

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. 1239/JP/2018
निर्धारण वर्ष / Assessment Year: 2012-13

Shri Purshotam Das Sharma, 379, Arjun Path, Shiv Colony (West), Ajmer Road, Jaipur.	बनाम Vs.	I.T.O., Ward-3(4), Jaipur.
स्थायी लेखा सं./ जीआईआर सं./ PAN/GIR No.: AFMPS 8339 B		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

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

सुनवाई की तारीख / Date of Hearing : 20/11/2019
उदघोषणा की तारीख / Date of Pronouncement : 21/11/2019

आदेश / ORDER

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

This is an appeal filed by the assessee against the ex parte order of Id. CIT(A)-I, Jaipur dated 30/08/2018 for the A.Y. 2009-10 in the matter of imposition of penalty U/s 271(1)(c) of the Income Tax Act, 1961 (in short, the Act).

2. The assessee is basically aggrieved for passing the ex parte order by the Id. CIT(A) without giving proper opportunity to the assessee. The assessee is also aggrieved for confirming the penalty of Rs. 27,872/- levied U/s 271(1)(c) of the Act.

3. Rival contentions have been heard and record perused. Facts in brief are that the assessee was an employee with North Western Railways and during the year under consideration earned income from salary therefrom and interest. Due to inadvertent mistake could not file regular return U/s 139 of the Act. Based on the information about TDS deducted out of salary and the A.O. initiated proceedings U/s 147 by issuing notice U/s 148 of the Act. In response thereto the assessee had filed his return of income declared income and tax payments.

4. The AO framed assessment u/s 147/143(3) of the Act vide his order dated 30.01.2016 by accepting the returned income. Thereafter he imposed penalty of Rs. 27,872 u/s 271(1)(C) of the Act. By the impugned order, the Id. CIT(A) confirmed the action of the A.O.

5. It was argued by the Id AR of the assessee that the penalty u/s 271(1)(c) of the Act has been levied on illegal notice as the notice issued by the AO dated 30.01.2016 does not contain perfect default of the assessee for such levy. The notice says that the assessee has concealed particulars of income or furnished inaccurate particulars of income. Penalty on the basis of such defective notice has been deleted by this Hon'ble Bench in large number of cases. Reliance is placed on the cases

of Udai Kant Mishra v/s ACIT (ITA No. 292/JPR/2016 vide order dated 22.12.2017 & Shri Ravi Mathur v/s DCIT, CC 4, Jaipur (ITA No. 969/JP/2017 vide order dated 13.06.2018.

6. From the record, I found that this ground was not specifically raised before the Id. CIT(A). Since the order passed by the Id. CIT(A) is ex parte without giving appropriate opportunity to the assessee, in all fairness, I restore the matter back to the file of the Id. CIT(A) for deciding the issue afresh after giving due and effective opportunity of hearing to the assessee. The assessee is also directed to appear before the Id. CIT(A) within 60 days from the date of receipt of this order. I direct accordingly.

7. In the result, appeal of the assessee is allowed for statistical purposes only.

Order pronounced in the open court on 21st November, 2019

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

जयपुर / Jaipur
दिनांक / Dated:- 21st November, 2019
*Ranjan

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

1. अपीलार्थी / The Appellant- Shri Purshotam Das Sharma, Jaipur.
2. प्रत्यर्थी / The Respondent- The I.T.O., Ward-3(4), Jaipur.
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. 1239/JP/2018)

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar