

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर  
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES "A", JAIPUR  
श्री संदीप गोसाई, न्यायिक सदस्य एवं श्री विक्रम सिंह यादव, लेखा सदस्य के समक्ष  
BEFORE SHRI SANDEEP GOSAIN, JM & SHRI VIKRAM SINGH YADAV, AM

आयकर अपील सं./ ITA No. 1108/JP/2019  
निर्धारण वर्ष / Assessment Year :2010-11

Smt. Shiva Bhatia, 49-A, New Colony, Gumanpura, Kota.	बनाम Vs.	D.C.I.T., Central Circle Kota.
स्थायी लेखा सं./ जीआईआर सं./ PAN/GIR No.: AHTPB 1598 A		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri P.C. Parwal (CA)  
राजस्व की ओर से / Revenue by : Smt. Monisha Choudhary (Addl.CIT)

सुनवाई की तारीख / Date of Hearing : 18/01/2021  
उदघोषणा की तारीख / Date of Pronouncement : 28/01/2021

आदेश / ORDER

**PER: SANDEEP GOSAIN, J.M.**

This is an appeal filed by the assessee against the order of Id.CIT(A)-2, Udaipur dated 28/06/2019 for the A.Y. 2010-11 in the matter of confirmation of penalty imposed U/s 271(1)(c) of the Income Tax Act, 1961 (in short, the Act), wherein following effective grounds have been taken.

- “1. Under the facts and circumstances of the case, the order passed U/s 271(1)(c) is illegal and bad in law.
2. The Id. CIT(A) has erred on facts and in law in confirming the levy of penalty u/s 271(1)(c) of the IT Act, 1961 on the alleged undisclosed salary income of Rs. 1,80,000/- received from M/s Bhatia Corporation Pvt. Ltd. by not accepting the explanation of assessee that such salary income was inadvertently left to be included at the time of filing the return.”

2. The hearing of the appeal was concluded through video conference in view of the prevailing situation of Covid-19 Pandemic.

3. In this appeal, the assessee is basically aggrieved by the order of the Id. CIT(A) in confirming the penalty imposed U/s 271(1)(c) of the Act. The brief facts of the case are that the assessee derives income from salary and income from other sources. She filed her return of income u/s 139(1) on 31.07.2010 at total income of Rs.1,46,301/- A search was carried out on 03.03.2016 at her residential premises. In response to notice issued u/s 153A, she filed the return on 01.10.2016 declaring total income of Rs.1,66,814/-. During the course of assessment proceedings when assessee prepared statement of affairs it came to her notice that salary of Rs.1,80,000/- from M/s Bhatia Corporation Pvt. Ltd. which was credited in her account but not actually received was left to be included in the income by mistake. Accordingly, she filed revised computation of total income and offered the same for taxation. The AO added the same to the total income of assessee. On this addition he initiated penalty proceedings u/s 271(1)(c) of the Act on account of concealment of the particulars of income. In penalty proceedings, the AO held that it is a case where assessee has suppressed her income by way of not disclosing her correct income in the regular return. The penalty proceedings are required to be initiated and imposed when assessee has concealed the particulars of her income.

Accordingly, by referring to explanation 5A to section 271(1)(c), he imposed penalty on such addition of Rs.1,80,000/-.

4. Being aggrieved by the order of the A.O., the assessee carried the matter before the Id. CIT(A). Before Id. CIT(A), the assessee submitted that since no incriminating material was found during search, addition made by the AO is not sustainable in law. Only because addition has been made to the income would not lead to penalty u/s 271(1)(c). Further omission of salary from income declared in the ROI filed u/s 153A was a bonafide mistake. On such bonafide mistake no penalty is leviable. The Ld. CIT(A) rejected the explanation of assessee by relying on the decision of Hon'ble Kerala High Court in case of E.N. Gopakumar where it is held that assessment proceedings generated by the issuance of notice u/s 153A can be concluded against the interest of assessee including making additions even without any incriminating material being available against the assessee in the search u/s 132. He further held that M/s Bhatia Corporation Pvt. Ltd. is a group concern wherein Sh. Prem J. Bhatia and Sh. Ram J. Bhatia are directors. Assessee is the daughter of Sh. Ram J. Bhatia. The assessee not being aware of salary credited to her by such group company is not a credible explanation. Similarly, in case of other group concerns namely M/s Bhatia Infrastructure Pvt. Ltd. and M/s Bhatia Automobiles Pvt. Ltd. wherein also Sh. Prem J. Bhatia and Sh. Ram J. Bhatia are directors, the company

credited salary to Sh. Yash Bhatia who is son of Sh. Prem J. Bhatia but the salary was not declared by Sh. Yash Bhatia in the return of income filed u/s 153A. Thus, the explanation furnished by the assessee as to why salary from M/s Bhatia Corporation Pvt. Ltd. was not offered to tax in the return of income filed u/s 153A is not a bonafide explanation. Accordingly, she confirmed the levy of penalty on the salary income of Rs.1,80,000/-.

5. Now the assessee is in further appeal before the ITAT against confirmation of penalty levied U/s 271(1)(c) of the Act. At the outset, the Id AR appearing on behalf of the assessee has submitted that under the identical circumstances, penalty levied in the case of Shri Yash Bhatia who is son of Shri Prem J Bhatia has already been deleted by the Coordinate Bench of this ITAT in ITA No. 1142/JP/2019 order dated 09/01/2020 and prayed that under similar circumstances, penalty levied and confirmed may be deleted.

6. On the other hand, the Id DR has relied on the orders passed by the lower authorities.

7. We have considered the rival contentions of both the parties and carefully perused the orders of the revenue authorities. The Id AR has drawn our attention towards the order passed by the Coordinate Bench in the case of Yash Bhatia in ITA No. 1142/JP/2019 order dated 09/01/2020

wherein the Tribunal had deleted the penalty imposed U/s 271(1)(c) of the Act by observing as under:

"8. We have heard the rival contentions and perused the material available on record. The limited point of dispute is whether addition towards salary income made by the Assessing officer during the course of proceedings u/s 153A r/w 143(3) can form the basis for levy of penalty by invoking provisions of explanation 5A to section 271(1)(c) of the Act which reads as under:

“Explanation 5A.— Where, in the course of a search initiated under [section 132](#) on or after the 1st day of June, 2007, the assessee is found to be the owner of—

- (i) any money, bullion, jewellery or other valuable article or thing (hereafter in this Explanation referred to as assets) and the assessee claims that such assets have been acquired by him by utilising (wholly or in part) his income for any previous year; or
- (ii) any income based on any entry in any books of account or other documents or transactions and he claims that such entry in the books of account or other documents or transactions represents his income (wholly or in part) for any previous year,

which has ended before the date of search and,—

- (a) where the return of income for such previous year has been furnished before the said date but such income has not been declared therein; or
- (b) the due date<sup>17</sup> for filing the return of income for such previous year has expired but the assessee has not filed the return,

then, notwithstanding that such income is declared by him in any return of income furnished on or after the date of search, he shall, for the purposes of imposition of a penalty under clause (c) of sub-section (1) of this section, be deemed to have concealed the particulars of his income or furnished inaccurate particulars of such income.”

9. *It is a settled legal proposition that penal provisions must be strictly construed and only on satisfaction of conditions specified therein, the penalty can be levied. In the instant case, the assessee has not been found to be recipient of salary income during the course of search. The assessee is an individual deriving salary and interest income and not required to maintain books of accounts. There is nothing on record that any documents/material/information was found during the course of search which remotely indicate that the assessee is recipient of salary income. It is only during the course of proceedings u/s 153A that the Assessing officer noticed that the assessee is in receipt of salary income and which has not been disclosed by the assessee in his return and the same was accordingly brought to tax. The dispute is not that the salary income was not offered to tax by assessee in his return of income which is an admitted position but the question is whether such salary income has been found during the course of search and the answer to that is not in affirmative. In the present case, we therefore find that none of the conditions specified in explanation 5A to section 271(1)(c) is satisfied in the instant case and therefore, levy of penalty is hereby directed to be deleted."*

8. After having gone through the facts of the present case, we noticed that only dispute in the present case is levy of penalty on the alleged undisclosed salary income of Rs.1,80,000/- credited to the account of assessee by M/s Bhatia Corporation Pvt. Ltd. We observe that assessee filed the original return of income on 31.07.2010. The time limit for service of notice u/s 143(2) was upto 30.09.2011. No notice was issued to the assessee before this date. Thus, the assessment proceedings for the year

under consideration were not pending on the date of search. In search no incriminating material indicating any undisclosed income for the year under consideration was found. The completed assessment can be interfered with by the AO while making assessment u/s 153A only on the basis of the incriminating documents found in search. Thus, when no incriminating documents for the year under consideration were found, addition made by the AO in assessment proceedings u/s 153A is illegal and bad in law. The **Coordinate Bench of the ITAT, Jaipur Bench in case of Shri Navrattan Kothari Vs. ACIT in ITA No. 425/JP/2017 order dated 13.12.2017** held *that assessment or reassessment of income of person other than searched persons based on seized material can be made u/s 153C r.w.s. 153A and has overriding effect on section 147/ 148.* In the present case, addition made by the AO is not on the basis of any material seized during the search proceedings. Hence, addition made by the AO in the assessment framed u/s 153A is incorrect. The addition, if any, could have been properly made by invoking the provisions of section 147 of the Act. Therefore, when addition made by the AO is itself illegal & bad in law, penalty levied on such addition is also not sustainable. The Ld. CIT(A) rejected this explanation of assessee by relying on the decision of Hon'ble Kerala High Court in case of E.N. Gopakumar. However, in various other cases including the decision of Supreme Court it has been held that

invocation of sec. 153A to reopen concluded assessments is not justified in absence of incriminating material found during search. Thus, where two views are possible, the view favoring the assessee has to be adopted as held by **Hon'ble Supreme Court in case of CIT Vs. M/s Vegetable Products Ltd. (1973) 88 ITR 192.**

9. We further observe that during the course of assessment proceedings u/s 153A when the assessee prepared her statement of affairs it came to her notice that salary of Rs.1,80,000/-from M/s Bhatia Corporation Pvt. Ltd. which was credited in her account but not actually received was left to be included in the income by mistake. Accordingly, she filed revised computation of total income and offered the same for taxation. Thus, the omission of salary from income declared in the ROI filed u/s 153A is a bonafide mistake. On such bonafide mistake no penalty is leviable. The **Hon'ble Supreme Court in case of Price Waterhouse Coopers (P.) Ltd. Vs. CIT (2012) 348 ITR 306, wherein, in this case the assessee firm filed its return of income along with tax audit report. In its tax audit report, it was indicated that provision towards payment of gratuity was not allowable but it failed to add provision for gratuity to its total income. It was held that it was a bona fide and inadvertent error. The same can only be described as a human error which we all are prone to make. The assessee could not be held guilty of either furnishing inaccurate**

*particulars or attempting to conceal its income. Therefore, imposition of penalty was unjustified.* The Ld. CIT(A) did not accept the explanation of assessee by holding that in similar group concerns namely M/s Bhatia Infrastructure Pvt. Ltd. and M/s. Bhatia Automobiles Pvt. Ltd., the company credited salary to Sh. Yash Bhatia but the salary was not declared by him in the return of income filed u/s 153A. It is submitted that in this case also salary was credited in the account of Yash Bhatia but was not actually received by him and therefore, it was left to be included in the income by mistake but when such mistake was noticed while preparing the statement of affair, the same was included in the income. Hence, for this reason it cannot be inferred that the assessee has intentionally not declared the salary income in the return of income. Considering the totality of facts and circumstances as well as decision of the Coordinate Bench in the case of Yash Bhatia (supra), we direct the A.O. to delete the addition so made. We direct accordingly.

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

Order pronounced in the open court on 28<sup>th</sup> January, 2021.

Sd/-  
(विक्रम सिंह यादव)  
(VIKRAM SINGH YADAV)  
लेखा सदस्य / Accountant Member

Sd/-  
(संदीप गोसाईं)  
(SANDEEP GOSAIN)  
न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur  
दिनांक / Dated:- 28/01/2021

**\*Ranjan**

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

1. अपीलार्थी / The Appellant- Smt. Shiva Bhatia, Kota.
2. प्रत्यर्थी / The Respondent- The D.C.I.T., Central Circle, Kota.
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त(अपील) / The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No. 1108/JP/2019)

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar