

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

डॉ. एस.सीतालक्ष्मी, न्यायिक सदस्य एवं श्री राठोड कमलेश जयन्तभाई, लेखा सदस्य के समक्ष
BEFORE: DR. S. SEETHALAKSHMI, JM & SHRI RATHOD KAMLESH JAYANTBHAI, AM

आयकर अपील सं./ITA. No. 385/Jodh/2018
निर्धारण वर्ष/Assessment Years : 2012-13

M/s Laxminath Infrastructure Pvt. Ltd. C-91, Agarsen Nagar, Churu.	बनाम Vs.	ACIT, Circle, Jhunjhunu.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AABCL3531 B		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri R.P. Sharma (C.A.)
राजस्व की ओर से / Revenue by : Ms Runi Pal (Addl.CIT)

सुनवाई की तारीख / Date of Hearing : 26/07/2022
उदघोषणा की तारीख / Date of Pronouncement : 23/08/2022

आदेश / ORDER

PER: DR. S. SEETHALAKSHMI, J.M.

This appeal by the assessee is directed against the order dated 03.07.2018 of the learned Commissioner of Income Tax (Appeals) [hereinafter referred to as (CIT(A)], arising from penalty order passed U/s. 271(1)(c) of the Income Tax Act, 1961 (in short the "the Act") for the AY 2012-13.

2. The assessee has raised the following grounds:-

"1. That on the facts and in the circumstances of the case the ld. CIT(A) erred in upholding the validity of order of imposition of penalty u/s 271(1)(c) of the Act.

2. That on the facts and in the circumstances of the case the ld. CIT(A) erred in upholding the validity of notice u/s 274 of the Act which does not specify the charge against the assessee as to whether it is for concealing particulars of income or furnishing inaccurate particulars of income.

3. That on the facts and in the circumstances of the case the ld. CIT(A) erred in sustaining penalty of Rs. 1,05,000/- under the provision of section 271(1)(c) of the Act.

4. That the petitioner may kindly be permitted to raise any additional or alternative grounds at or before the time of hearing.

5. The petitioner prays for justice & relief.”

3. Brief facts of the case are that the assessee had e-filed its return of income on 30.09.2012 declaring total income of Rs. 14,44,000/-. Further the case was selected for scrutiny and the assessment was completed u/s 143(3) of the Act on 26.02.2015 at a total assessed income of Rs. 1,72,90,280/-. While completing the assessment, the AO made trading addition after invoking provisions of section 145(3) of the Act besides addition of interest income on FDRs. The AO had also observed that the assessee had derived interest on IT refund amounting to Rs. 4,20,289/- out of which the assessee company had declared interest on IT refund amounting to Rs. 97,669/- only and had not shown interest on IT refund amounting to Rs. 3,22,620/- in its total income. Therefore, the AO made addition of such interest income and had initiated the penal proceeding u/s 271(1)(c) of the IT Act, 1961. Aggrieved of this order, the assessee preferred an appeal before the Ld. CIT(A).

4. The AO arrived the findings that on verification of details of fixed assets & depreciation chart as on 31.03.2012, it is seen that the assessee company has shown an addition on account of new vehicle Bolero SLX amounting Rs. 7,20,106/- purchased on 30.01.2012 during the year and claimed depreciation

@ 7.5% of Rs. 54,008/-. During assessment proceedings the assessee was asked to produce the complete vouchers of new assets purchased along with Registration certificate for verification. The A/R of assessee company has furnished evidence of bills purchased and copy of RC issued by the DTO, Churu. On verification of RC issued by the DTO, Churu, it is revealed that vehicle was registered with DTO, Churu on 11.06.2012 after the relevant period. Looking to the registration certificate, it is very clear that the vehicle purchased by the assessee company has not put to use during the year under consideration because such vehicle was registered on 11.06.2012 relevant to the A.Yr. 2013-14, therefore, claim of depreciation on new Bolero SLX amounting Rs. 54,008/- for the year is not allowable. Thus, out of total depreciation claimed , a sum of Rs. 20,80,584/- (2134592-54008) is allowed for the year under consideration.

Subject to the above remarks total income of the assessee company is computed as under:-

1. Contract income as discussed above as per para No. 5	Rs. 1,69,26,491/-
Less:- i) Depreciation allowed as per para no. 8 as discussed above.	<u>Rs. 20,80,584/-</u>
Net Contract income	Rs. 1,48,45,907/-
Add:- i) FDR interest income as per para no. 6 as discussed above	Rs. 20,24,082/-
ii) Interest income I.T. refund as as per para no. 7 as discussed above.	<u>Rs. 4,20,289/-</u>
Total taxable income	Rs. 1,72,90,278/-
R/o	Rs. 1,72,90,282/-

Assessed u/s 143(3) at Rs. 1,72,90,280/-. Charge interest u/s 234B, 234C and withdraw interest u/s 244A(3). Issue demand notice and challan. Show cause penalty notice u/s 271(1)(c) for furnishing of inaccurate particulars thereby concealing the income has separately been issue. Sent calculation sheet which forms part of this assessment order.

5 Being aggrieved by the assessment order, the assessee preferred an appeal before the Id CIT(A). Before the Id. CIT(A), the assessee has reiterated its arguments in written submission of the order. The CIT(A) for the reasons stated in his order has rejected the arguments and submissions made by the assessee. The Id. CIT(A), in his order in para 4.3 as held under :-

" 4.3 I have carefully considered the material before me. I find that appellant received refund of Rs. 30,00,080/- which includes the interest amount of Rs. 3,22,620/-. This fact is also accepted by the A/R of the appellant that department automatically adjusted the refund against the demand without giving any intimation to the assessee. These facts established that the appellant received interest of Rs. 3,22,620/- which was not shown appellant with intention to evade the tax on the interest income. Therefore I am the view that this is fit case for imposition the penalty u/s 271(1)(c) of the Income Tax Act, 1961. Hence, I confirm the penalty of Rs. 1,05,000/- u/s 271(1)(c) of the Income Tax Act, 196. These grounds are not allowed."

6. Aggrieved by the CIT(A) order, the assessee filed appeal before us against said penalty order.


7. On the other hand, Ld. DR strongly supporting the order of the lower authorities.

8. We have heard both the parties, perused materials available on record and gone through orders of the authorities below. Ground Nos. 1 and 2 are inter related, the Id. AR for the assessee submitted that the assessee has filed its return of income on 30.09.2012 declaring total income of Rs. 14,44,000/-. The case was selected for scrutiny and the assessment was completed u/s 143(3) of the Act, 1961 on 26.02.2015 and the total income was assessed at Rs. 1,72,90,280/-. On the completion of the assessment proceedings, the AO has observed that the assessee had derived interest on income tax refund amounting to Rs. 4,20,289/- out of which the assessee company had declared interest on income tax refund amounting to Rs. 97,669/- and the allegation of the Assessing Officer is that the assessee has not shown interest on IT refund amount to Rs. 3,22,620/- in its total income. Therefore, the assessee made addition of such interest income and initiated the penalty proceedings u/s 271(1)(c) of the Act. On perusal of the assessment order, the AO has failed to consider the reply of the assessee during the assessment proceedings relating to the business. The Assessing Officer gone through the reply of the assessee filed on 20.01.2015 and explained the reasons that there was not intimation about the interest on income tax refund and also there was no mentioned in Form 26AS about the interest on Income Tax Refund. Further, the Id. AR for the assessee submitted that as soon as the assessee came to know he offered the interest on refund for levy of income tax, he voluntary surrendered the interest on Income Tax Refund of Rs. 3,22,620/- for the year under consideration as income from other sources for tax purposes. We are of the view the question of concealment income does not arise in the present case where the assessee himself accepts and surrendered the interest income for tax refund and the assessee has deposited the tax accordingly and during the course of assessment proceedings, the assessee in his reply dated 20.01.2015 accepted its mistake that the amount of Rs. 3,22,620/- was surrendered for the taxation when the

assessee was asked specifically on this count. The Id. CIT(A) as observed in para 4.3, that the assessee has not given explanation during the course of proceedings, but from the assessment order the assessee has filed the reply dated 20.01.2015 and the assessee has accepted its mistake and surrendered the interest on Income Tax Refund of Rs. 3,20,620/- for the year under consideration as income from other sources for tax purposes. The Id. AR for the assessee submitted that before the Id. CIT(A) that reply filed by the assessee on 27.02.2017 which has not been considered by the Id. CIT(A). The Id. CIT(A) erred in upholding the order of the Assessing Officer where both the AO and Id. CIT(A) has failed to accept the submissions and the additional evidences filed before the AO hence, ground Nos. 1 and 2 are allowed.

9. In ground No. 3 the Id. AR for the assessee submitted with the penalty of Rs. 1,05,000/- is unjustified and bad in law because the assessee repeatedly made submission that he has surrendered to the amount of interest on TDS refund, which was not shown in the return of income. During the course of assessment proceedings, when it was noticed by the assessee that there was a mistake, the assessee himself voluntarily surrendered the interest amount. The Id. AR for the assessee submitted that documentary proof in Form 26AS that there was no mention about the interest on IT Refund which is reproduced as under:-

Data updated till 15-Jun-2022




TDS

Centralized Processing Cell

TRACES

TDS Reconciliation Analysis and Correction Enabling System



Form 26AS

Annual Tax Statement under Section 203AA of the Income Tax Act, 1961

See Section 203AA and second provision to Section 206C (5) of the Income Tax Act, 1961 and Rule 31AB of Income Tax Rules, 1962

Permanent Account Number (PAN)	AABCL3531B	Current Status of PAN	Active
Name of Assessee	LAXMINATH INFRASTRUCTURE PRIVATE LIMITED		
Address of Assessee	C 91, AGARSEN NAGAR, CHURU, RAJASTHAN, 331001		

Financial Year: 2011-12 Assessment Year: 2012-13

Above data / Status of PAN is as per PAN details. For any changes in data as mentioned above, you may submit request for corrections Refer www.tin-nsdl.com / www.tinltsl.com for more details. In case of discrepancy in status of PAN please contact your Assessing Officer

Communication details for TRACES can be updated in 'Profile' section. However, these changes will not be updated in PAN database as mentioned above

(All amount values are in INR)

PART A - Details of Tax Deducted at Source

Sr. No.	Name of Deductor	TAN of Deductor	Total Amount Paid/ Credited	Total Tax Deducted [#]	Total TDS Deposited			
1	CAREER POINT INFRA LIMITED	JDHC02776E	15097603.00	301952.00	301952.00			
Sr. No.	Section ¹	Transaction Date	Status of Booking [*]	Date of Booking	Remarks ^{**}	Amount Paid / Credited	Tax Deducted ^{**}	TDS Deposited
1	194C	23-Mar-2012	F	19-May-2012	-	3000000.00	60000.00	60000.00
2	194C	05-Mar-2012	F	19-May-2012	-	3254222.00	65084.00	65084.00
3	194C	21-Feb-2012	F	19-May-2012	-	3343381.00	66868.00	66868.00
4	194C	14-Jan-2012	F	19-May-2012	-	3500000.00	70000.00	70000.00
5	194C	14-Oct-2011	F	19-Jan-2012	-	2000000.00	40000.00	40000.00
2	EXECUTIVE ENGINEER PWD DIVISION KUCHAMAN CITY	JDHE00693A	6416683.00	128334.00	128334.00			
Sr. No.	Section ¹	Transaction Date	Status of Booking [*]	Date of Booking	Remarks ^{**}	Amount Paid / Credited	Tax Deducted ^{**}	TDS Deposited
1	194C	31-Mar-2012	P	18-May-2012	-	3878288.00	77566.00	77566.00
2	194C	29-Feb-2012	P	18-May-2012	-	2538395.00	50768.00	50768.00
3	OFFICE OF THE SUPERINTENDING ENGINEER	JDH001430C	5791002.00	119295.00	119295.00			
Sr. No.	Section ¹	Transaction Date	Status of Booking [*]	Date of Booking	Remarks ^{**}	Amount Paid / Credited	Tax Deducted ^{**}	TDS Deposited
1	194C	31-Jul-2011	F	18-Oct-2011	-	2744358.00	56534.00	56534.00
2	194C	30-Jun-2011	F	19-Jul-2011	-	3046644.00	62761.00	62761.00
4	RAJASTHAN STATE INDUSTRIAL DEVELOPMENT & INVESTMENT CORP LTD	JDHR02757G	67233877.00	1344676.00	1344676.00			
Sr. No.	Section ¹	Transaction Date	Status of Booking [*]	Date of Booking	Remarks ^{**}	Amount Paid / Credited	Tax Deducted ^{**}	TDS Deposited
1	194C	31-Mar-2012	F	18-May-2012	-	5342102.00	106842.00	106842.00
2	194C	20-Mar-2012	F	18-May-2012	-	4165073.00	83301.00	83301.00
3	194C	06-Mar-2012	F	18-May-2012	-	3535067.00	70701.00	70701.00
4	194C	29-Feb-2012	F	18-May-2012	-	6576879.00	131538.00	131538.00
5	194C	17-Feb-2012	F	18-May-2012	-	7577263.00	151545.00	151545.00
6	194C	03-Feb-2012	F	18-May-2012	-	4161935.00	83239.00	83239.00
7	194C	25-Jan-2012	F	18-May-2012	-	9541069.00	190821.00	190821.00
8	194C	24-Jan-2012	F	18-May-2012	-	8342774.00	166855.00	166855.00
9	194C	14-Dec-2011	F	20-Jan-2012	-	6801450.00	136029.00	136029.00
10	194C	24-Nov-2011	F	20-Jan-2012	-	11190265.00	223805.00	223805.00
5	RAJASTHAN STATE ROAD DEVELOPMENT & CONSTRUCTION CORPORATION LIMITED	JDHR05107E	8600320.00	172006.00	172006.00			
Sr. No.	Section ¹	Transaction Date	Status of Booking [*]	Date of Booking	Remarks ^{**}	Amount Paid / Credited	Tax Deducted ^{**}	TDS Deposited
1	194C	31-Mar-2012	F	15-May-2012	-	26780.00	536.00	536.00
2	194C	30-Dec-2011	F	14-Jan-2012	-	4427706.00	88554.00	88554.00

PRIVATE LIMITED								
349	194A	31-Mar-2012	F	08-May-2012	-	1954.29	195.43	195.43
350	194A	29-Mar-2012	F	11-Jun-2014	-	58178.69	5817.87	5817.87
351	194A	29-Mar-2012	U	22-Nov-2012	B	-58178.69	-5817.87	-5817.87
352	194A	29-Mar-2012	U	22-Nov-2012	-	58178.69	5817.87	5817.87
353	194A	29-Mar-2012	F	08-May-2012	B	-58178.69	-5817.87	-5817.87
354	194A	29-Mar-2012	F	08-May-2012	-	58178.69	5817.87	5817.87
355	194A	29-Dec-2011	F	20-Jan-2012	-	57241.08	5724.11	5724.11
356	194A	29-Dec-2011	F	11-Jun-2014	-	57241.08	5724.11	5724.11
357	194A	29-Dec-2011	U	22-Nov-2012	B	-57241.08	-5724.11	-5724.11
358	194A	29-Dec-2011	U	22-Nov-2012	-	57241.08	5724.11	5724.11
359	194A	29-Dec-2011	F	20-Jan-2012	B	-57241.08	-5724.11	-5724.11
360	194A	29-Sep-2011	F	25-Oct-2011	-	56775.34	5677.54	5677.54
361	194A	29-Sep-2011	F	16-May-2014	-	56775.34	5677.54	5677.54
362	194A	29-Sep-2011	U	22-Nov-2012	B	-56775.34	-5677.54	-5677.54
363	194A	29-Sep-2011	U	22-Nov-2012	-	56775.34	5677.54	5677.54
364	194A	29-Sep-2011	F	25-Oct-2011	B	-56775.34	-5677.54	-5677.54

PART A1 - Details of Tax Deducted at Source for 15G / 15H

Sr. No.	Name of Deductor	TAN of Deductor	Total Amount Paid / Credited	Total Tax Deducted [#]	Total TDS Deposited
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Sr. No.	Section ¹	Transaction Date	Date of Booking	Remarks ^{**}	Amount Paid/Credited	Tax Deducted ^{**}	TDS Deposited
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No Transactions Present

PART A2 - Details of Tax Deducted at Source on Sale of Immovable Property u/s 194(A) / TDS on Rent of Property u/s 194(B) / TDS on payment to resident contractors and professionals u/s 194(M) (For Seller/Landlord of Property/Payee of resident contractors and professionals)

Sr. No.	Acknowledgement Number	Name of Deductor	PAN of Deductor	Transaction Date	Total Transaction Amount	Total TDS Deposited ^{***}
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Sr. No.	TDS Certificate Number	Date of Deposit	Status of Booking [*]	Date of Booking	Demand Payment	TDS Deposited ^{***}
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Gross Total Across Deductor(s)

No Transactions Present

PART B - Details of Tax Collected at Source

Sr. No.	Name of Collector	TAN of Collector	Total Amount Paid / Debited	Total Tax Collected	Total TCS Deposited
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Sr. No.	Section ¹	Transaction Date	Status of Booking [*]	Date of Booking	Remarks ^{**}	Amount Paid/ Debited	Tax Collected ^{**}	TCS Deposited
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1	206CH	16-Jun-2011	F	25-Jul-2011	-	128400.00	2645.00	2645.00
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PART C - Details of Tax Paid (other than TDS or TCS)

Sr. No.	Major ² Head	Minor ² Head	Tax	Surcharge	Education Cess	Penalty	Interest	Others	Total Tax	ISIT Code	Date of Deposit	Challan Serial Number	Remarks ^{**}
1	0020	300	00	0.00	0.00	0.00	0.00	500.00	500.00	0011352	27-Jul-2018	12530	-
2	0020	400	105000.00	0.00	0.00	0.00	0.00	0.00	105000.00	0004329	05-Jul-2018	07479	-
3	0020	400	12600.00	0.00	0.00	0.00	0.00	0.00	12600.00	0004329	05-Jul-2018	06930	-
4	0020	300	00	0.00	0.00	0.00	0.00	1000.00	1000.00	0170361	17-Apr-2017	00317	-
5	0020	400	89740.00	0.00	0.00	0.00	0.00	0.00	89740.00	0004329	26-May-2016	53324	-
6	0020	400	12558.00	0.00	0.00	0.00	0.00	0.00	12558.00	0004329	26-May-2016	03817	-
7	0020	300	00	0.00	0.00	0.00	0.00	10000.00	10000.00	0170361	19-Dec-2015	00171	-
8	0020	400	6259360.00	0.00	0.00	0.00	0.00	0.00	6259360.00	0004329	23-Mar-2015	01387	-
9	0020	300	00	0.00	0.00	0.00	0.00	1000.00	1000.00	0170361	12-Mar-2015	00768	-

Part D - Details of Paid Refund

Sr. No.	Assessment Year	Mode	Refund Issued	Nature of Refund	Amount of Refund	Interest	Date of Payment	Remarks
1	2010-11	PAPER	-	PAN	1600370.00	NA	21-May-2011	
2	2009-10	PAPER	-	PAN	3011080.00	NA	15-Apr-2011	

Part E - Details of AIR Transaction

Sr. No.	Type Of Transaction ⁴	Name of AIR Filer	Transaction Date	Single/Joint Party Transaction	Number of Parties	Amount	Mode	Remarks ^{**}
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No Transactions Present

Notes For AIR:

1. Due date for filing Annual Information return by specified entities (Filers) is 31st August, immediately following the FY in which transaction is registered / recorded. This section will be updated after filing AIR.

2. Transaction amount is total amount reported by AIR filer. It does not reflect respective share of each individual in joint party transaction.

PART F - Details of Tax Deducted at Source on Sale of Immovable Property u/s 194(A) / TDS on Rent of Property u/s 194(B) / TDS on payment to resident contractors and professionals u/s 194(M) (For Buyer/Tenant of Property /Payer of resident contractors and professionals)

Taking into consideration of the present facts and circumstances of the case we are of the opinion to delete the penalty and set aside the order of the Id. CIT(A). Taking strong reliance in case of K.C. Builders vs. ACIT (2006) 265 ITR 562, we allow the Ground No. 3 of the Appeal.

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

Order pronounced in the open Court on 23/08/2022.

Sd/-

(राठोड कमलेश जयन्तभाई)
(RATHOD KAMLESH JAYANTBHAI)
लेखा सदस्य / Accountant Member

Sd/-

(एस.सीतालक्ष्मी)
(Dr. S. Seethalashmi)
न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 23/08/2022.

***Santosh**

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

1. अपीलार्थी / The Appellant- M/s Laxminath Infrastructure Pvt. Ltd., Churu.
2. प्रत्यर्थी / The Respondent- ACIT, Circle, Jhunjhunu.
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. 385/Jodh/2018 }

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar