

आयकर अपीलिय अधिकरण, इंदौर न्यायपीठ, इंदौर
IN THE INCOME TAX APPELLATE TRIBUNAL,
INDORE BENCH, INDORE

BEFORE HON'BLE RAJPAL YADAV, VICE PRESIDENT
AND
HON'BLE MANISH BORAD, ACCOUNTANT MEMBER
VIRTUAL HEARING

ITA No.334/Ind/2020

Assessment Years: 2011-12

ITO-1

Itarsi

: Appellant

V/s

Shri Anil Kumar Soni

Itarsi

: Respondent

PAN:ACRPS3167M

Revenue by	Shri Harshit Bari, Sr. DR
Respondent by	S/Shri S.N. Agrawal & Bhavesh Agrawal, ARs
Date of Hearing	01.09.2021
Date of Pronouncement	30 .09.2021

ORDER

PER MANISH BORAD, A.M

The above captioned appeal filed at the instance of the Revenue for Assessment Year 2011-12 is directed against the order of Ld. Commissioner of Income Tax(Appeals)-I (in short 'Ld. CIT], Bhopal dated 11.09.2020 which is arising out of the order

u/s 271(1)(C) of the Income Tax Act 1961(In short the 'Act') dated 27.08.2014 framed by DCIT-1(1), Bhopal.

The Revenue has raised following grounds of appeal in ITANo.334/Ind/2020:

1.On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in :

Whether on the fact and the circumstances of the case, the Ld. CIT(A) has erred in deleting penalty of Rs.70,00,000/- levied u/s 271(1)(c) of the Act.

2. The brief facts of the case are that the assessee is engaged in the business of purchase and sale of jewellery under his proprietor concern in the name of M/s Beauty Jewellers at Itarsi. Survey u/s 133A of the Income Tax Act was conducted and during the course of survey proceedings additional income of Rs.2,15,21,144/- was declared by the assessee towards excess additional stock of Rs.2,14,96,454/- and excess cash of Rs.24,690/-. Assessment in this case was completed u/s 143(3) on 26.02.2014 on returned income of Rs.2,22,96,660/-. Penalty proceeding u/s 271(1)(c) of the Act were initiated.

3. In the penalty order, the Ld. AO stated that the assessee had declared undisclosed income of Rs.2,15,21,144/- during the course of survey which would not have been declared unless survey proceedings would have been conducted at the premises

and hence he held that imposition of penalty is valid since the revised return was filed only after discovery of concealment by the Revenue. Therefore, the AO levied penalty of Rs.70,00,000/- u/s 271(1)(c) of the Act.

4. Aggrieved assessee preferred an appeal before the ld. CIT(A) challenging the levy of penalty u/s 271(1)(c) of the Act and succeeded.

5. Now revenue is in appeal before this Tribunal.

6. Ld. Departmental Representative (DR) supported the order of Ld. AO.

7. Per contra, Ld. counsel for the assessee relied on the finding of Ld. CIT(A) and also referred to the written submissions and paper book placed at pages 1 to 100.

8. We have heard rival contentions and perused the records placed before us and carefully gone through the judgments referred and relied by the Ld. counsel for the assessee. Revenue's sole grievance is against the finding of Ld. CIT(A) deleting the penalty levied u/s 271(1)(c) of the Act. We notice that the survey u/s 133A of the Act was conducted at the business premises on 26.10.2010. The assessee declared undisclosed income of

Rs.2,15,21,144/- which consisted of excess stock of Rs.2,14,96,454/- and excess cash of Rs.24,690/-. This survey was conducted during F.Y. 2010-11 (A.Y. 2011-12). Assessee filed the return of income on 30.09.2011 i.e. before the due date of filing the income Tax Return and declared income of Rs.2,22,96,660/- incorporating the undisclosed income of Rs.2,15,21,144/- surrendered during the course of survey. Assessment proceedings u/s 143(3) of the Act was carried out and the Ld. AO made no addition and assessed the income as disclosed in the return of income. However, Ld. AO levied penalty u/s 271(1)(c) of the Act for concealment of income.

9. We find that it is a judiciary settled proposition that where the income declared during the course of survey is offered to tax in the return of income filed within the due date prescribed u/s 139(1) of the Act and the assessing officer accepts the income declared in the return, the assessee cannot be held to have concealed the particulars of income nor or has furnishing inaccurate particulars of income because the due date of filing return of income did not expire and the particulars furnished in the return of income have not found to be untrue. In support of

this view we rely on the judgment of Hon'ble High Court of Gujarat in the case of *CIT vs. R. Umedbhai Jewellers Pvt. Ltd.* in ITANo.549 of 2016 wherein it has been held that “*where assessee having filed the return of income by the due date, in which disclosed income during the survey was also offered to tax and no further addition has been made during the assessment, the question of assessee having furnished inaccurate particulars of the income and imposing penalty thereon would not arise.*”

10. Similar view was also taken by Hon'ble High Court of Delhi in the case of *CIT vs. SAS Pharmaceuticals (2011)335 ITR 259 (Del)* wherein Hon'ble High Court held as follows:

12. After considering the respective submissions of the learned counsel for the parties, we are of the view that the argument of the learned counsel for the assessee has to prevail as it carried substantial weight. It is to be kept in mind that [Section 271\(1\)\(c\)](#) of the Act is a penal provision and such a provision has to be strictly construed. Unless the case falls within the four-corners of the said provision, penalty cannot be imposed. Sub-section (1) of [Section 271](#) stipulates certain contingencies on the happening whereof the AO or the Commissioner (Appeals) may direct payment of penalty by the assessee. We are concerned herewith the fundamentality provided in Clause

(c) of [Section 271](#) (1) of the Act, which authorizes imposition of penalty when the AO is satisfied that the assessee has either;

(a) Concealed the particulars of his income; or

(b) Furnished inaccurate particulars of such income.

13. It is not the case of furnishing inaccurate particular of income, as in the income tax return, particulars of income have been duly furnished and the surrendered amount of income was duly reflected in the income tax return. The question is whether the particulars of income were concealed by the assessee or not. It would depend upon the issue as to whether this concealment has reference to the income tax return filed by the assessee, viz., whether concealment is to be found in the income tax return.

14. We may, first of all, reject the contention of the learned counsel for the Revenue relying upon the expression „in the course of any proceedings under this Act“ occurring in Sub-section (1) of [Section 271](#) of the Act and contending that even during survey when it was found that the assessee had concealed the particular of his income, it would amount concealment in the course of „any proceedings“. The words „in the course of any proceedings under this Act“ are prefaced by the satisfaction of the AO or the Commissioner of Income Tax (Appeals). When the survey is conducted by a survey team, the question of satisfaction of AO or the Commissioner (Appeals) or the Commissioner does not arise. We have to keep in mind that it is the AO who initiated the penalty proceedings and directed the payment of penalty. He had not recorded any satisfaction during the course of survey. Decision to initiate penalty proceedings was taken while making assessment order. It is, thus, obvious that the expression „in the course of any proceedings under this Act“ cannot have the reference to survey proceedings, in this case.

15. It necessarily follows that concealment of particulars of income or furnishing of inaccurate particular of income by the assessee has to be in the income tax return filed by it. There is sufficient indication of this in the judgment of this Court in the case of Commissioner of Income Tax, Delhi-I Vs. Mohan Das Hassa Nand 141 ITR 203 and in Reliance Petroproducts Pvt. Ltd. (supra), the Supreme Court has clinched this aspect, viz., the assessee can furnish the particulars of income in his return and everything would depend upon the income tax return filed by the assessee. This view gets supported by Explanation 4 as well as 5 and 5A of [Section 271](#) of the Act as contended by the learned counsel for the Respondent.

16. No doubt, the discrepancies were found during the survey. This has yielded income from the assessee in the form of amount surrendered by the assessee. Presently, we are not concerned with the assessment of income, but the moot question is to whether this would attract penalty upon the assessee under the provisions of [Section 271\(1\)](#) (c) of the Act. Obviously, no penalty can be imposed unless the conditions stipulated in the said provisions are duly and unambiguously satisfied. Since the assessee was exposed during survey, may be, it would have not disclosed the income but for the said survey. However, there cannot be any penalty only on surmises, conjectures and possibilities. [Section 271](#) (1) (c) of the Act has to be construed strictly. Unless it is found that there is actually a concealment or non-disclosure of the particulars of income, penalty cannot be imposed. There is no such concealment or non-disclosure as the assessee had made a complete disclosure in the income tax return and offered the surrendered amount for the purposes of tax.

17. We, thus, answer the questions as formulated above, in favour of the assessee and against the Revenue finding no fault with the decisions of the CIT (A) as well as the Tribunal. As a result, this appeal is dismissed.

11. We, thus respectfully following the judgments and decisions referred hereinabove, and under given facts and circumstances of the case, are of the considered view that the assessee cannot be held to have concealed or furnished the particulars of income since the income declared during the course of survey has been offered to tax in the return of income filed before the due date of filing the return of income. We, thus, find no reason to interfere in the finding of Ld. CIT(A) and the same stands confirm. Grounds raised by the revenue are dismissed.

12. In the result, Revenue's appeal in ITANo.334/Ind/2020 is dismissed.

The order pronounced as per Rule 34 of ITAT Rules, 1963 on 30.09.2021.

Sd/-

(RAJPAL YADAV)
VICE PRESIDENT

Sd/-

(MANISH BORAD)
ACCOUNTANT MEMBER

दिनांक /Dated : 30.09. 2021

Patel/PS

Copy to: The Appellant/Respondent/CIT concerned/CIT(A) concerned/ DR, ITAT, Indore/Guard file.

By Order,
Asstt.Registrar, I.T.A.T., Indore