

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

श्री रमेश सी.शर्मा, लेखा सदस्य एवं श्री विजय पाल राव, न्यायिक सदस्य के समक्ष
Before : Shri Ramesh C.Sharma, AM & Shri Vijay Pal Rao, JM

आयकर अपील सं./ITA No. 509/JP/2018
निर्धारण वर्ष/Assessment Year : 2013-14

Shri Santosh Bhansali 2654, Shah Bhawan, Ghee Walon ka Rasta, Johri Bazar, Jaipur	बनाम Vs.	The ITO Ward- 2(1), Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AAYPB 1353 K		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri H.M. Singhvi, CA
राजस्व की ओर से / Revenue by: Shri Kailash Mangal, Addl. CIT-DR

सुनवाई की तारीख / Date of Hearing : 26/09/2019
घोषणा की तारीख / Date of Pronouncement : 09 /12/2019

आदेश / ORDER

PER RAMESH C. SHARMA, AM

This is an appeal filed by the assessee against the order of the Id. CIT(A), Kota dated 31-10-2018 for the Assessment Year 2013-14, in the matter of imposition of penalty u/s 271(1)(c) of the Act.

2.1 In this appeal, the assessee is aggrieved for penalty levied with respect to decline of assessee's claim of agricultural land which is not liable to capital gains tax.

2.2 The assessee is also aggrieved for defective notice issued by the AO without mentioning the limb under which penalty was to be imposed. Accordingly, the penalty order is not sustainable in law.

2.3 During the course of hearing, the Id.AR of the assessee also placed on record the order of ITAT Jaipur Bench in the case of Shri Prakash Raj Bhansali vs ITO (ITA No.508/JP/2018 for the Assessment Year 2013-14 dated 5-03-2019) and contended that under the similar facts and circumstances of the case, the penalty so levied by the AO for decline of the assessee's claim of agricultural land was deleted by the Tribunal.

2.4 We have gone through the orders of the authorities below and found from the record that in the return of income the assessee has claimed exemption in respect of treating the profit on sale of agricultural land. On enquiry, the AO found that agricultural land was situated within the 8KM from the municipal limit. Therefore, the assessee is liable for capital gains tax. Accordingly, the AO levied the capital gains tax on the agricultural land sold by the assessee by declining the assessee's claim that the land is not falling within the municipality limits which is a capital asset chargeable to tax u/s 2(14) of the Act. The assessee accepted AO's contention and by filing revised computation offered the gains to capital gains tax. However, AO levied penalty for decline of assessee's claim and levied penalty u/s 271(1)(c) of the Act.

2.5 By impugned order, the Id. CIT(A) confirmed the action of the AO levying the penalty.

2.6 We had carefully gone through the orders of authorities below as well as order of the Coordinate Bench submitted by the Id.AR of the assessee in the case of Shri Prakash Raj Bhansali vs ITO (supra) wherein under similar facts and circumstances of the case, the decline of assessee's claim of exemption u/s 10 of the Act in respect of agricultural land was held to be not liable for penalty u/s 271(1)(c) of the Act. The precise observation of the Tribunal in the case of Shri Prakash Raj Bhansali vs ITO (supra) is as under:-

“5. **On merits:-** Once, it is a claim of the assessee for exemption U/s 10 of the Act and the AO has also not disputed the primary facts disclosed in the return of income as well as capital asset in question is an agricultural land but only on the investigation conducted by the AO through concerned Teshildar it was found that the land in question does not fall in the exclusion clause of Section 2(14) of the Act. Therefore, it is a highly debatable issue and the claim of the assessee is based on the primary facts of agricultural income would be regarded as bonafide claim. Hence, the claim of exemption though rejected by the AO would not Ipso facto amount to furnishing inaccurate particulars of income. The claim of the assessee was neither found to be bogus nor absolutely impermissible but as per provisions of Section 2(14) and particularly the issue whether the land sold by the assessee will be treated as agricultural land or a capital asset in terms of section 2(14) of the Act was subjected to the outcome of the enquiry conducted by the AO. Therefore, the said claim made under the provisions of the Act is disallowed by the AO would not attract the penalty provisions of Section 271(1)(c) of the Act. The Hon’ble Supreme Court in case of CIT vs. Reliance Petroproducts Pvt. Ltd. 322 ITR 158 has held that where the information given by the assessee is not found to be incorrect the assessee cannot be held guilty of furnishing inaccurate particulars of income for the purpose of levying the penalty U/s 271(1)(c) of the Act. The Hon’ble Supreme Court has also observed that merely making a wrong claim does not amount to furnishing inaccurate particulars of income in the absence of finding that any detail supplied by the assessee is incorrect or false. Accordingly, in view of the facts and

circumstances of the case the penalty levied by the AO U/s 271(1)(c) of the Act is not sustainable and the same is deleted.

In the result, the appeal filed by the assessee is allowed.”

As the facts and circumstances in the instant case are pari materia, therefore, respectfully following the decision of ITAT Jaipur Bench in the case of Shri Prakash Raj Bhansali vs ITO (supra), we direct the AO to delete the penalty.

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

Order pronounced in the open court on 09 /12/2019.

Sd/-
(विजय पाल राव)
(Vijay Pal Rao)
न्यायिक सदस्य / Judicial Member

Sd/-
(रमेश सी शर्मा)
(Ramesh C. Sharma)
लेखा सदस्य / Accountant Member

जयपुर / Jaipur
दिनांक / Dated:- 09 /12/ 2019

*Mishra

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

1. अपीलार्थी / The Appellant- Shri Santosh Bhansali, Jaipur
2. प्रत्यर्थी / The Respondent- The ITO Ward-2 (1), Jaipur
3. आयकर आयुक्त(अपील) / CIT(A),
4. आयकर आयुक्त / CIT,
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No.509/JP/2018)

आदेशानुसार / By order,

सहायक पंजीकार / Assistant. Registrar