

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर  
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, 'SMC'  
JAIPUR

श्री संदीप गोसाई, न्यायिक सदस्य एवं श्री राठौड कमलेश जयंतभाई, लेखा सदस्य के समक्ष  
BEFORE: SHRI SANDEEP GOSAIN, JM & SHRI RATHOD KAMLESH JAYANTBHAI, AM

आयकर अपील सं./ITA No. 438/JPR/2022  
निर्धारण वर्ष / Assessment Year : 2009-10

Shri Dharamraj Singh, 82, Jagnath Puri, Jhotwara, Jaipur.	बनाम Vs.	ITO, Ward No. 1(1), Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AGBPS 1352 C		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Miss Shivangi Samdhani (CA)  
राजस्व की ओर से / Revenue by : Ms Monisha Choudhary (Addl.CIT)

सुनवाई की तारीख / Date of Hearing : 15/02/2023  
उदघोषणा की तारीख / Date of Pronouncement: 20/02/2023

आदेश / ORDER

PER: RATHOD KAMLESH JAYANTBHAI, A.M.

This appeal is filed by the assessee aggrieved from the order of the National Faceless Appeal Centre, Delhi (Here in after referred as to "NFAC"), CIT(A) for the assessment year 2009-10 dated 04.11.2022, which in turn arises from the order passed u/s.

271(1)(c) of the Income tax Act, 1961 (in short 'the Act') by the Income Tax Officer, Ward-3(1) Jaipur dated 24.05.2017.

2. The assessee has marched this appeal on following grounds of appeal;

“1. In the facts and circumstances of the case and in law the Id. CIT(A) has erred in confirming the penalty amounting to Rs. 4,54,230/- imposed by Id. AO/u/s 271(1)(c) of the Income Tax Act, 1961. The action of Id. CIT(A) is illegal, unjustified, arbitrary and against the facts of the case. Relief may please be granted by deleting the said penalty of Rs. 4,54,230/-.

2. In the facts and circumstances of the case and in law the Id. Ao has erred in levying penalty without specifically pointing out whether the penalty was proposed on concealment of particulars of income or for furnishing inaccurate particulars of income. The action of Id. AO is illegal, unjustified, arbitrary and against the facts of the case. Relief may please be granted by quashing the penalty imposed u/s 271(1)©.

3. The assessee craves his right to add, amend or later any of the grounds on or before the hearing.”

3. The facts as culled out from the records is that an information was received from the DIT (I&CI), Rajasthan, Jaipur that the assessee had sold out a property i.e. plot No. 129, Champa Nagar, Gurjar Ki Thadi, New Sanganer Road, Jaipur for a sale consideration of Rs. 15,00,000/- and the stamp value of the property was at Rs. 15,03,560/-. The assessee had filed his return declaring income of Rs. 1,49,480/- for the year under consideration but the assessee had not declared any capital gain in his return of income. Therefore, capital gain of Rs. 15,03,560/- on sold property

has escaped from assessment and assessment was reopened. Thereafter, assessment proceedings u/s 147 of the Income Tax Act, 1961 by issuing notice u/s 148 of the Income Tax Act, 1961 was initiated on 22.03.2016. During the course of assessment proceedings, since the appellant had not responded any of the notices issued, the AO had sent a request to the Sub-Registrar-II, Jaipur for providing the copy of sale deed dated 23.07.2008 which was executed between the assessee and Shri Smt. Hiteshi Saini. The Sub-Registrar-II, Jaipur provided the copy of above sale deed dated 23.07.2008 and from that deed it is revealed that the stamp value of the property was adopted at Rs. 15,03,560/- and since the assessee has not shown this transaction in the return of income the same was also added and thus the returned income was determined at Rs. 16,53,040/- (Rs. 1,49,480/- income returned plus consideration received on sale of property at Rs.15,03,560). Thereafter the order under section 271(1)(c) dated 24.05.2017 was passed levying penalty of Rs. 4,54,230/- against the assessee.

4. Aggrieved from the said order of penalty passed u/s. 271(1)(c) of the act the assessee has preferred an appeal before

the Commissioner of Income Tax, Appeals on 27.06.2017. Subsequently, the appeal was transferred to the National Faceless Appeals Center in terms of board notification dated 25.09.2020 issued by the CBDT. The NFAC issued notice dated 27.01.2021, 09.12.2021 and 18.10.2022 to present the case of the assessee. In response to the notices so issued the assessee did not present their case and therefore the case was decided by the Id. CIT(A) based on the material available on record. The relevant finding of the Id. CIT(A) is reiterated here in below:

#### 5. Decision

“ 5.1 I have carefully perused the submission of the appellant, along with the penalty order passed u/s. 271(1)(c). It is seen from the penalty order that the Assessing Officer has levied penalty of Rs.4,54,230/- on the addition of Rs. 15,03,560/- as capital gain on sale of property. On perusal of the assessment order and penalty order, it was noticed that the appellant has failed to comply any of the statutory notices issued during the course of assessment proceedings as well as penalty proceedings.

5.2 From the above it can be seen that mere silence of the appellant on the capital gain on sale of property and why the same was not offered in its return of income proves that the appellant had consciously furnished inaccurate particular of its income.

6. In this regards the Apex Court in the case of Reliance Petroproducts Pvt. Ltd. (322 ITR 158) (at page 164 ) regarding the word 'particulars' used in this section, of the section 271(1) (C) has held as under. "There can be no dispute that everything would depend upon the Return filed because that is the only document, where the assessee can furnish the particulars of his income. When such particulars are found to be inaccurate, the liability would arise"

6.1 In this regard it would be pertinent to state that the Hon'ble Gujarat High Court in the case of CIT vs. National Textile 249 ITR 125 (Guj) has stated that if the explanation of the appellant is found to be false and non bonafide penalty is attracted. XDEPA

6.2 Further, the Apex Court in the case of Reliance Petroproducts Pvt.Ld. (322 ITR 158) has considered some other cases of the Apex Court on the issue at page 164 and 165 and observed as under:-

"In Dilip N. Shroff v. Jt. CIT [2007] 6 SCC 329, this Court explained the terms "concealment of income" and "furnishing inaccurate particulars". The Court went on to hold therein that in order to attract the penalty under section 271(1)(c), mens rea was necessary, as according to the Court, the word "inaccurate" signified a deliberate act or omission on behalf of the assessee. It went on to hold that Clause (iii) of section K. Bhanji Vanmalidas & Sons,.. VS Department Of Income Tax Indian Kanon <http://indiankanon.org/doc/194279369/4> 271(1) provided for a discretionary jurisdiction upon the Assessing Authority, inasmuch as the amount of penalty could not be less than the amount of tax sought to be evaded by reason of such concealment of particulars of income, but it may not exceed three times thereof. It was pointed out that the term "inaccurate particulars" was not defined anywhere in the Act and, therefore, it was held that furnishing of an assessment of the value of the property may not by itself be furnishing accurate particulars. It was further held that the assessee must be found to have failed to prove that his explanation is not only not bona fide but all the facts relating to the same and material to the computation of his income were not disclosed by him. It was then held that the explanation must be preceded by a finding as to how and in what manner, the assessee had furnished the particulars of his income. The Court ultimately went on to hold that the element of mens rea was essential. It was only on the point of mens rea that the judgment in Dilip N. Shroff's case (supra) was upset".

6.3 In Dharamendra Textile Processors' case (supra), after quoting from section 271 extensively and also considering section 271(1)(c), the Court came to the conclusion that since section 271(1)(c) indicated the element of strict liability on the assessee for the concealment or for giving inaccurate particulars while filing Return, there was no necessity of mens rea. The Court went on to hold that the objective behind enactment of section 271(1)(c) read with indicated with the said section was for providing remedy for loss of revenue and such a penalty was a civil liability and, therefore, wilful concealment is not an essential ingredient for attracting civil liability as was the case in the matter of prosecution under section 276C of the Act. The basic reason why decision in Dilip N. Shroff's case (supra) was overruled by this Court in Dharamendra Textile Processors' case (supra), was that according to this Court the effect and difference between section 271(1)(c) and section 276C of the Act was lost sight of in case of Dilip N. Shroff (supra).

6.4 From above discussions it can be seen that that there is strict liability on the appellant for concealment or for giving inaccurate particulars while filing the return. The penalty under that provision is a

civil liability. Wilful concealment is not an essential ingredient for attracting civil liability. It is obvious that the penal provisions would operate when there is concealment of particulars of income or a failure of duty to disclose fully and truly particulars of income, imposed under the Act and the Rules there under.

6.5 The duty is enjoined upon the appellant to make a correct and complete disclosure of particulars of his income and it is only when he fails in his duty by not disclosing particulars of his income or part thereof, he conceals the particulars of his income. The duty is enjoined upon the appellant to make a complete disclosure of particulars of his income as well as a correct disclosure. Therefore, if the disclosure made of the particulars of income is incorrect, then also he commits breach of his duty. Such defaults entail the penal consequences contemplated by section 271(1) (c).

6.6 Considering the above facts, I am of the view that the appellant has consciously furnished inaccurate particular of his income and thereby concealed the particulars of income pertaining to capital gain of Rs. 1503560/- on sale of property and the Assessing officer has rightly levied penalty of Rs. 4,54,230/- u/s 271(1)(c) for furnishing inaccurate particular of its income. Hence the penalty levied by the AO is confirmed and the grounds of appeal raised by the appellant is hereby dismissed.”

5. Aggrieved from the said order of the Id. CIT(A), the assessee has preferred this appeal before the tribunal on the grounds as raised here in above in para 2. The Id. AR of the assessee appearing before us submitted that the assessee was under the bonafide belief that the since his quantum appeal is pending the penalty appeal may not persuaded and therefore, under that bonafide believe he remained non-compliant before the Id. CIT(A). The Id. AR of the assessee thus submitted that the matter may be remanded to the file of the Id. CIT(A) to deal the facts of the case on merits as the quantum appeal of the

assessee is still pending with the Id. CIT(A). As the assessment has been made ex-party and the decision of the quantum appeal have direct bearing on the levy of penalty Id. AR of the assessee prayed that in the interest of the justice the matter may be remanded back to the file of the Id. CIT(A).

6. On the other hand, Id. Sr. DR supported the order of the Id. CIT(A) and submitted that the assessee remained non-compliant to the three notices issued and has not submitted any justifiable reason so as to remain non attentive to the notices so issued. At the same time looking to the arguments of the Id. AR, she has fairly admitted that in the interest of justice let this the issue be restored to the file of the Id. CIT(A) as the quantum appeal of the assessee is pending before Id. CIT(A).

7. We have heard the rival contentions, perused the material on record. To support the contention the Id. AR of the assessee was directed to file proof of pendency of appeal and the affidavit by the bench. The Id. AR of the assessee vide letter dated 17.02.2023 filed the screen shot and affidavit of the assessee. From the screen shot submitted as extracted from the system it is

clear that the quantum appeal of the assessee pending. This is fact is also declared by the assessee in his sworn affidavit filed by him. The content of the affidavit is reproduced here in below :

“Affidavit

I, Dharam Raj Singh, Aged 57 years, S/o Devi Singh, resident of 82 Jagannathpuri, Kalwar Road, Jhotwara, Jaipur, Rajasthan Pin – 302012 do hereby declare on oath as under:

1. That I am regularly assessed to tax and my PAN is AGBPS1352C.
2. That assessment u/s 147 for A.Y. 2009-10 was completed in may case vide order dated 16.11.2016. Disallowance of Rs. 15,03,560/- was made. Aggrieved by the said order, I preferred appeal before CIT(A).
3. That submissions, paper book and prayer for additional evidences were filed before CIT(A) physically as well as on the Income Tax Portal. The said appeal is pending for disposal under Appeal No. CIT(A), Jaipur-1/10233/2017-18. The screenshot of the Income Tax Portal evidencing the said appeal is enclosed herewith.
4. That on 24.05.2017, an order u/s 271(1)(c) imposing penalty on the disallowance made in quantum assessment was passed. Aggrieved by the said order, appeal before CIT(A) was filed.
5. That CIT(A) vide order dated 04.11.2022 decided the penalty appeal before the quantum appeal.”

7.1 The Bench also noted from the entire episode that the assessee is deprived off to get the justice from the judicial authorities below because of technical latches as quantum appeal

of the assessee has direct bearing on the levy of penalty and the same is pending before Id. CIT(A) and the assessee merely on technical ground deprived off from the justice which should not be done. Hence, the Bench in the interest of equity and justice restores the appeal of the assessee to the file of the Id. CIT(A) for afresh adjudication taking into consideration the fact that the quantum appeal of the assessee is also pending before Id. CIT(A). The assessee is also directed not take adjournment on frivolous ground and cooperate the Id. CIT(A) for adjudication of the appeals filed by the assessee.

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

Order pronounced in the open court on 20/02/2023.

Sd/-  
( संदीप गोसाई )  
(Sandeep Gosain)  
न्यायिक सदस्य / Judicial Member

Sd/-  
( राठौड कमलेश जयंतभाई )  
(Rathod Kamlesh Jayantbhai)  
लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 20/02/2023

\*Santosh.

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

1. अपीलार्थी / The Appellant- Shri Dharamraj Singh, Jaipur
2. प्रत्यर्थी / The Respondent- ITO, Ward-1(1), Jaipur.

3. आयकर आयुक्त / CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.
5. गार्ड फाईल / Guard File {ITA Nos. 438/JPR/2022}

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar