

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, "A" JAIPUR

श्री विजय पाल राव, 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. 245/JP/2019
निर्धारण वर्ष / Assessment Year : 2009-10

Smt. Rajni Bhatia 4 THA 24, Jahawar Nagar, Jaipur.	बनाम Vs.	The ITO, Ward-6(1), Jaipur.
स्थायी लेखा सं./ जीआईआर सं./ PAN/GIR No.: AAPPB 4247 B		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shir Manish Agarwal (C.A.)
राजस्व की ओर से / Revenue by : Miss. Chanchal Meena (Addl.CIT)

सुनवाई की तारीख / Date of Hearing : 08/07/2020
उदघोषणा की तारीख / Date of Pronouncement: 09/07/2020

आदेश / ORDER

PER: VIJAY PAL RAO, J.M.

This appeal by the assessee is directed against the order dated 10.12.2018 of Id. CIT(A), Ajmer arising from the penalty order passed U/s 271(1)(c) of the IT Act for the assessment year 2009-10. Due to prevailing COVID-19 pandemic condition the hearing of the appeal is concluded through video conference. The assessee has raised the following grounds:-

"1. On the facts and in the circumstances of the case and in law, Id. CIT(A) has grossly erred in confirming penalty of Rs.1,64,670/- levied by Id. AO u/s 271(1)(c) of the Income Tax Act, 1961, without providing adequate opportunity of being heard. Appellant prays order so passed is not in accordance with law and deserves to be quashed.

2. On the facts and in the circumstances of the case and in law, Id.CIT(A) has grossly erred in confirming penalty in respect of addition of Rs.1,85,553/- arbitrarily. Appellant prays that appeal in respect of such addition went till ITAT and was restored to the file of CIT(A), which has been allowed in favour of assessee vide order dated 17.11.2017 and therefore penalty in respect of such addition deserves to be deleted.

3. On the facts and in the circumstances of the case and in law, Id.CIT(A) has grossly erred in confirming penalty in respect of disallowance of interest of Rs. 3,47,359/- claimed by assessee u/s 24(b). Appellant prays that, interest was inadvertently claimed on the higher side and in fact as soon as the mistake was pointed out by Id.AO, assessee himself offered the same for taxation, thus penalty levied in respect of such interest deserves to be deleted.

4. That, he case and in law, Id.CIT(A) has further erred in confirming penalty of Rs.1,64,670/-without appreciating the fact that mere disallowance of claim made by assessee does not ipso facto tantamounts to concealment of income or furnishing of inaccurate particulars of income. It is therefore prayed that penalty of Rs.1,64,670/- deserves to be deleted."

2. We have heard the Id. AR as well as Id. DR and considered the relevant material on record. The Id. AR of the assessee has submitted that the Id. CIT(A) has dismissed the appeal of the assessee vide ex-parte impugned order and confirmed the levy of penalty. Thus, the Id. AR has pleaded that the assessee may be given one more opportunity to present her case before the Id. CIT(A) as the assessee having a good case on merits.

3. On the other hand, the Id. DR has opposed to request for grant of one more opportunity to the assessee and submitted that the Id. CIT(A) has allowed 5 to 6 opportunity to the assessee but none has attended on any date of hearing. She has relied upon the orders of the authorities below.

4. At the outset, we note that the Id. CIT(A) has dismissed the appeal of the assessee summarily in para 3.1 as under:-

"3.1 I have gone through the penalty order carefully. The appellant has not furnished any written submission. In view of the facts discussed by the AO levied penalty of Rs. 1,64,670/- u/s 271(1)(c) in respect of addition of 1,85,553/- and disallowance of interest of Rs. 3,47,359/-. Accordingly, the penalty of Rs. 1,64,670/- levied by the AO u/s 271(1)(c) in respect of addition/disallowance of Rs. 5,32,912/- made by the AO is hereby confirmed."

Thus, it is clear that the Id. CIT(A) has confirmed the levy of penalty for want of attendance and written submission on behalf of the assessee. The Id. CIT(A) has not given any reasoning as to how the addition/disallowance made by the AO amounts to concealment particulars of income or furnishing inaccurate particulars of income. Accordingly, in the facts and circumstances of the case as the Id. CIT(A) has dismissed the appeal of the assessee vide ex-parte impugned order which is not a speaking order the matter is set aside to the record of the Id. CIT(A) for granting one more opportunity to the assessee to present her case.

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

Order pronounced in the open court on 09/07/2020.

Sd/-

(विक्रम सिंह यादव)
(Vikram Singh Yadav)

लेखा सदस्य / Accountant Member

Sd/-

(विजय पाल राव)
(Vijay Pal Rao)

न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 09/07/2020.

*Santosh.

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

1. अपीलार्थी / The Appellant- Smt. Rajni Bhatia, Jaipur.
2. प्रत्यर्थी / The Respondent- ITO, Ward-6(1), 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. 245/JP/2019}

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar