

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर  
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES 'B' 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. 1389/JP/2018  
निर्धारण वर्ष /Assessment Year :2010-11

M/s Murlidhar Deen Dayal, Lal Kothi, Kesar Ganj, Ajmer	बनाम Vs.	ITO, Ajmer
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AAEFM0693D		
अपीलार्थी /Appellant		प्रत्यर्थी /Respondent

निर्धारिती की ओर से / Assessee by : Sh. Mahendra Gargieya (Adv.) &  
Sh. Hemang Gargieya (Adv.)  
राजस्व की ओर से / Revenue by : Ms. Chanchal Meena (Addl.CIT)

सुनवाई की तारीख / Date of Hearing : 10/08/2020  
उदघोषणा की तारीख / Date of Pronouncement: 11/08/2020

आदेश / ORDER

PER: VIKRAM SINGH YADAV, A.M.

This is an appeal filed by the assessee against the order of Id. CIT(A), Ajmer dated 18.09.2018 wherein the assessee has taken the following grounds of appeal:-

- "1. The impugned penalty order u/s 271(1)(c) of the Act dated 03.03.2017 is bad in law and on facts of the case, for want of jurisdiction and various other reasons and hence the same kindly be quashed.*
- 2. The Id. CIT(A) erred in law as well as on the facts of the case in confirming the order of AO dated 03.03.2017 imposing penalty u/s 271(1)(c) of the Act of Rs. 5,00,000/-. The penalty so imposed, being totally contrary to the provisions of law and facts, hence the same kindly be deleted in full.*

*3. That the impugned show case notice issued u/s 274 r/w 271(1)(c) of the Act, is quite vague and did not at all specify under which limb of Section 271(1)(c) of the Act, the penalty proceedings had been initiated i.e., whether for concealment particulars of income or furnishing of inaccurate particulars of income. The impugned penalty based on such a notice being contrary to the provisions of law & facts kindly be quashed."*

2. During the course of hearing, the Id. AR submitted that the assessee firm deals in the business of cattle feed on whole sale basis. The return of income was filed on 14.10.2010 declaring total income of Rs. 33,274/-. A survey u/s 133A was conducted on 15.09.2009 at the business premises of Goyal Group at Ajmer, which also included the assessee. During the course of survey, the assessee offered the amount of undisclosed income on account of Cash & Stocks of Rs. 14,55,858/- (Rs. 1,55,858 Cash + Rs. 13,00,000). But the same were not included by the assessee in its return of income. Thereafter, the assessment was completed at total income of Rs. 15,00,390/- by making additions on account of the alleged excess cash of Rs. 1,55,858/-, alleged investments in the unaccounted purchased of Rs. 13,00,000/- and GP on short stock of Rs. 754 with others, pursuant to the survey. The Id. CIT(A) however, partly reduced the impugned addition and sustained the same as Rs. 13,00,000/-.

3. It was further submitted that the assessee has since taken the matter before the Tribunal and the Tribunal vide its order dated 11.04.2019 in ITA No. 428/JP/2013 rejected the approach of the lower authorities and restored the income as declared of the return of income and the relevant findings of the Tribunal reads as under:-

*"11. The Co-ordinate Jaipur Bench of ITAT has already been taking this view in the case of ITO vs. Suresh Chandra Koolwal (2004) 32 TW 23 (Jp). Various Benches of the ITAT have taken similar view such as in the cases of*

*R. K. Synthetics 30 TW 228 (Jd). Ashok Kumar Soni vs. DCIT (2001) 72 TTJ 323 (Jd), Karam Chand vs. ACIT (2000) 73 ITD 434 (Chd): (2000) 68 TTJ 789 (Chd) & Rishab Kumar Jain vs. ACIT (1999) 63 TTJ 236 (Del). In the case of Rajesh Jain vs. DCIT (2006) 100 TTJ 929 (Del), held that computation of undisclosed income solely on the basis of confessional statement of the assessee was not justified.*

*12. In view of the above facts and circumstances, I direct the AO to restrict the addition to the extent of Rs. 28,240/- being profit element on unaccounted sales.*

*13. In the result, appeal of the assessee is allowed in part."*

4. It was accordingly submitted that only basis of imposition of the penalty vide the impugned penalty order is the addition of Rs. 13,00,000/- being alleged unexplained investment made in the purchase of stock and which has since has been deleted by the Tribunal, the consequent penalty levied deserves to be deleted.

5. Per contra, the Id. DR submitted that the addition has been made by the AO pursuant to survey conducted by the Department and it is therefore, not a case of voluntarily disclosure by the assessee. It was further submitted that given that in the quantum proceedings, the Tribunal has restricted the addition made by the AO to the extent of Rs 28,240/-, the matter may be remanded to the file of the AO to recalculate the quantum of penalty so levied u/s 271(1)(c) of the Act.

6. We have heard the rival submissions and perused the material available on record. We find that the penalty has been levied on addition of Rs 13,00,000/-, being investment in unaccounted purchases made by the AO pursuant to survey conducted at the premises of the assessee. The Tribunal in the quantum proceedings has however held that it was not a case of unexplained

investment/unaccounted purchases as wrongly understood by the authorities below and it was only the suppressed sales made out of recorded purchases and in respect of undisclosed sales, only profit element can be added and the AO was accordingly directed to restrict the addition to the extent of Rs 28,240/-, being the profit element on unaccounted sales. Therefore, where the very basis of levy of penalty, being the quantum addition, has been restricted to Rs 28,240/-, the consequent levy of penalty shall also stand restricted to Rs 28,240/-. No other arguments have been taken or canvassed during the hearing in support of ground no. 2, hence the same is dismissed. In the result, the AO is directed to restrict the penalty to Rs 28,240/- and the remaining penalty is hereby directed to be deleted.

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

Order pronounced in the open Court on 11/08/2020.

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:- 11/08/2020

\*Ganesh Kr.

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

1. अपीलार्थी / The Appellant- M/s Murlidhar Deen Dayal, Ajmer
2. प्रत्यर्थी / The Respondent- ITO, Ajmer
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. 1389/JP/2018}

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar