

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

श्री विजय पाल रॉव, न्यायिक सदस्य एवं श्री विक्रम सिंह यादव, लेखा सदस्य के समक्ष  
BEFORE: SHRI VIJAY PAL RAO, JM & SHRI VIKRAM SINGH YADAV, AM

आयकर अपील सं./ITA No. 1131/JP/2019  
निर्धारण वर्ष/Assessment Years : 2014-15.

|   |             |                                   |
|---|-------------|-----------------------------------|
| Shri Ram Babu Agrawal,<br>R-13, Yudhishtar Marg,<br>C-Scheme, Jaipur. | बनाम<br>Vs. | The DCIT,<br>Circle-5,<br>Jaipur. |
| स्थायी लेखा सं./जीआईआर सं./PAN/GIR No. AASPA 6246 J                   |             |                                   |
| अपीलार्थी / Appellant   |             | प्रत्यर्थी / Respondent           |

निर्धारिती की ओर से / Assessee by : Shri PC Parwal (CA)

राजस्व की ओर से / Revenue by : Ms Chanchal Meena (JCIT)

सुनवाई की तारीख / Date of Hearing : 17/12/2019  
घोषणा की तारीख / Date of Pronouncement : 19/12/2019.

आदेश / ORDER

PER VIJAY PAL RAO, J.M.

This appeal by the assessee is directed against the order dated 26.07.2019 of Id. CIT (A)-2, Jaipur arising from the penalty order passed under section 271(1)(c) of the IT Act for the assessment year 2014-15. The assessee has raised the following grounds of appeal :-

1. Under the facts and circumstances of the case, the learned CIT (A) erred in confirming the action of assessing officer of imposing penalty of Rs. 7,28,400/- u/s 271(1)(c).
2. Under the facts and circumstances of the case, the learned CIT (A) erred in observing that appellant has not brought any evidence to prove the non-disclosure of interest income due to inadvertent mistake.

3. Under the facts and circumstances of the case, penalty levied by the learned CIT (A) and confirmed by Id. CIT (A) is illegal and bad in law.
4. Pray for necessary cost to be awarded to assessee.
5. The appellant prays to leave to, add, alter or amend aforesaid grounds of appeals at or before the time of hearing of appeal."

**Ground no. 3 is regarding validity of penalty order passed by the AO which goes to the root of the matter. Therefore, we take up this issue of validity of penalty levied by the AO under section 271(1)(c) of the IT Act.**

2. The Id. A/R of the assessee has submitted that the AO while initiating the proceedings under section 271(1)(c) of the IT Act has stated in the assessment order that the penalty proceedings under section 271(1)(c) are initiated for inaccurate particulars. He has referred to the assessment order. He has then referred to the show cause notice dated 26<sup>th</sup> May, 2017 issued by the AO and submitted that the AO has not specified the limb and default for which the penalty under section 271(1)(c) was initiated. The Id. A/R has thus contended that when the AO was not sure about the default of the assessee then the penalty order passed under section 271(1)(c) is not valid and liable to be quashed. In support of his contention, he has relied upon the Third Member decision of Amritsar Bench of the Tribunal in case of HPCL Mittal Energy Ltd. vs. Addl. CIT, 169 DTR 1 (TM).

3. On the other hand, the Id. D/R has submitted that the AO has given a definite finding in the penalty order passed under section 271(1)(c). Therefore, even if there was uncertainty at the time of initiating the proceedings, once the AO has given a definite finding, then the validity of initiation of proceedings cannot be challenged.

Further, the recording of satisfaction in the assessment order cannot be taken as initiation of proceedings. She has relied upon the orders of the authorities below.

4. We have considered the rival submissions as well as the relevant material on record. The assessee filed his return of income on 27<sup>th</sup> March, 2015 declaring total income of Rs. 82,17,460/-. During the scrutiny assessment, the AO noted that the assessee has not declared the income of Rs. 23,57,284/- on account of interest from partnership firm. The assessee explained the reason for not declaring the interest income as inadvertent mistake because the said amount was not received by the assessee but was credited in the capital account of the assessee. Further, the assessee explained that for the assessment year 2015-16 the assessee has offered the interest income to tax. The AO has not accepted this explanation of the assessee and made the addition of Rs. 23,57,284/- to the total income of the assessee and subsequently initiated the penalty proceedings. In the penalty proceedings, the assessee has explained that it was a bonafide and inadvertent mistake for not declaring the interest income for the year under consideration but it was declared for the subsequent year. The AO has passed the impugned penalty order whereby the penalty against the said addition of Rs. 23,57,284/- at minimum rate of 100% of tax sought to be evaded was levied. The assessee challenged the action of the AO before the Id. CIT (A) but could not succeed. We find that the AO in the assessment order has stated the ground of initiating the penalty and default of assessee being furnishing inaccurate particulars of income. In the second show cause notice dated 2<sup>nd</sup> December, 2016 the AO has not specified the default and limb for which the penalty was proposed to be levied. Therefore, the AO has initiated the penalty proceedings for concealment of particulars of income or furnishing inaccurate

particulars of income. The AO was not sure about the default of the assessee whether it was concealment of particulars of income or furnishing inaccurate particulars of income. As regards the satisfaction recorded by the AO in the assessment order, it does not support the case of the revenue as the AO has stated that the penalty proceedings are initiated for inaccurate particulars whereas in the case in hand when the income was not at all declared in the return of income, then it is a case of concealment of particulars of income and not furnishing inaccurate particulars of income. In the penalty order, the AO has again stated in para 4.4 as under :-

*" 4.4. From the above it is clear that the assessee has consciously made the concealment by furnishing inaccurate particular of his interest income on capital in the partnership firm. This shows that the assessee has committed the default as prescribed u/s 271(1)(c) of the IT Act, 1961 and is therefore liable for penalty."*

Thus the AO has again stated that the assessee has consciously made the concealment by furnishing inaccurate particulars of his interest income on capital in the partnership firm. The statement of the AO is very vague and mixing up both the default of concealment as well as furnishing inaccurate particulars of income. Therefore, the finding of the AO even in the impugned penalty order passed under section 271(1)(c) is not definite or correct. The Id. Third Member in case of HPCL Mittal Energy Ltd. vs. Addl.CIT (supra) while dealing with this issue has held in para 15 as under :-

- “ 15. *The moot question is that what should be the nature of specification of a charge by the AO at the stage of initiation of penalty proceedings and at the time of passing the penalty order. Is the AO required to specify in the penalty notice/order as to whether it is a case of 'concealment of particulars of income'; or 'furnishing of inaccurate particulars of income'; or both of them, which can be expressed by using the word 'and' between the two expressions. When the AO is satisfied that it is a clear-cut case of concealment of particulars of income, he must specify it so in the notice at the time of initiation of penalty proceedings and also in the penalty order. The AO cannot initiate penalty on the charge of 'concealment of particulars of income', but ultimately find the assessee guilty in the penalty order of 'furnishing inaccurate particulars of income'. In the same manner, he cannot be uncertain in the penalty order as to concealment or furnishing of inaccurate particulars of income by using slash between the two expressions. When the AO is satisfied that it is a clear-cut case of 'furnishing of inaccurate particulars of income', he must again specify it so in the notice at the time of initiation of penalty proceedings and also in the penalty order. After initiating penalty on the charge of 'furnishing of inaccurate particulars of income', he cannot impose penalty by finding the assessee guilty of 'concealment of particulars of income'. Again, he cannot be uncertain in the penalty order as to concealment or furnishing of inaccurate particulars of income by using slash between the two expressions. When the AO is satisfied that it is a clear-cut case of imposition of penalty u/s 271(1)(c) of the Act on two or more additions/disallowances, one or more falling under the expression 'concealment of particulars of income' and the other under the 'furnishing of inaccurate particulars of income', he must specify it so by using the word 'and' between the two expressions in the notice at the time of initiation of penalty proceedings. If he remains convinced in the penalty proceedings that the penalty was rightly initiated on such counts and imposes penalty accordingly, he must specifically find the assessee guilty of 'concealment of particulars of income' and also 'furnishing of inaccurate particulars of income' in the penalty order. If the charge is not levied in the above manner in all the three clear-cut situations discussed above in the penalty notice and also in the penalty order, the penalty order becomes unsustainable in law.”*

Accordingly, when the AO was not clear about the default of the assessee whether it is concealment of particulars of income or furnishing inaccurate particulars of income

either at the stage of recording the satisfaction or at the time of issuing the show cause notice under section 274 of the Act or at the time of passing the penalty order under section 271(1)(c), then the penalty levied on a charge which is not correct is not sustainable in law. Hence in the facts and circumstances of the case, the impugned order passed by the AO under section 271(1)(c) is invalid as the AO was not certain about the default and charge for which the penalty proceedings were initiated and finally the penalty was levied. The same is set aside.

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

Order pronounced in the open court on 19/12/2019.

Sd/-

(विक्रम सिंह यादव)  
(Vikram Singh Yadav)  
लेखा सदस्य / Accountant Member

Sd/-

( विजय पाल राँव )  
(VIJAY PAL RAO)  
न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 19/12/2019.

das/

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

1. अपीलार्थी / The Appellant-Shri Ram Babu Agrawal, Jaipur.
2. प्रत्यर्थी / The Respondent-The DCIT, Circle-5, Jaipur.
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File {ITA No. 1131/JP/2019}

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar