)(c) of the Act.

9. In view of the above discussion, I do not find that it is a fit case for levy of penalty U/s 271(1)(c) of the Act. I direct the A.O. to delete the penalty so imposed.

10. In the result appeal of the assessee is allowed.

Order pronounced in the open court on 20th November, 2019.

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

जयपुर / Jaipur

दिनांक / Dated:- 20th November, 2019

*Ranjan

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

1. अपीलार्थी / The Appellant- Smt. Santosh Raghuvanshi, Ajmer.
2. प्रत्यर्थी / The Respondent- The D.C.I.T., Circle-1, Ajmer.
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. 927/JP/2018)

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar