

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCH-A,VC, JAIPUR

डॉ. एम. एल. मीना, लेखा सदस्य एवं डॉ. एस. सीतालक्ष्मी, न्यायिक सदस्य के समक्ष
BEFORE: DR. M.L. MEENA, AM & DR. S. SEETHALAKSHMI, JM

आयकर अपील सं./ITA No. 123/JP/2022
Assessment Year : 2018-19.

Shri Lokesh Khandelwal A-401, Oberoi Park View , Thakur Village, Kandivali East, Mumbai 400 001.	बनाम Vs.	The PCIT (Central) Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN No. AHYPK 7242 F		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri Rakesh Joshi (CA)
राजस्व की ओर से / Revenue by : Shri Manoj Mehar (CIT)

सुनवाई की तारीख / Date of Hearing : 24.05.2022.
घोषणा की तारीख / Date of Pronouncement : 27/05/2022.

आदेश / ORDER

PER DR. MITHA LAL MEENA, A.M.

This is an appeal filed by the assessee against the order of Id. PCIT (Central) Jaipur dated 25.03.2022 for the assessment year 2018-19. The assessee has raised the following grounds of appeal :-

1. On the facts and circumstances of the case as well as in law, the learned Principal Commissioner of Income Tax (PCIT) has erred in passing an order u/s 263 of the Income Tax Act, 1961, without granting the opportunity of being heard to the appellant and without considering the provision of law.
2. On the facts and circumstances of the case as well as in law, the learned Principal Commissioner of Income Tax (PCIT) has erred in considering the order passed u/s 143(3) r.w.s. 153B(1)(b) of the Income Tax Act, 1961 by the learned Assessing Officer is erroneous and prejudicial to the interest of the revenue, on the issue of non-initiating the penalty proceedings u/s 271AAB(1A) of the Income Tax Act, 1961, without appreciating the facts and circumstances of the case.

3. On the facts and circumstances of the case as well as in law, the learned Principal Commissioner of Income Tax (PCIT) has erred in assuming jurisdiction u/s 263 of the Income Tax Act, 1961 for non-initiating the penalty proceedings u/s 271AAB(1A) of the Income Tax Act and directing the learned Assessing Officer to initiate penalty proceedings, 1961, without appreciating the facts and circumstances of the case.
4. On the facts and circumstances of the case as well as in law, the learned Principal Commissioner of Income Tax (PCIT) has erred in giving direction to the learned Assessing Officer to initiate and levy penalty under the requisite sections as mentioned in the show cause notice i.e. u/s 271AAB(1A) of the Income Tax Act, 1961, after arriving at due satisfaction independently, without considering the facts and circumstances of the case.
5. The appellant craves leave to add, amend, alter or delete the said ground of appeal.

2. The brief facts of the case are that the assessee is an individual and derives income from salary, house property and other sources. The assessee filed his return of income under section 139 of the IT Act, 1961 on 28.09.2018 declaring total income of Rs. 1,73,83,680/-. A search and seizure operation under section 132(1) of the Income Tax Act, 1961 was carried out on 07.09.2017 at the various premises of "Resonance Group, Kota" to which the assessee belongs, including the premises of the assessee. A number of persons/premises covered u/s 132 of the IT Act, 1961. Cash, jewellery and other documents found and seized from some persons' residence and business premises. The assessee was covered under search proceeding. The case of the assessee was also selected for scrutiny through CASS. The AO completed the assessment under section 143(3) read with section 153B(1)(b) of the IT Act and computed the total income of the assessee at Rs. 2,23,25,630/- by making various additions.

3. On examination of the assessment records, the Id. PCIT has observed that the Assessing Officer had failed to correctly initiate penalty proceedings. Hence a show cause notice under section 271AAB(1A) of the Act was issued to the assessee on 07.03.2022 fixing the case for hearing on 14.03.2022. Against the said notice, assessee sought the adjournment and thereafter, filed his reply on 25.03.2022. However, the Id. PCIT without considering the submissions of the assessee passed the order on 25.03.2022.

4. Aggrieved by the order of the Id. PCIT, now the assessee is before us.

5. We have heard rival submissions and perused the material available on record. In the first ground, the assessee has challenged before us that the assessee was not granted sufficient opportunity of being heard and without considering the provisions of law passed the order under section 263 of the IT Act. Alternatively, the Id. A/R submitted that the Id. PCIT is not authorized under section 271AAB to initiate penalty proceedings, only the AO and CIT (A) has a power to initiate the penalty proceedings. Therefore, the Id. PCIT cannot direct the AO to reconsider the initiation of penalty proceedings under section 271AAB as the Id. PCIT is not authorized to do so. In support of his contention, the Id. A/R placed reliance on the decision of Hon'ble Punjab & Haryana High Court in case of CIT vs. Rakesh Nain Trivedi, (2016) 128 DTR 309 (P&H) and Hon'ble Rajasthan High Court in case of CIT vs. Keshrimal Parasmal (1986) 157 ITR 484 (Raj.).

6. After considering the totality of facts and circumstances of the case and the case laws cited before us, we are of the considered view that in the interest of

natural justice, it will be appropriate to remand the matter back to the file of the Id. PCIT to adjudicate the matter afresh after affording sufficient opportunity of being heard to the assessee and considering the submissions of the assessee.

7. Since we have remanded the matter back to the file of the Id. PCIT for adjudication afresh, the remaining grounds have become infructuous and need no adjudication.

8. In the result, appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 27/05/2022.

Sd/-
(डॉ. एस. सीतालक्ष्मी)
(Dr. S. Seethalakshmi)
न्यायिक सदस्य / Judicial Member

Sd/-
(डॉ. एम. एल. मीना)
(Dr. M.L. Meena)
लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 27/05/2022.

das/

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

1. अपीलार्थी / The Appellant- Shri Lokesh Khandelwal, Mumbai.
2. प्रत्यर्थी / The Respondent-The PCIT (Central), 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. 123/JP/2022}

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar