

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. 1038 & 1039/JP/2019  
निर्धारण वर्ष / Assessment Year: 2010-11

Prem Singh, S/o-Arjun Singh, Village-Mahtoli, Sumari, Bharatpur (Raj)	बनाम Vs.	I.T.O., Ward-2, Bharatpur.
PAN No. BRQPS 9092 C		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri Rajendra Agarwal (CA)  
राजस्व की ओर से / Revenue by : Shri Manmohan Kandpal (JCIT)

सुनवाई की तारीख / Date of Hearing : 20/11/2019  
उदघोषणा की तारीख / Date of Pronouncement : 22/11/2019

आदेश / ORDER

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

These are the appeals filed by the assessee against the separate orders of Id.CIT(A), Alwar dated 25/06/2019 for the A.Y. 2010-11 in the matter of imposition of penalty U/s 271F and 271(1)(b) of the Income Tax Act, 1961 (in short, the Act).

2. Firstly, I take ITA No. 1038/JP/2019 for the A.Y. 2010-11

Rival contentions have been heard and record perused. In this case, penalty U/s 271F of the Act amounting to Rs. 5,000/- was levied by the

A.O. by observing that in this case, assessment was completed u/s 144 r.w.s. 147 of the Act on 26/12/2017 at total of Rs. 453423/- for AY 2010-11. The return of income was not filed by the assessee for AY 2010-11. As per the provision of Section 139(1) of the Act, the assessee was required to file his return of income within the time limit and due date prescribed in the Act. Further, the assessee can file his return of income within one year from the end of the relevant assessment year. But, the assessee had failed to comply with provision of Section 139 of the Act. The assessee had not filed his return of income even in response to notice u/s 148 of the Act. As the assessee company has not filed the return of income within the time allowed u/s 139 of the Act even though his income exceeded within the time allowed u/s 139 of the Act, even though the income exceeded the maximum limit not chargeable to tax, a notice u/s 274 r.w.s. 271F was issued to the assessee on 26/12/2017 requiring to show cause as to why penalty for failure to file the return of income shall not be imposed. The assessee has not submitted any reply to the said show cause notice issued. In view of the above finding, the A.O. levied penalty U/s 271F of the Act. By the impugned order, the Id. CIT(A) confirmed the action of the A.O.

3. It was argued by the Id AR of the assessee that the income of the assessee was not chargeable to tax during the year under consideration

and addition was made solely on account of loss on sale of shares amounting to Rs. 4,53,423/- which further resulted in taxable income being negative, therefore, the assessee was not liable to file his return of income U/s 139(1) of the Act. I do not find any merit in the contention of the Id AR in so far as the penalty is levied with respect to return which was not filed even after giving so many opportunities and ultimately on assessment, addition was made by disallowing the claim of loss of Rs. 4,53,423/-. The Id. CIT(A) has also confirmed the action of the A.O. by observing that the assessee has undertaken share transaction worth Rs. 27.75 lacs but did not file any regular return of income. I do not find any infirmity in the order of the Id. CIT(A) in confirming the penalty imposed U/s 271F of the Act.

4. Now I take ITA No. 1039/JP/2019 for the A.Y. 2010-11

This is an appeal filed by the assessee against the order of the Id. CIT(A), Alwar dated 25/06/2019 for the A.Y. 2010-11 in the matter of imposition of penalty U/s 271(1)(b) of the Act.

5. I have considered the rival contentions and found that in this case the assessment was completed u/s 144 r.w.s. 147 of the Act on 26.12.2017 at a total Income of Rs. 4,53,423/- making total addition of Rs. 4,53,423/- on account of unexplained Investment

u/s 69 of the Act. Penalty proceedings u/s 271(1)(b) of the Act was initiated for non-compliance of the notices issued during the course of assessment proceedings.

6. From the record, I found that the A.O. has reopened the assessment by issuing notice U/s 148 of the Act on 30/03/2017. Thereafter, notice u/s 142(1) of the Act was issued on 29.09.2017 fixing the date 09.10.2017 for hearing but the same was remained un-complied with. Again, notice u/s 142(1) of the Act was issued to the assessee on 01.11.2017 fixing the case for hearing on 07.11.2017. However, in response to this, no compliance had been made by the assessee. Further, a show cause notice alongwith notice u/s 142(1) of the Act was issued to the assessee on 10.11.2017 providing him a final opportunity to appear for the case on 15.11.2017, but no compliance was made by the assessee. Again, notice u/s 142(1) of the Act was issued to the assessee on 18.12.2017 fixing the case for hearing on 21.12.2017 but no one appeared, nor any written submission was filed. Thereafter, the case was completed u/s 144 r.w.s 147 vide assessment order dated 26.12.2017. In view of the consistent non compliance, penalty proceedings u/s 271(1)(b) of the Act was initiated separately on 26/12/2017 by

issuing notice u/s 274 r.w.s. 271(1)(b) of the Act fixing the date 12.01.2018 for hearing, but no compliance was made by the assessee. Again to decide the penalty, opportunity has been provided to the assessee vide letter No. 634 dated 22/06/2018 fixing the case for hearing on 27/06/2018 remained uncomplished with.

7. It is clear from the above, despite giving various opportunities, neither the assessee nor the Id AR of the assessee nor any submission was filed. Even during the penalty proceedings, notices were issued but there was no compliance on these facts. In the facts and circumstances of the case, the A.O. was justified in levying the penalty of Rs. 10,000/- U/s 271(1)(b) of the Act. I do not find any infirmity in the order of the A.O. for imposition of penalty U/s 271(1)(b) of the Act for non-compliance.

8. In the result, both the appeals of the assessee are dismissed.

Order pronounced in the open court on 22<sup>nd</sup> November, 2019

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

जयपुर / Jaipur  
दिनांक / Dated:- 22<sup>nd</sup> November, 2019

**\*Ranjan**

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

1. अपीलार्थी / The Appellant- Shri Prem Singh, Bharatpur.
2. प्रत्यर्थी / The Respondent- The I.T.O. Ward-2, Bharatpur.
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. 1038 & 1039/JP/2019)

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar