

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL,
JAIPUR BENCHES (SMC), JAIPUR

श्री रमेश सी.शर्मा, लेखा सदस्य के समक्ष
Before : Shri Ramesh C.Sharma, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No. 979/JP/2016
निर्धारण वर्ष / Assessment Year : 2011-12

Shri Ramesh Kabra Prop: M/s.Ramesh Bartan Bhandar Opp:Gopal Building, Ajmer Road, Madan Ganj, Jaipur	बनाम Vs.	The ITO Ward- 1 Kishangarh
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AJJPK 0077 D		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri Satish Gupta, CA
राजस्व की ओर से / Revenue by: Ms.Chanchal Meena, JCIT

सुनवाई की तारीख / Date of Hearing : 24/07/2020
घोषणा की तारीख / Date of Pronouncement : 03/08/2020

आदेश / ORDER

PER RAMESH C. SHARMA, AM

This is an appeal filed by the assessee against the order of the Id. CIT(A)-Ajmer dated 09-08-2016 for the Assessment Year 2011-12, in the matter of penalty of Rs.73,000/- imposed u/s 271(1)(c) of the Income Tax Act, 1961.

2.1 This appeal was earlier decided by the Tribunal by passing ex-parte order dated 13-04-2017. Thereafter, the assessee filed the Misc. Application for recalling the ex-parte order. The Tribunal vide its order dated 18-08-2017 recalled its earlier order dated 13-04-2017 and the Registry was directed to fix the case

for hearing afresh before the regular Bench. Now this appeal is again put up before this Bench for hearing.

2.2 I have considered the rival contentions and carefully gone through the orders of the authorities below and found that the AO estimated the 10% of Net Profit at Rs.4,28,000/- and added in the declared income of the assessee. Penalty proceedings were initiated. In the last, the AO at para 7 page 6 of penalty order levied the penalty by holding that *“the above facts clearly establish on record that the assessee has concealed income chargeable to tax and furnished inaccurate particulars of income and thereby caused loss to the revenue.”*

2.3 From the record, I found that prior to levy of penalty a Notice u/s 274 of the Act was issued which was in a fixed format and did not mention the limb on which the AO issued the notice to levy the penalty. Hon’ble Karnataka High Court in the case of CIT vs SSA’s Emerald Meadows in ITA No. 380 of 2015 relying upon the decision of Hon’ble High Court in the case of CIT vs Manjunath Cotton and Ginning Factory, 359 ITR 565 held that ITAT allowed the appeal holding that the notice issued by the AO u/s 274 is bad in law as it did not specify which limb of Section 271(1)© of the Act, the penalty proceedings had been initiated. Hon’ble Supreme Court of India in this case dismissed the SLP filed by the Department. Moreover, Hon’ble Karnataka High Court in the case of CIT vs Manjunath Cotton and Ginning Factory has upheld in conclusion part para 63 sub para “p, q and r” that notice u/s 274 of the Act should specifically state the

grounds mentioned in section 271(1)© of the Act i.e. whether it is for concealment of income or for furnishing of incorrect particulars of income. It was held that the sending printing form where all the grounds are mentioned in Section 271 could not satisfy requirement in law and the assessee should know the grounds which he has to reply specifically otherwise principle of natural justice is offended and on the basis of such proceedings, no penalty could be imposed to the assessee. Recently Hon'ble Bombay High Court in the case of CIT vs Samson Perinchery has held that penalty should be clear as to the limb for which it is levied and the position being unclear the penalty is not sustainable. They relied upon the decision of Hon'ble Supreme Court in the case of Ashok Pai vs CIT 292 ITR 11 where Hon'ble Apex Court observed that concealment of income and furnishing of inaccurate particulars of income in Section 271(1)© of the Act have different meaning. ITAT Jaipur Bench in the case of Shankarlal Khandelwal vs DCIT in ITA No. 878/JP/2013 and in the case of Lalchand Mittal, Jaipur vs DCIT in ITA No.772/JP/2016 has held that penalty is not leviable under these circumstances.

2.4 In view of the above facts and circumstances of the case and applying the judicial pronouncements discussed above to the facts of the instant case, I do not find any justification for imposition of penalty and the same is directed to be deleted.

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

Order pronounced in the open court on 03 /08/2020.

Sd/-

(रमेश सी शर्मा)

(Ramesh C. Sharma)

लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 03 /08/ 2020

*Mishra

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

1. अपीलार्थी / The Appellant- Shri Ramesh Kabra, Kishgargarh
2. प्रत्यर्थी / The Respondent- The ITO Ward—1, Kishangarh
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.979/JP/2016)

आदेशानुसार / By order,

सहायक पंजीकार / Assistant. Registrar