

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

श्री कुल भारत, न्यायिक सदस्य एवं श्री ओ.पी.कांत, लेखा सदस्य के समक्ष  
BEFORE: SHRI KUL BHARAT, JM & SHRI O.P. KANT, AM

आयकर अपील सं./ITA No.938/JP/2019  
निर्धारण वर्ष/Assessment Year : 2014-15

Shri Anurag Shah 2654, Shah Bhawan, Ghee Wallon Ka Rasta, Johari Bazar, Jaipur.	बनाम Vs.	The ITO, Ward-2(1), Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN No. CGCPS 0926 H		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारितकी ओर से / Assessee by : None  
राजस्व की ओर से / Revenue by : Smt. Runi Pal (ACIT)

सुनवाई की तारीख / Date of Hearing : 18/11/2020  
घोषणा की तारीख / Date of Pronouncement: 19/11/2020

आदेश / ORDER

PER SHRI O.P. KANT, A.M.

This appeal has been filed by the assessee challenging the order dated 15/04/2019 passed by the learned Commissioner of Income-tax(Appeals)-I, Jaipur [in short the Ld. CIT(A)] for assessment year 2014-15 in relation to penalty levied by the ld. Assessing Officer for furnishing inaccurate particulars of income.

2. The grounds raised in the appeal are reproduced as under:-

*“1. That the Lower Authorities has grossly erred in holding penalty u/s 271(1)(c) of the Act of Rs. 91000/-.*

*2. That the Assessing authority has grossly erred in imposing the penalty u/s 271(1)(c) of the Act without affording proper opportunity of hearing and without considering the proper service of the notice on the appellant.*

*3. That the Lower Authorities has grossly erred in holding that surrender was not made voluntarily and imposing the penalty u/s 271(1)(c) of the Act of Rs. 91,000/- where a surrender was made in good faith.*

*4. That the lower authorities has grossly erred in sustaining the penalty that too without considering the entire material facts as available on record and without investigating complete facts independently.*

*5. That the assessee has right to add alter or amend any ground of appeal on or before the date of hearing.”*

3. At the outset, we may like to mention that this appeal was fixed for hearing through videoconferencing facility and the assessee was informed the date of the hearing through e-mail provided in the form No. 36 i.e. ([ankitexportsjpr@yahoo.co.in](mailto:ankitexportsjpr@yahoo.co.in)) filed by the assessee. During the course of the hearing neither anybody represented on behalf of the assessee nor any adjournment was sought on behalf of the assessee. The matter relates to assessment year 2014-15 and the case has been adjourned from time on time request of Id. Authorized Representative (AR) of the assessee. Despite notifying, the assessee did not take any

steps for effective representation for getting the matter disposed on merit. It is, therefore appears that assessee is not interested in prosecuting the matter. Accordingly, the appeal is heard ex-parte qua the assessee.

4. Briefly stated facts of the case are that against the return of income filed by the assessee on 07/03/2016 declaring total income of Rs. 1,08,350/-, scrutiny assessment under section 143(3) of the income tax Act, 1961 (in short the 'Act') was completed on 20/10/2016 after disallowing claim of exemption of long-term capital gain of Rs. 6,82,863/- on sale of shares of "M/s Kappac Farma". Simultaneously, penalty proceedings under section 271(1)(c) of the Act were initiated for furnishing inaccurate particulars of the income. The Assessing Officer after providing opportunity and considering submission of the assessee held that the assessee has made wrong claim of exemption under section 10(38) of the Act and thereby evaded taxes. He accordingly, levied penalty Under section 271(1)(c ) of the Act vide order dated 22/03/2017. On further appeal, the Ld. CIT(A) upheld the order of the Assessing Officer. Aggrieved, the assessee filed appeal before the Income Tax Appellate Tribunal (in short the 'Tribunal') raising the grounds as reproduced above.

5. We have heard the Ld. Departmental Representative through video conference facility and perused the relevant material on record.

Before the Ld. CIT(A) the assessee contended that he has voluntarily and in good faith offered the income from long-term capital gain for taxation and therefore no penalty should be levied. The Ld. CIT(A), however offered that the assessee has offered the said long-term capital gain for tax during the scrutiny assessment proceeding only. The relevant finding of the Ld. CIT(A) is reproduced as under:-

*“(iii) It is seen that the income disclosed under the head 'long term capital gain' in the return of income was not genuine. The appellant has taken accommodation entries and to avoid taxes showed such income under the head 'long term capital gain' and claimed exemption u/s 10(38) of the Act. It is also seen that the similar income was offered by the appellant under the IDS-2016 for AY 2015-16. All this shows that only as a result of scrutiny assessment, on being questioning by the AO, the appellant came forward to offer the above income for taxation. The attention is invited to judgment of Hon'ble Apex Court in the case of Union of India vs. Dharamendra Textile Processors 293 ITR 584 (SC), wherein after quoting from section 271 extensively and also considering section 271(1)(c), the Hon'ble Court came to the conclusion that since section 271(1)(c) indicates the element of strict liability on the assessee for the concealment or for giving inaccurate particulars while filing Return, there was no necessity of mens rea. The Court went on to hold that the objective behind enactment of section 271(1)(c) read with Explanations indicated with the said section was for providing remedy for loss of revenue and such a penalty was a civil liability and, therefore, willful concealment is not an essential*

*ingredient for attracting civil liability as was the case in ne matter of prosecution under section 276C of the Act.”*

In our opinion, the Ld. CIT(A) is justified in upholding the penalty in view of wrong claim by the assessee without any bonafide explanation in terms of Explanation-1 to section 271(1)(c ) of the Act. We do not find any error in the order of the Ld. CIT(A) on the issue in dispute and accordingly, we upheld the same. The grounds raised by the assessee are dismissed

In the result, the appeal of the assessee is dismissed.

Order pronounced in the open court on 19/11/20120

Sd/-

(कुल भारत )  
(Kul Bharat)

न्यायिक सदस्य / Judicial Member

Sd/-

(ओ.पी.कांत)  
(O.P. Kant)

लेखा सदस्य / Accountant Member

Jaipur

Dated:- 19/11/2020

Santosh\* /Dragon Software

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

1. अपीलार्थी / The Appellant- Shri Anurag Shah, Jaipur.
2. प्रत्यर्थी / The Respondent- ITO, Ward-2(1), Jaipur.
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त(अपील) / The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT,
6. गार्ड फाईल / Guard File (ITA No.938/JP/2019)

आदेशानुसार / By order,

सहायक पंजीकार / Assistant. Registrar.