

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

श्री रमेश सी.शर्मा, लेखा सदस्य एव संदीप गोसाई, न्यायिक सदस्य के समक्ष
BEFORE: SHRI RAMESH C SHARMA, AM & SHRI SANDEEP GOSAIN, JM

आयकर अपील सं./ITA No.880/JP/2019
निर्धारण वर्ष/Assessment Year : 2014-15

The DCIT Central Circle-1 Jaipur	बनाम Vs.	Shri Jugal Kishore Garg A-36, Govind, Takteshai Road JLN Marg, Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: ABBPG 4020 E		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

राजस्व की ओर से / Revenue by: Smt. Runi Paul , Addl.CIT DR
निर्धारिती की ओर से / Assessee by : Shri S.L. Poddar, Advocate

सुनवाई की तारीख / Date of Hearing : 26/08/2020
उदघोषणा की तारीख / Date of Pronouncement: 11 /09/2020

आदेश / ORDER

PER SANDEEP GOSAIN, J.M.

The present appeal has been filed by the Department against the order of Id.CIT (A)-4, Jaipur dated 25.04.2019 for the Assessment Year 2014-15 passed u/s 271AAB of the Income Tax Act, 1961 (in short the "Act") raising following grounds of appeal.

"1. Whether on the facts and I the circumstances of the case and in law the Id. CIT(A) was right in deleting the penalty of Rs. 62,70,000/- imposed by the AO u/s 271AAB(1)(c) of the I.T. Act, 1961 ignoring the fact that had the search not been conducted, the assessee would not have shown this income of Rs. 3.30 crore.

2. Whether on the facts and I the circumstances of the case and in law the ld. CIT(A) was right in deleting the penalty on undisclosed income of Rs. 3.30 crores on account of advances.

3. Whether on the facts and I the circumstances of the case and in law the ld. CIT(A) is justified in holding that the income was found recorded in other documents maintained by the assessee in normal course as per clause (c) of sub section (1) to explanation of Section 271AAB of the I.T. Act, 1961.’

2.1 Apropos Ground No. 1 to 3 of the Revenue, the facts as emerges from the order of the ld. CIT(A) are as under:-

“5. I have perused the written submissions submitted by the Ld. A/R and the order of AO. I have also gone through various judgments cited by the Ld. A/R and those contained in the order of AO.

In the present case the AO imposed penalty u/s 271AAB on disclosure of Rs. 3.3 Crores made u/s 132(4) of the Act and the 92,770/-, the addition sustained by CIT(A). The Ld. A/R has argued for deletion of penalty taking the following grounds.

1. That the notice issued by the AO is not specific, not specifying under which clause the AO sought to impose the penalty.

2. That the penalty u/s 271AAB is not mandatory as concluded by the AO.

3. That appellant case is directly covered by decision of Hon'ble ITAT Jaipur in the case of Raja Ram Maheshwari Vs. DCIT (ITA 992/JP/2017 dated 10-01-2019). The Ld. A/R also highlighted other judgment in his favour namely:

- a. Ravi Mathur 969/JP/2017
- b. S C Mittal 931/1P/2017
- c. Anuj Mathur 971/JP/2017

5.2 The appellant was subjected to search and seizure on 04-09-2013. During the course of search certain loose paper were found and seized marked Annexure AS/Exhibit-1, which contained list of advances given for land purchased totaling to Rs. 3.3 Crores. These 3 pages are filed before me in paper book pager 31 to 33. The appellant owned these advance given as his undisclosed income u/s 132(4) of the Act and paid tax there in the returned

filed on 31-01-2015. The AO imposed penalty on Rs. 3.3 Crores and also the on the sum of Rs. 92,770/- confirmed by CIT(A) on certain other disallowances.

5.3 I have carefully perused the order relied upon. The relevant para 21 reads as under:-

21. During the course of search, a note book (diary) has been found wherein there are notings relating to advance given to various persons towards purchase of land. The notings describe the name of the persons, the amount advanced which ranges from Rs. 2 Lacs to Rs. 24 lacs to 10 persons and the date of such advance during the period November, 2013 to February, 2014. Therefore, what has been found during the course of search is certain entries relating to undisclosed investment in purchase of land. Besides, the said entries, there are no other document in terms of any agreement to sell, the description of the property which has been found during the course of search. As per the definition of undisclosed income u/s 271AAB, the undisclosed investment in purchase of land cannot be stated to be income which is represented by any money, bullion, jewellery or other valuable article or thing. Whether it can be said that such undisclosed investment represents income by way of any entry in the books of account or other documents or transactions found in the course of a search under section 132. An investment *per se* represents an outflow of funds from the assessee's hand and an income *per se* represents an inflow of funds in the hands of the assessee. Therefore, once there is an inflow of funds by way of income, there could be subsequent outflow by way of investment. Investment and income thus connote different meaning and connotation and thus cannot be used interchangeably. In the definition of undisclosed income, where it talks about "income by way of any entry in the books of account or other documents or transactions found in the course of a search under section 132", what perhaps has been envisaged by the legislature is an inflow of funds in the hands of the assessee which has been found recorded by way of any entry in the books of accounts or other documents, and which has not been recorded before the date of search in the books of accounts or other documents maintained by the assessee in the normal course. We are also conscious of the fact that there are deeming provisions in terms of section 69 and 69B wherein such investments are deemed to be treated as income in absence of satisfactory explanation. In our view, the deeming fiction so envisaged under Section 69 and Section 69B where investments

which are found either not recorded or found recorded at a lesser value in the books of accounts, and such investments are deemed to be income of the assessee of the year in which such investments have been made, cannot be extended and applied automatically in context of section 271AAB. It is a well-settled legal proposition that the deeming provisions are limited for the purposes that have been brought on the statute book and have therefore to be applied in the context of provisions wherein they have been brought on the statute book and not otherwise. In the instant case, the deeming provisions are contained in section 69 and section 69B and therefore, the same have to be applied in the context of bringing to tax such investments to tax in the quantum proceedings. The same cannot be extended to the penalty proceedings which are separate and distinct from the assessment proceedings and more so, where the provisions of section 271AAB provide for a specific definition of undisclosed income. Where a specific definition of undisclosed income has been provided in Section 271AAB, being a penal provision, the same must be strictly construed and in the light of satisfaction of conditions specified therein. In light of the same, the undisclosed investment by way of advance for purchase of land can be subject matter of addition in the quantum proceedings, however the same cannot be said to qualify as an undisclosed income in the context of section 271AAB read with the explanation thereto and penalty so levied deserves to be set-aside.

Careful perusal of the order shows that appellant case is covered by the said decision of Hon'ble ITAT Jaipur order as the impugned seized document contains list of advances made by the appellant. Such advances were owned up as undisclosed income by the appellant.

5.4 Further during the course of appellate proceedings the Ld. A/R was specifically asked about applicability of the decision in the case of Sandeep Chandak Vs. CIT 93 Taxmann.com 405, in which case the SLP filed by the appellant in that case was dismissed by Hon'ble Supreme Court. The Ld. A/R submitted as under:

1. That the case Shri Sandeep Chandak in ITA No. 122 of 2017 decided by Hon'ble Allahabad High Court is totally different from the facts of the facts of the assessee's case. In the case of Shri Sandeep Chandak the issue of initiation of penalty and satisfaction of the AO was primary issue which

has been challenged by the assessee. The Hon'ble ITAT Lucknow Bench has given relief to the assessee.

At the end the Tribunal has held that since the provisions of Section 271AAB are not mandatory therefore, levy of penalty in each and every case where ever the assessee has made default is unjustified."

6. I have carefully perused the submissions made and the judgment too. I am in agreement with the Ld. A/R that in Sandeep Chandak case the adjudication was made in reference to the notice issued u/s 274 r.w.s. 271(1)(c) by the Department. The grounds in the case of Sandeep Chandak are as under:

2. Following questions of law have been framed by the assessee :

"(A) Whether on the facts and circumstances of the case and in law, the Ld. ITAT has erred in not appreciating the facts that the notice was issued for imposition of penalty u/s 271AAB and not for imposition of penalty u/s 271(1)(c) of the Act ?

(B) Whether on the facts and circumstances of the case and in law, the Ld. ITAT has erred in not appreciating the facts that the specific charge 'have in a statement under sub section 4 of section 132 during the course of search and seizure operation admitted undisclosed income' was mentioned in the notice?

(C) Whether the benefit of Section 292BB was correctly denied to the AO/appellant by the ITAT?"

6.2 Clearly the issue of what constitute the 'undisclosed income within the definition provided in the section u/s 271AAB was never a subject matter before the Hon'ble High Court of Allahabad. Even otherwise this aspect is discussed elaborately in the order of Niraj Mathur delivered by Hon'ble ITAT Jaipur.

Thus, following the decision of the Hon'ble ITAT Jaipur Bench discussed supra, the penalty levied by the AO is unjustified. The various other cases of ITAT Jaipur bench referred by the Ld. AR also support his case.

6.3 Accordingly the penalty on 3.3 Crores is directed to be deleted. To make matter clear, the penalty is confirmed on the addition of Rs. 92,770/-. The AO thus will recompute the penalty u/s 271AAB on a sum of Rs. 92,770/- at the same rate adopted in the initial penalty order.'"

2.2 During the course of hearing, the Id. DR supported the order of the AO.

2.3 On the other hand, the Id.AR supported the order of the Id. CIT(A).

2.4 We have heard the Id. counsel for both the parties, perused the materials placed, orders passed by the Revenue authorities as well as judgements/ orders cited by the parties. It is not imperative repeat the facts of the case as the Id. CIT(A) has elaborately discussed the issue in detail by taking the reference of ITAT Judgement in the case of Raja Ram Maheshwari vs DCIT (ITA No. 992/JP/2017 dated 10-01-2019) and thus the Id. CIT(A) had partly allowed the appeal of the assessee by observing as under:- .

6.3 Accordingly the penalty on 3.3 Crores is directed to be deleted. To make matter clear, the penalty is confirmed on the addition of Rs. 92,770/-. The AO thus will recompute the penalty u/s 271AAB on a sum of Rs. 92,770/- at the same rate adopted in the initial penalty order.’’

Hence, taking into consideration the facts, circumstances of the case and also the decision of ITAT Jaipur bench in the case of Raja Ram Maheshwari vs DCIT (supra), we concur with the findings of the Id.

CIT(A) in the case of the assessee. Thus the appeal of the Revenue is dismissed.

3.0. In the result, the appeal of the Revenue is dismissed.

Order pronounced in the open court on 11 /09/2020.

Sd/-

(रमेश सी.शर्मा)

(Ramesh C. Sharma)

लेखासदस्य / Accountant Member

Sd/-

(संदीप गोसाई)

(Sandeep Gosain)

न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 11/09/2020.

*Mishra

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

1. अपीलार्थी / The Appellant- The DCIT, Central Circle-1, Jaipur

2. प्रत्यर्थी / The Respondent- Shri Jugal Kishore Garg, 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. 880/JP/2019}

आदेशानुसार / By order,

सहायक पंजीकार / Asstt. Registrar