

IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE
(Conducted Through Virtual Court)

**Before: Shri T.R. Senthil Kumar, Judicial Member
And Shri B.M. Biyani, Accountant Member**

**ITA No. 960/Ind/2019
Assessment Year: 2012-13**

The Asstt. Commissioner of Income Tax (Central), Ujjain (Appellant)	Vs	M/s. JPJ Exim Pvt. Ltd. Shop No. 117, 2 nd Floor, Dawa Bazaar, Indore PAN No: AABCJ4142N (Respondent)
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**Appellant by : Shri Ashish Porwal, Sr. D.R.
Respondent by : None**

Date of hearing : 03-10-2022
Date of pronouncement : 19-10-2022

आदेश/ORDER

PER : T.R. SENTHIL KUMAR, JUDICIAL MEMBER:-

This is an appeal filed by the Revenue against the order dated 30.09.2019 passed by the Commissioner of Income Tax (Appeals)-3, Bhopal, as against cancellation of penalty levied u/s. 271(1)(c) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') relating to the Assessment Year (A.Y) 2012-13.

2. The Grounds of Appeal raised by the Revenue are as follows:

01. On the facts and in the circumstances of the case, the Ld. CIT(A) erred in deleting the penalty of Rs. 1,00,00,000/- levied by the Assessing Officer u/s 271(1)(c) of the Income Tax Act, 1961 without appreciating the fact that the assessee offered the income for taxation only as a consequence of survey action carried out on its premises.

02. On the facts and in the circumstances of the case, the Ld. CIT(A) erred in deleting the aforesaid penalty levied by the Assessing Officer without appreciating the fact that the assessee did not offer the said amount for taxation in its Income Tax Return.

3. The brief facts of the case is that the assessee is engaged in the business of construction and land development activities at Ujjain. A survey action u/s. 133A of the Act was carried out in the business premises of the assessee on 27.07.2017. During the survey proceedings, the director of the assessee company alongwith his friend who is a partner in SM Group in his statement declared additional income of Rs. 3 Crores. This amount was added as the income of the assessee u/s. 68 of the Act. However the Assessing Officer did not find any irregularities in the books of account or no incriminating details or information were found by the Revenue.

3.1. In order to buy mental peace with the department, the assessee declared the additional income of Rs. 3 Crores. The above income offered was accepted by the Assessing Officer who had passed reassessment order on 21.12.2018 and also initiated penalty proceedings u/s. 271(1)(c) of the Act by issuing a show cause notice. In response the assessee filed a reply dated 02.06.2019 that the assessee is a body corporate and its books of account are duly audited under the Companies Act.

3.2. During the survey operations, the Revenue could not find any irregularities or information were found in the assessee premises. The assessee had fully cooperated with the Assessing Officer and provided all the details and information which he could not gather and submit it to the A.O. All the particulars of shareholders who satisfied the requirement of Section 68 namely identity, creditworthiness and genuineness of the transaction that supporting evidences filed by the assessee. The assessee further submitted that the share application money was received by the assessee from various individuals/HUFs in the Financial Year 2010-11 and there were being allotted with the shares in the Financial Year 2011-12 who are having valid PAN and regularly assessed to tax. Thus the assessee claimed the said disclosure of income was made to buy peace of mind so requested to drop the penalty proceedings relying upon the Jurisdictional High Court Judgment in the case of CIT vs. Shivnarayan Jamnalal & Co [1996] 89 Taxmann.com 420 and other case laws. This explanation was not accepted by the Assessing Officer and levied a minimum penalty of Rs. 3 Crores.

4. Aggrieved against the same, the assessee filed an appeal before the Ld. CIT(A) raising various Grounds of Appeal. The Ld. CIT(A) held that there was no incriminating material was found during the survey proceedings in relation to the share capital/premium. The assessee has successfully proved the identity, creditworthiness and the lenders and all the payments were through banking channels. The same is proved by filing copies of the application made by the shareholders for allotment of shares, PAN Nos. and copy of ITR with

confirmation letters with the bank statements. The assessee having made voluntarily declaration of an amount pertaining to share capital/premium and the same was disclosed in the return of Income and paid the appropriate taxes. Therefore the same cannot be called as concealment of income by the assessee. As per Explanation 5A, the assessee offered the additional income in the Return of Income filed u/s. 139(1)/153A and it is not a case of non-disclosure of income therefore the A.O. erred in levying penalty without appreciating the facts of the case in a mechanical manner for concealment of income. The Ld. CIT(A) further held as follows:

4.1.2 As per provisions of section 271(l)(c) of the Act, there are two different charges i.e. the concealment of particulars of income or furnishing of inaccurate particulars of income. The penalty can be imposed for a specific charge. It is a settled proposition that both these limbs i.e. concealment of particulars' of income or of 'furnishing inaccurate particulars' of income carry different connotations as held by the Honourable Supreme Court in the case of T Ashok Pai v/s CIT (2007) 292 ITR (SC).

4.1.3 The penalty notice was issued in a mechanical manner without specifying the specific charge as to whether the appellant is found guilty of concealing the particulars of the income or have furnished inaccurate particulars of income. Thus the very initiation of the present penalty proceeding is not in accordance with the law and have led to vitiation of entire penalty proceedings. The Hon'ble jurisdictional High Court in the case of Principal Commissioner of Income Tax v/s Kulwant Singh Bhatia dated 09.05.2018 (ITA 9 to 14 of 2018) has held that the penalty u/s 271(l)(c) of the Act of 1961 is not sustainable in law as the notice was not specific, observing as follows:-

"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 Learned Tribunal has rightly relying on the decision of CIT V/s Manjunatha Cotton Ginning Factory and CIT V/s SSA'S Emerald Meadows 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."

It is observed that facts of the present case under appeal before me are identical to that of the case of Kulwant Singh Bhatia (Supra) in so far as additional income was offered by the appellant in the returns filed after the search. In that case also, it was the observation of the AO that the assessee has offered additional income only due to search and the additional income was not declared in the return filed u/s 139 and therefore, penalty proceedings u/s 271(l)(c) were initiated. The penalties were also confirmed by the CIT(A) but were deleted by the Tribunal holding the same as not sustainable in law, as no specific charge was levied in penalty show cause notice, later the order of the Honourable ITAT was affirmed by the Honourable Jurisdictional High court.

4.1.4 Hon'ble Jurisdictional MP High Court in the case of CIT vs Shivnarayan Jamnalal & Co (1996) 89 Taxman 420 has held as under:-

In the instant case, both the appellate authorities had correctly approached the matter and found that there was no fraudulent attempt on the part of the assessee. The assessee had placed before the authorities whatever books of accounts it has maintained, whether they were properly maintained or not, but it has not withheld or concealed any material or made any deliberate attempt to defraud the authorities. The assessing authority had employed the flat rate for assessing the income of the assessee and on the basis he had been taxed. Hence, the tribunal was justified in setting aside the penalty.

4.1.5 Similar view was taken by Hon'ble MP High Court in the case of CIT vs Chirag Ingots Pvt Ltd (2005) 142 Taxman 427 and has held that it relates to imposition of penalty on the assessee under section 271(l)(c) of the Act. It was set aside by CIT(Appeals) as also by Tribunal holding that in the absence of any factual finding that the loans taken by the assessee were bogus, no penalty can be imposed.

4.1.6 It has been held by Hon'ble M.P. High Court which has been upheld by Hon'ble Supreme Court in the case of CIT Vs Suresh Chandra Mittal [2001] 251 ITR 9, that where the assessee filed revised return showing higher income after search and notice for re-opening of assessment to purchases peace and avoid litigation, and department simply rested its conclusion on the Act of voluntarily surrendered done by the assessee in good faith. High court was justified in holding that no penalty could be levied. In view of the above facts the AO is not justified in imposing the penalty on the returned income. Therefore, the penalty imposed by the AO amounting to Rs. 32,00,000/- in AY 2011-12 and Rs. 1,00,00,000/- in AY 2012-13 are Deleted. Therefore, the appeal on these grounds is Allowed.

4.1. Thus the ld. CIT(A) deleted the penalty levied against the assessee.

5. During the course of the hearing none appeared on behalf of the assessee in spite of notices served on the assessee. With the help of Ld. D.R. we are proceeding further with the above appeal. The Ld. D.R. submitted that the assessee has not voluntarily disclosed the above income but pursuant to the survey action carried on u/s. 133A of the Act. The assessee come forwarded and declared the income which amounts to concealment of income only. Therefore the Ld. CIT(A) erred in deleting the penalty levied u/s. 271(1)(c) of the Act.

5.1. Heard the Ld. D.R. Mr. Ashish Porwal and perused the materials available on record. When a specific question was raised to the Ld. D.R. whether the assessing officer has clearly mentioned the specific charge for initiating penalty proceedings u/s. 271(1)(c) either for concealing the particulars of income or furnishing inaccurate particulars of income. The Ld. D.R. could not answer to the above query and also could not dispute the findings of the Ld. CIT(A) in Para 4.1.3 of the appellate order, wherein the Ld. CIT(A) relied upon the Jurisdictional High Court judgment dated 09.05.2018 in the case of PCIT vs. Kulwant Singh Bhatia wherein it was held that the penalty u/s. 271(1)(c) of the Act is not sustainable, which followed Karnataka High Court judgment in the case of CIT vs. Manjunatha Cotton Ginning Factory and CIT vs. SSA's Emerald Meadows and thereby cancelled the penalty imposed by the assessing Officer. Further the Ld. CIT(A) has followed the Jurisdictional High Court judgment in the case of CIT vs. Suresh Chandra Mittal which has been confirmed by Hon'ble Supreme Court in [2010] 251 ITR Page 9 where the assessee field

revised return showing higher income after search, to purchases peace and avoid litigation

6. Respectfully following the above Jurisdictional High Court judgment in the case of Shivnarayan Jamnalal & Co and Supreme Court Judgment in the case of Suresh Chandra Mittal, we have no hesitation in deleting the penalty levied u/s. 271(1)(c) of the Act. The Revenue has not made out any good grounds for levying penalty u/s. 271(1)(c) of the Act, therefore the grounds are devoid of merits and the same are rejected.

7. In the result, appeal filed by the Revenue is hereby dismissed.

Order pronounced as per Rule 34 of I.T.A.T. Rules 1963 on 19 -10-2022

Sd/-
(B.M. BIYANI)
ACCOUNTANT MEMBER
Indore: Dated 19/10/2022

Sd/-
(T.R. SENTHIL KUMAR)
JUDICIAL MEMBER

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order

Assistant Registrar
Income Tax Appellate Tribunal,
Indore Bench, Indore

Strengthened preparation & delivery of orders in the ITAT	
1) Date of dictation	03/10/2022
2) Date on which the typed draft is placed before the Dictating Member & Other Member	/10/2022
3) Date on which the approved draft comes to the Sr. P.S./P.S.	/10/2022
4) Date on which the fair order is placed before the Dictating Member for pronouncement	/10/2022
5) Date on which the fair order comes back to the Sr. P.S./P.S.	/10/2022
6) Date on which the file goes to the Bench Clerk	/10/2022
7) Date on which the file goes the Head Clerk	
8) Date on which the file goes to the Assistant Registrar for signature on the order	
9) Date of Dispatch of the order	