

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. 949/JP/2019
निर्धारण वर्ष/Assessment Years : 2006-07

Shri Kesamal Khanwani 104/4, Agarwal Farm, Mansarovar, Jaipur.	बनाम Vs.	The ITO, Ward-2(4), Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AAYPK 1330 R		
अपीलार्थी /Appellant		प्रत्यर्थी /Respondent

निर्धारिती की ओर से/ Assessee by : Miss Shivangi Samdhani (CA)
राजस्व की ओर से/ Revenue by : Smt. Monisha Choudhari (JCIT)

सुनवाई की तारीख/ Date of Hearing : 08/09/2021
उदघोषणा की तारीख/Date of Pronouncement :13/09/2021

आदेश / ORDER

PER: VIKRAM SINGH YADAV, A.M.

The assessee has filed the present appeal against the order of Id. CIT(A)-I, Jaipur dated 23.04.2019 confirming the levy of penalty U/s 271(1)(c) of the IT Act on addition of Rs. 3,00,000/- made U/s 69A of the Act for the assessment year 2006-07.

2. During the course of hearing, the Id. AR submitted that the assessee was involved in agricultural activities and has shown receipt from the agricultural activities which were deposited in the bank account, however due to non-submission of the sale bills of the

agricultural produce, the AO has not accepted the assessee's explanations and found the deposits as unexplained and the Id. CIT(A) has also confirmed the said addition on account of non verification. It was further submitted that on appeal of the assessee, the Tribunal has set-aside the matter to the file of the Assessing Officer and in the set-aside proceedings, the Assessing Officer has accepted the agricultural income as shown by the assessee as genuine and our reference was drawn to the findings of the Assessing Officer in the set-aside proceedings which read as under:

"Consequent to receiving the order of ITAT, notice u/s 142(1) was issued to the assessee to substantiate his claim with regard to having agricultural income. In response to the said notice, Shri Gajanand Gupta, CA and A/R of the assessee, attended and filed written reply, along with the required information. Supporting papers like Jamabandi and Girdavri of the agricultural land held by him, Copy of Trading account of agriculture, copy of some sale bills in support of having made sale of agricultural crop, were submitted, which were examined. The AO had doubted the sales made to R.K. Sankhla, on the basis of which addition was made. The statements of Shri R.K. Sankhla were recorded on oath, who confirmed the fact of purchasing Amla from the assessee. The assessee owns 26 bighas of agricultural land in Malpura tehsil of Jaipur. He had been showing agricultural income from last many years, which had been accepted by the department. After examining various details produced during the course of assessment and discussion made with the AR of the assessee, the

agriculture income of the assessee which has been disallowed by the AO and confirmed in appeal by the CIT(Appeal), is accepted as genuine.”

3. It was accordingly submitted that where the explanation in support of the source of the deposits in the bank account has been accepted by the Revenue in the set aside proceedings, there is no basis for levy of penalty U/s 271(1)(c) of the Act and the penalty so levied and confirmed by the Id CIT(A) may thus be deleted.

4. Per contra, the Id. DR submitted that there were two grounds of appeal before the Tribunal. One was relating to genuineness of the agriculture produce and the second one was relating to source of deposits in the bank account which was claimed by the assessee as deposits received from sale of agriculture produce. It was submitted that first ground was set-aside by the Tribunal to the file of the Assessing officer, however, the second ground of appeal was dismissed by the Tribunal. It was accordingly submitted that where the addition has been sustained by the Tribunal in the quantum proceedings, the AO has rightly levied the penalty u/s 271(1)(c) of the Act. The Id. DR has thus relied on the findings of the lower authorities.

5. We have heard the rival contentions and perused the material available on record. We find that the assessee has given the necessary explanation in support of the cash deposits in his bank account being receipt from the sale of the agricultural produce and during the course of set-aside proceedings, the AO has carried out the necessary

verification including examination of Shri R. K. Sankla who has purchased the agriculture produce and has also gone through the Jamabandi and Girdavri reports so submitted by the assessee. We therefore, find that where the explanation so furnished by the assessee has been accepted and found genuine in support of agriculture income and the receipts thereof has been explained as the source of deposits in the bank account, there is no basis for levy of penalty U/s 271(1)(c) of the Act as the explanation so furnished has been accepted by the Revenue.

6. Regarding the contention advanced by the Id DR that there were separate grounds of appeal wherein one ground of appeal has been set-aside and the second ground of appeal has been dismissed, we find that though separate grounds of appeal were taken before the Tribunal, however, the outcome of the second ground of appeal was dependent on outcome of the first ground of appeal as the explanation for source of deposits has been stated to be out of receipts from sale of the agriculture produce. Therefore, without getting into the reasons why the two grounds of appeal were treated differently by the Coordinate Bench as the quantum proceedings have attained finality in absence of any further appeal by either of the parties, the explanation so furnished by the assessee continues to be relevant before any action is taken in terms of levy of penalty u/s 271(1)(c) of the Act. The explanation of the assessee, as we have noted above, has since been accepted by the Revenue in support of genuineness of agriculture produce, the same explanation holds good in support of source of deposits in the bank account as the same is the consistent stand of the assessee from the

beginning and thus, where the explanation has been duly accepted, there is no basis for levy of penalty u/s 271(1)(c) of the Act.

7. In light of aforesaid discussions and in the entirety of facts and circumstances of the case, we hereby direct the deletion of penalty imposed U/s 271(1)(c) of the Act.

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

Order pronounced in the open Court on 13/09/2021.

Sd/-

(संदीप गोसाई)

(Sandeep Gosain)

न्यायिक सदस्य / Judicial Member

Sd/-

(विक्रम सिंह यादव)

(Vikram Singh Yadav)

लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 13/09/2021.

*Santosh

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

1. अपीलार्थी / The Appellant- Shri Kesamal Khanwani, Jaipur.
2. प्रत्यर्थी / The Respondent- ITO, Ward- 2(4), 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. 949/JP/2019 }

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar