

आयकर अपीलिय अधिकरण, जयपुर न्यायपीठ, जयपुर  
IN THE INCOME TAX APPELLATE TRIBUNAL,  
JAIPUR BENCHES,"B" JAIPUR

श्री संदीप गोसाई, न्यायिक सदस्य एवं श्री विक्रम सिंह यादव, लेखा सदस्य के समक्ष  
BEFORE: SHRI SANDEEP GOSAIN, JM & SHRI VIKRAM SINGH YADAV, AM

आयकर अपील सं./ITA No. 212/JP/2018  
निर्धारण वर्ष / Assessment Year : 2009-10

|  |             |                               |
|--|-------------|-------------------------------|
| M/s. Accme (Urvashi Pumps) Engineers (P) Ltd.<br>A-407, Road No 14, VKI Area, Jaipur | बनाम<br>Vs. | The ACIT<br>Circle – 4,Jaipur |
| स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: BABCA 5655 R                                 |             |                               |
| अपीलार्थी / Appellant  |             | प्रत्यर्थी / Respondent       |

निर्धारिती की ओर से / Assessee by : Shri Rohan Sogani, CA  
राजस्व की ओर से / Revenue by: Smt. Runi Paul, JCIT DR

सुनवाई की तारीख / Date of Hearing : 21/01/2020  
उदघोषणा की तारीख / Date of Pronouncement: 23 /01/2020

आदेश / ORDER

PER SANDEEP GOSAIN, J.M.

The present appeal has been filed by the assessee against the order of CIT(A) -2, Jaipur dated 15.11.2017 for the assessment year 2009-10 wherein the assessee has raised the following ground of appeal.

“1. In the facts and circumstances of the case and in law the ld. CIT(A) has erred in confirming the action of the AO in imposing penalty u/s 271(1)( c) of the I.T. Act, 1961 amounting to Rs. 38,516/-. The action of the ld. CIT(A) is illegal, unjustified, arbitrary and against the facts of the case. Relief may please be granted by quashing the said penalty u/s 271(1)( c).”

2.1 Brief facts of the case are that the assessee filed its return of income and subsequently assessment u/s 143(3) of the I.T. Act, 1961 was

completed and addition was made by the AO on account of interest on FDR of Rs. 1,13,318/-.The said order of the AO was sustained uptill ITAT. Therefore, the penalty proceedings were also initiated and consequently penalty of Rs. 38,516/- was imposed by the AO u/s 271(1)© of the Act on account of concealment of income.

2.2 Aggrieved by the order of the AO for imposition of penalty, the assessee preferred appeal before the Id. CIT(A) which was dismissed by the Id. CIT(A) for which the assessee is in appeal before us.

2.3 The Id.AR appearing on behalf of the assessee reiterated the same arguments as were raised by him before the Id. CIT(A) and the same are contained in para 2.2 of the Id. CIT(A)'s order which is reproduced as under:-

*“2.2 The relevant extract of the submission of the appellant is as under:*

*"The assessee company maintains its accounts on accrual basis. It requires estimating the accrued income by way of interest on unmatured fixed deposit. This estimation can be at variance with the working of the hank. Such variance over the total period c)f maturity of fixed deposit will get neutralized.*

*It is undisputed that the total interest income on maturity accounted for by the company will he in total agreement with the total interest given by the bank.*

*In view of this when the difference is taxed in subsequent years, the same may not be taxed in the year under appeal as that would lead to double taxation.*

*It is submitted that assessee company has nowhere tried to conceal its income which is a sine qua non for levy of penalty under section 271(I)(c). Law for making addition in quantum proceedings is different from the law for imposing penalty. In recognition of this fundamental difference, both Provisions of section 271(1)(c) of the Act give discretionary powers to the authority. levying*

*penalty, to levy or 1701 to levy penalty in the case of concealment of income or furnishing inaccurate particulars of income.*

*3.6 Hon'ble Supreme Court in the case Hindustan Steel Ltd. v. State of Orissa [1972J 83 ITR 26 (SC) laid down a ratio that penalty should not be imposed merely because it is lawful to do so. The Assessing Officer has to exercise his discretion judiciously. An order imposing penalty for failure to carry out a statutory obligation is the result of a quasi-criminal proceeding, and penalty will not ordinarily be imposed unless the party obliged either acted deliberately in defiance of law or was guilty of conduct contumacious or dishonest. or acted in conscious disregard of its obligation.*

*3.7. It is submitted that merely because the method of calculating the interest income as adopted by the assessee company does not match with that adopted by the Id AO and on this account additions are made, then no penalty can be levied.*

*3.8. Hon'ble Supreme Court the case of Reliance Petro products (P.) Ltd [20.10] 322 ITR 158 (SC) held that ".....,*

*'We do not agree, as the assessed had furnished all the details of its expenditure as well as income in its Return, which details, in themselves, were not found to be inaccurate nor could be viewed as the concealment of income on its part. It was up to the authorities to accept its claim in the Return or not. Merely because the assessee had claimed the expenditure, which claim was not accepted or was not acceptable to the revenue, that by itself would not, in our opinion, attract the penalty under section 27.1(1)(c). If we accept the contention of the revenue then in case of every Return where the claim made is not accepted by Assessing Officer for any reason, the assessee will invite penalty under section .271(1)4). That is clearly not the intendment of the Legislature...."*

*In view of the above, penalty levied by the Id AO, deserves to be deleted in toto.'*

2.4 On the other hand, the Id. DR relied on the order of the AO which is reproduced by the Id. CIT(A) in para 2.1 of his order as under:-

*'2.1 The relevant extract of penalty order is as under:*

*"The assessee filed its return of income on 28.09.2009 declaring total income of Rs. 1,33,47,510/- .Assessment u/s 143(3) of the IT Act was completed on 28,12.20.11 at total income of Rs. 1,53.08.400A-. while completing the assessment u/S 143(3) following addition was made by the A.O.*

*Interest on EDR: Rs, 1,13,318/- .During the assessment proceedings, on perusal the 26AS statement of the assessee it was found that the assessee had received interest from State Bank Of India amounting of Rs. 6,57,670/- whereas the assessee, in its return of income had declared interest of Rs. 5,44,352/- • Thus the assessee had declared less amount of RS. 1,13,318/- on interest of Rs. 5,44,352/- . Thus the assessee was asked the difference and the assessee had stated only that it is due to methodology of the interest credit by the Bank. The reply of the assessee was not acceptable and thus it was held that the assessee had declared the less amount of Rs. 1,13,318/- on interest of the Fdr from state Bank Of India and added to total income of the assessee.*

*Since the assessee had concealed its income and furnished inaccurate particulars of such income, penalty proceedings us 271(1)(c)(1)(0 was initiated during assessment proceeding and notice u/s 274 r. w.s. 271(1)(c) of the I.T. Act was issued on 28.12.2011.*

*Aggrieved with the order of the A.O., the assessee preferred appeal before the Id. (IT(A), The Id. CIT(A)-2, Jaipur vide his order in appeal No. 483/1.1-12 dated 19.06.2014 has upheld the addition of Rs. 1,13,318/- made by the A.0 and dismissed assessee's appeal. Tire, indings of the ld. C2171A)-2, Jaipur were as under...*

*Since penalty proceedings u/s 271(1)(c) was initiated therefore before imposing penalty reasonable opportunity of being heard was given to the assessee vide this office letter dated 03.03.2016. In response to it , A.R. of the assessee filed written submission on 10.03.2016 stating herein that.....*

*I have considered the reply of the assessee. The fact given by the assessee are immaterial The section mentioned by the assessee relates to limitation of imposing penalty. Section 275(a) of the Income-tax Act, 1961 says that.....*

*Provided that in the case where the relevant assessment or other order is the subject-matter of an appeal to the Commissioner (appeals) under section 246 or section 246A, and the commissioner (Appeals) passes the order on or after the 15<sup>th</sup> day of June, 2003 disposing of such appeal , cm order imposing penalty shall he passed before the expiry of the financial year in which the proceedings, in the course of which action for imposition of penalty has been initiated, are completed, or within one year from :the end of the financial year in which the order of the commissioner (appeals) is received by the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner. whichever is letter:*

*The assessee failed to submit it's reply on merit, that they have not concealed their income. Since the assessee has not submitted any reply on*

*merit of the case therefore, I decide the issue of penalty on the basis of merit of the documents available on record. It may be mentioned that as per 26AS the assessee has received interest on bank RDR amounting to Rs. 6,57,670/- whereas the assessee has only shown an amount of Rs. 5,44,352/-, therefore interest amounting to Rs. 1,13,318/- has been less shown. It may be mentioned that the assessee was maintaining its book of accounts on mercantile basis, hence the income which has been accrued during the year was the real income of assessee., It is immaterial that the assessee would have disclosed such income in other year. Under Income-tax Act real income of each year is brought to tax in that year only in which it has been earned or has been accrued. It is not the assessee to decide that in which year he wants to disclose such income. The assessee has concealed its income to the tune of Rs.1,13,318/- although it was appearing in form— 26As and also in the interest certificate issued by the bank. The assessee is, therefore held to have committed the default of concealing its income by way of deliberately finishing inaccurate particulars of its income and thus concealing its income. This act of assessee attracts provisions of section 271(1)(c) of the Income-tax Act."*

2.5 After hearing both the ld. counsels of the assessee and perusing the materials available on record, we found that the assessee was maintaining its account on accrual basis which requires estimating the accrued income by way of interest on unmatured fixed deposit. As per the assessee, this estimation can be at variance with the working of the bank and such variance over the total period of maturity of fixed deposit will ultimately get neutralized. The assessee had been adopting this method of calculation in previous years also and even the auditor of the assessee had never objected. We are of the view that as per facts of the present case since the assessee was maintaining multiple accounts and was estimating the accrual income by way of interest on unmatured Fixed deposit and

this estimation can be at variance with the working of the bank and even otherwise such variance over the total period of maturity of fixed deposit will ultimately get neutralized. Therefore, merely because of method of calculating the interest income as adopted by the assessee company does not match with that adopted by the AO then no penalty can be levied. We are conscious of the fact that law for making addition in quantum proceedings is different from the law for imposing penalty. In recognition of this fundamental difference, both proceedings have been kept separate and independent. Provisions of Section 271(1)(c) of the Act give discretionary powers to the authority levying penalty to levy or not levy penalty in the case of concealment of income or furnishing inaccurate particulars of income. Hon'ble Supreme Court in the case of Hindustan Steel Ltd. vs State of Orissa (1972) 83 ITR 26 (SC) laid down a ratio that penalty should not be imposed merely because it is lawful to do so. The Assessing Officer has to exercise his discretion judiciously. An order imposing penalty for failure to carry out a statutory obligation is the result of quasi-criminal proceedings and penalty will not ordinarily be imposed unless the party obliged either acted deliberately in defiance of law or was guilty of conduct contumacious or dishonest or acted in conscious disregard of its obligation. Therefore, keeping in view our

above discussions, we are of the view that merely because of method of calculating the interest income as adopted by the assessee company does not match with that adopted by the AO then in that eventuality no penalty can be levied. Our this view is fortified by the decision of Hon'ble Supreme Court in the case of CIT vs Reliance Petroproducts (P) Ltd. 322 ITR 158. Hence, the penalty sustained by the ld. CIT(A) is deleted. The solitary ground of the assessee is allowed.

3.0 In the result, the appeal filed by the assessee is allowed with no order as to cost.

Order pronounced in the open court on 23 /01/2020.

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

Sd/-  
(संदीप गोसाईं)  
(Sandeep Gosain)  
न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur  
दिनांक / Dated:- 23/01/2020.

\*Mishra

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

1. अपीलार्थी / The Appellant- M/s. Accme (Urvashi Pumps) Engineers Pvt Ltd., Jaipur
2. प्रत्यर्थी / The Respondent- ACIT, Circle – 4, Jaipur
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.
5. गार्ड फाईल / Guard File {ITA No. 212/JP/2018}

आदेशानुसार / By order,

सहायक पंजीकार / Asstt. Registrar