

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. 1101/JP/2019
निर्धारण वर्ष/Assessment Year :2013-14

Sh. Pawan Mundra 524-A, Talwandi, Kota	बनाम Vs.	DCIT, Central, Kota
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: ADGPM6757R		
अपीलार्थी /Appellant		प्रत्यर्थी /Respondent

निर्धारिती की ओर से/ Assessee by : Sh. C. M. Birla (CA)
राजस्व की ओर से/ Revenue by : Ms. Chanchal Meena (Addl.CIT)

सुनवाई की तारीख/ Date of Hearing : 23/07/2020
उदघोषणा की तारीख/Date of Pronouncement: 24/07/2020

आदेश / ORDER

PER: VIKRAM SINGH YADAV, A.M.

This is an appeal filed by the assessee against the order of Id. CIT(A)-2, Udaipur dated 28.06.2019 wherein the assessee has raised the following revised grounds of appeal:-

- "1. That as the Learned AO has not initiated penalty u/s 271AAB on income shown suo-motto at Rs. 5,20,000/- therefore penalty on it amounting to Rs. 1,56,000/- being unsustainable needs deletion.*
- 2. That as source of Rs. 80,000/- is well explained during assessment proceedings, penalty u/s 271AAB on it amounting to Rs. 24,000/- also being not leviable needs deletion."*

2. Regarding Ground No. 1, the Id AR drawn our reference to the findings of the Assessing in the assessment order passed u/s 143(3) r/w 153A dated 29.01.2016 which read as under:-

"7. Undisclosed income admitted and declared in the return of income

During the course of post search proceedings, the assessee had admitted an income of Rs. 6,00,000/- on A/c of undisclosed investment in Land as per documents seized from residence of Shri B.D. Mundra at 524A, Talwandi, Kota and inventorised as Exhibit-13, Page 45-49 of Annexure-AS, which is a copy of registered sale/purchase deed dated 05.04.2012, regarding industrial land purchased by the assessee. This disclosure was made through a chart furnished by Shri Anil Mundra, brother of the assessee during the course of post search proceeding on 18.11.2013.

7.1 However, the assessee had offered income of Rs. 5,20,000/- in the revised return filed on 09.11.2013 for taxation.

7.2 Out of undisclosed income admitted of Rs. 6,00,000/- by the assessee, income of Rs. 5.20 Lakh has been admitted and declared in the revised return filed. The assessee was asked to furnish justification for not offer balance undisclosed investment in Land of Rs. 80,000/-. No reply has been furnished by the assessee on this issue therefore, an addition of Rs. 80,000/- u/s 69B of the IT Act, 1961 has been made to the total income of the assessee.

7.3 It is worthwhile to mention here that the addition made of Rs. 80,000/- covered under the provision of section 69B of the Income Tax Act, 1961 as these represents undisclosed investment which are not recorded in the books of account and assessee has failed to offer any explanation about the source of the same therefore as per section 115BBE(1)(a) the income of Rs. 80,000/- liable for tax @

30%. Penalty proceedings u/s 271AAB is initiated separately by way of issue of notice u/s 274 r.w.s 271AAB of the Act.”

3. It was submitted by the Id AR that on perusal of the aforesaid findings of the AO, it is clear that the penalty proceedings have only been initiated in the context of income of Rs. 80,000/- brought to tax u/s 69B of the Act and as far as the income of Rs. 5.20 lakh offered by the assessee in the revised return e-filed on 09.11.2013, the penalty proceedings were not initiated. It was accordingly submitted that the penalty so levied by the AO u/s 271AAB therefore deserves to be deleted.

4. Regarding the penalty levied by the AO on addition of Rs. 80,000/- made u/s 69B of the Act, our reference was drawn to the working of investment in the Industrial Land as per revised return of income as under:

Cash available as on 31.03.2013	Rs. 82,561
Add: Undisclosed income	<u>Rs. 5,20,000</u>
	Rs. 6,02,561
Less : Investment in Industrial Land	<u>Rs. 6,00,000</u>
Revised Cash in hand on 31.03.2013	<u>Rs. 2,561</u>

5. It was submitted by the Id AR that the AO has not disputed the amount of investment for purchase of Industrial Land amounting to Rs. 6,00,000/- appearing in the revised balance-sheet. The AO has also not disputed the fact that available cash in hand and additional income shown of Rs. 5.2 lakh is sufficient to meet cost of investment of 6,00,000/-. His only grievance is that out of Rs. 6,00,000/-, the assessee has shown undisclosed income of Rs. 5,20,000/- only and has used cash in hand of Rs. 80,000/-. It was submitted that where the assessee has cash in hand of Rs. 80,000/- which is not disputed

by the Id. AO, the assessee cannot be deprived to use it. Though the addition of Rs. 80,000/- is made by Id. AO which is sustained by Id. CIT(A) and the same has not been challenged in second appeal before the Tribunal given the quantum of addition, however, such controversial addition is not justifiable as per provisions of section 69B of the Act and therefore, does not justify levy of penalty u/s 271AAB of the Act.

6. Per contra, the Id. DR again drawn our reference to Para 7 of the assessment order and submitted that the additional income of Rs. 5.20 lakh was offered subsequent to the date of search conducted on 13.08.2013 and even though the assessee has filed revised return of income on 09.11.2013 given that such undisclosed income was pursuant to search conduct on 13.08.2013, the assessee is liable for penalty u/s 271AAB of the Act. It was further submitted that given that the assessee has originally admitted undisclosed income of Rs. 6,00,000/-, only additional of Rs. 5.20 lakh was offered in the revised return, balance addition of Rs. 80,000/- was made during the course of assessment proceedings. It was accordingly submitted that the penalty proceedings u/s 271AAB were initiated for the whole of the undisclosed income of Rs. 6,00,000/- and it is incorrect on the part of the Id. AR to state that the penalty has been initiated only in relation to the additional income of Rs. 80,000/- brought to tax by the Assessing Officer. Further, our reference was drawn to the findings of the Id CIT(A) which read as under:-

"6.3 The income of Rs. 6,00,000/- being unexplained investment in land, in respect of which penalty has been levied, was detected because a copy of registered sale/purchase deed dated 05.04.2012, regarding purchase of industrial land by the assessee for Rs. 6,00,000/- was found during search. The investment was not recorded in the books of account on or before the date of search. Therefore the income of Rs. 6,00,000/-

falls within the definition of 'undisclosed income' as given in clause (c) of Explanation to section 271AAB (reproduced in the preceding para). Accordingly, it is held that penalty u/s 271AAB is leviable on the income of Rs. 6,00,000/-. The issue whether penalty is leviable at 10% or 30% of undisclosed income is discussed separately in the succeeding paras.

6.4 Three different rates for levy of penalty are provided in Section 271AAB, 10% of 'undisclosed income' in cases falling under clause (a), 20% of 'undisclosed income' in cases falling under clause (b), and 30% of 'undisclosed income' in cases not falling under clause (a) or (b).

6.5 For a case to fall under clause (a), the following conditions must be met–

- (i) The assessee admits the 'undisclosed income' in a statement u/s 132(4) during search and specified the manner in which such income has been derived*
- (ii) Substantiates the manner in which the undisclosed income was derived*
- (iii) The assessee on or before the 'specified date'–
 - (A) pays the tax, together with interest, if any, in respect of the undisclosed income; and*
 - (B) furnishes the return of income for the specified previous year declaring such undisclosed income therein.**

6.6 The assessee has laid much stress on the fact that out of the income of Rs. 6,00,000/- in respect of which penalty u/s 271AAB has been levied, income of Rs. 5,20,000/- was offered to tax in the return of income filed before issue of notice u/s 153A. There is no dispute about this fact, and therefore in respect of the income of Rs.5,20,000/-, which was declared in the ROI filed before issue of notice u/s 153A,

the assessee satisfies the condition "(iii)" above. However, at no stage, including in the present appellate proceedings, has the assessee specified the manner in which the income of Rs.5,20,000/-was derived, much less substantiate such manner. Therefore conditions (ii) and (ii) above, also required to be met for levy of penalty at the lower rate of 10%, under clause (a) of Section 271AAB(1), are not satisfied in the assessee's case. Accordingly, it is held that in respect of the income of Rs.5,20,000/- penalty is leviable at 30% under clause (a) of Section 271AAB(1) .

6.7 As regards income of Rs. 80,000/- in addition to the fact that at no stage, including in the present appellate proceedings, has the assessee specified the manner in which the income of Rs. 80,000/- was derived, much less substantiate such manner, this income was not offered to tax in the return of income filed u/s 153A. Therefore, none of the conditions for levy of penalty at the lower rate of 10%, under clause (a) of Section 271AAB (1), are satisfied. Accordingly, it is held that in respect of the income of Rs. 80,000/- penalty is leviable at 30% under clause (a) of Section 271AAB(1).

6.8 In view of the above discussion penalty of Rs. 1,80,000/-, levied by the A.O u/s 271AAB(1)(c), is hereby confirmed. "

7. We have heard the rival submissions and perused the material available on record. Regarding the first contention of the Id AR that the penalty u/s 271AAB has been initiated only in respect of Rs 80,000/-, we have carefully gone through the assessment order and are unable to agree to the contention so advanced by the Id AR. The sum and substance of para 7 of the assessment order where read in totality will show clearly that the penalty has been initiated

in respect of Rs 6,00,000/- admitted by the assessee pursuant to search conducted on 13.08.2013. Given that the assessee had only disclosed a sum of Rs 5.2 lacs in the revised return filed on 9.11.2013, subsequent to date of search and thereafter, in the return filed on 16.02.2015 in response to notice u/s 153A, the Assessing officer has brought the balance amount of Rs 80,000/- to tax during the course of assessment proceedings. However, as far as initiation of penalty proceedings u/s 271AAB is concerned, the same has been initiated on the whole of the sum of Rs 6 lacs admitted by the assessee pursuant to search.

8. Regarding the second contention of the Id AR that the assessee had cash in hand of Rs 80,000/- as on 31.03.2013 and the same has been utilized in making the investment for purchase of land. In our view, what needs to be seen is the source of investment at the point in time when the investment was made. In the instant case, the sale deed has been registered on 5.4.2012, therefore, what needs to be seen is whether the assessee was having sufficient cash in hand on or before 5.4.2012 reflected in its books of accounts to make such investment, however, there is nothing on record to substantiate the same. Therefore, we are unable to agree to the contention so raised by the Id AR and confirm the following findings of the Id CIT(A) which reads as under:

"As regards income of Rs. 80,000/- in addition to the fact that at no stage, including in the present appellate proceedings, has the assessee specified the manner in which the income of Rs. 80,000/- was derived, much less substantiate such manner, this income was not offered to tax in the return of income filed u/s 153A. Therefore, none of the conditions for levy of penalty at the lower rate of 10%, under clause (a) of Section 271AAB (1), are satisfied. Accordingly, it is held that in respect of the

income of Rs. 80,000/- penalty is leviable at 30% under clause (a) of Section 271AAB(1)."

In the result, both the grounds taken by the assessee are dismissed and the matter is decided in favour of the Revenue and against the assessee. The appeal of the assessee is accordingly dismissed.

Order pronounced in the open Court on 24/07/2020.

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

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

जयपुर / Jaipur

दिनांक / Dated:- 24/07/2020

*Ganesh Kr.

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

1. अपीलार्थी / The Appellant- Sh. Pawan Mundra, Kota
2. प्रत्यर्थी / The Respondent- DCIT, Central, Kota
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. 1101/JP/2019}

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar