

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

BEFORE T.R. SENTHIL KUMAR, JUDICIAL MEMBER
AND
SHRI B.M. BIYANI, ACCOUNTANT MEMBER

(Conducted through Virtual Court)

ITA No. 27/Ind/2022
Assessment Year: 2014-15

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| M/s. J.C. Sharma & Sons Bhopal | <u>बनाम</u> | DCIT, 5(1), Bhopal |
| (Appellant / Assessee) | <u>/Vs.</u> | (Respondent/ Revenue) |
| PAN: AAEFJ6447L | | |
| Assessee by | Shri Ashish Goyal, AR Shri N.D. Patwa, AR | |
| Revenue by | Shri Ashish Porwal, Sr. DR | |
| Date of Hearing | 04.11.2022 | |
| Date of Pronouncement | 09.11.2022 | |

आदेश / ORDER

Per B.M. Biyani, A.M.:

Feeling aggrieved by appeal-order dated 29.10.2021 passed by learned National Faceless Appeal Centre (NFAC), Delhi [**Ld. CIT(A)**], which in turn arises out of penalty-order dated 28.10.2016 passed by the learned DCIT-5(1), Bhopal [**Ld. AO**] u/s 271(1)(c) of the Income-tax Act, 1961 [**the Act**] for Assessment-Year 2014-15, the assessee has filed this appeal on following grounds:

***“1. The Ld. CIT(A) was not justified in confirming the penalty, which is bad in law, void ab initio, barred by limitation, illegal, contrary to the facts and circumstances of the case, liable to be annulled.*”**

2. The ld. CIT(A) was justified in not giving a fair and reasonable opportunity of being heard, and ignoring the facts and circumstances of the case, and merely dismissing the appeal without considering the merits of the case.

3. The Ld. CIT(A) erred in confirming the penalty of Rs. 40,00,000/- u/s 271(1)(c) of the Income Tax Act 1961.”

2. The registry has informed that that the present appeal had been filed after a delay of 62 days and therefore time-barred. The Ld. AR prayed that the delay has occurred due to Covid-19 Pandemic. The Ld. AR further placed reliance on the order of Hon'ble Supreme Court in **Suo Motu Writ Petition (C) No. 3 of 2020 read with Misc. Applications**, by which suo motu extension of the limitation-period for filing of appeals w.e.f. 15.03.2020 under all laws has been granted and hence there is no delay in fact. We confronted the Ld. DR who agreed to the submission of Ld. AR. In view of this, the appeal is proceeded with for hearing, there being no delay.

3. Briefly stated the facts are such that the assessee filed return of income declaring a total income of Rs. 1,04,00,390/-. During assessment-proceeding, Ld. AO observed that a survey was conducted by revenue on 21.01.2014 wherein the assessee surrendered unexplained income of Rs. 1,05,62,207/-, but while filing return of income the assessee offered income of Rs. 1,00,00,000/- only. Therefore, while completing assessment u/s 143(3), the Ld. AO made an addition of Rs. 5,62,207/-, being the income surrendered by assessee but not disclosed in the return and accordingly completed assessment at a total income of Rs. 1,09,62,597/- vide assessment-order dated 13.04.2016. Simultaneously, the Ld. AO initiated proceeding for imposition of penalty u/s 271(1)(c) vide show-cause notice dated 13.04.2016 which came to be decided vide penalty-order dated 26.10.2016 by imposition of a penalty of Rs. 40,00,000/-. Being aggrieved, the assessee filed appeal to Ld. CIT(A). However, the Ld. CIT(A) did not grant any relief and therefore the assessee has come in appeal before us.

4. Ld. AR appearing on behalf of the assessee straightaway carried us to the show-notice dated 13.04.2016 issued by Ld. AO, placed at Page No. 1 of the Paper-Book, which reads as under:

“In connection with the penalty-proceeding u/s 271(1)(c) for the A.Y. 2014-15 you are requested to attend my office on 04/05/2016 to show cause why penalty should not be imposed. However, if you do not wish to be heard in person in this regard, you may submit your written submissions so as to reach me by the above date which will be considered before disposal of the matter. In the case of non-compliance on your part the penalty proceedings shall be decided on merit”

Reading the contents of this notice, Ld. AR submitted that the show-cause notice nowhere specifies any charge against the assessee.

5. Then, the Ld. AR submitted that there are innumerable decisions of the Hon'ble Courts and ITAT where it has been loudly held that if the show-cause notice does not specify the specific charge of default committed by the assessee, the whole proceedings are invalid. Ld. AR relied upon the decision of Hon'ble Jurisdictional High Court of M.P. itself in the case of ***Pr.CIT-I, vs. Kulwant Singh Bhatia, ITA No. 9 to 14 of 208, order dated 9th May 2018***, wherein such a view has been taken. The concluding paragraph of the decision reads as under:

“11. On due consideration of the arguments of the learned counsel for the appellant, so also considering the fact that the ground mentioned in show-cause notice would not satisfy the requirement of law, as notice was not specific, we are of the view that the learned Tribunal has rightly relying on the decision of CIT V/s. Manjunatha Cotton Ginning Factory (supra) and CIT V/s. SSA'S Emerald Meadows (supra) rightly allowed the appeal of the assessee and set aside the order of penalty imposed by the authorities. No substantial question of law is arising in these appeals. ITA.No(s). 9/2018, 10/2018, 11/2018, 12/2018, 13/2018 and 14/2018, filed by the appellant have no merit and are hereby dismissed.”

6. With these submissions, the Ld. AR contended that the whole penalty-proceeding conducted by Ld. AO is illegal and unsustainable. Hence, the penalty-order passed by Ld. AO deserves to be quashed.

7. Ld. DR relied upon the orders of lower authorities and argued that the penalty should be upheld.

8. We have considered rival submissions of both sides, perused the record and considered the legal judgement cited before us. We observe that the Ld. AO has not specified any charge in the show-cause notice and this factual aspect is not rebutted by revenue. Therefore the whole proceeding of penalty conducted by Ld. AO is illegal as per the decision of Hon'ble jurisdictional High Court in **Kulwant Singh Bhatia (supra)**. Ld. DR, although dutifully supported the orders of lower authorities yet could not controvert the applicability of this decision to the present-appeal either on facts or in law. Therefore, we are satisfied that the penalty imposed by Ld. AO cannot be sustained. Accordingly, we quash the penalty-order passed by Ld. AO.

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

Order pronounced as per Rule 34 of I.T.A.T. Rules 1963 on 09.11.2022.

Sd/-

(T.R. Senthil Kumar)
JUDICIAL MEMBER

Sd/-

(B.M. BIYANI)
ACCOUNTANT MEMBER

Indore

दिनांक /Dated : 09.11.2022

Patel/Sr. PS

Copies to: (1) The appellant
(2) The respondent
(3) CIT

- (4) CIT(A)
(5) Departmental Representative
(6) Guard File

By order
Sr. Private Secretary
Income Tax Appellate Tribunal
Indore Benches, Indore

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| 1. | Date of taking dictation | |
| 2. | Date of typing & draft order placed before the Dictating Member | |
| 3. | Date on which the approved draft comes to the Sr. P.S./P.S. | |
| 4. | Date on which the fair order is placed before the Dictating Member for pronouncement | |
| 5. | Date on which the file goes to the Bench Clerk | |
| 6. | Date on which the file goes to the Head Clerk | |
| 7. | Date on which the file goes to the Assistant Registrar for signature on the order | |
| 8. | Date of dispatch of the Order | |