

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES,"SMC" 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. 24/JPR/2023
निर्धारण वर्ष / Assessment Years : 2015-16

M/s Ramavtar Krishnavtar B-29, Bhamashah Mandi, Kota.	बनाम Vs.	Income Tax Officer Ward-1(3), Kota.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AADFR 1857 P		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri Saurabh Harsh (Adv.)
राजस्व की ओर से / Revenue by : Shri Monisha Choudhary (Addl. CIT)

सुनवाई की तारीख / Date of Hearing 22/02/2023
उदघोषणा की तारीख / Date of Pronouncement : 28/02/2023

आदेश / ORDER

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

This is an appeal filed by the assessee against the order of the National Faceless Appeal Centre, Delhi [hereinafter referred to as "NFAC/CIT(A)"], dated 22.11.2022 for the assessment year 2015-16.

2. The assessee has raised the following grounds:-

"1. That the ld. Assessing Officer grossly erred in imposing penalty u/s 271(1)(c) of the Income Tax Act, 1961 in the amount of Rs. 1,19,175/- without affording any opportunity of being heard in person and without

proving any element of concealment and the learned CIT (Appeals), Kota also erred in confirming the same without there being any basis.”

3. The brief facts of the case are that assessee filed its return of income on 28.09.2015 declaring income of Rs. 6,66,640/- and assessment was completed U/s 143(3) of the Act on 19.12.2017 at an income of Rs. 10,94,320/-. During the course of assessment proceedings, the AO made an addition on account of disallowing interest of Rs. 3,85,674/-. Since , the assessee has concealed the income, the AO initiated penalty u/s 271(1)(c) on 19.12.2017. Subsequently, penalty notices was issued to the assessee on 19.12.2017 and 28.05.2018. In response to the penalty notice dated 28.05.2018 assessee filed his reply of notice.

4. The ld. AO observed that the assessee's reply is not acceptable at the reply submitted by the assessee that the funds provided to Shri Radhey Shyam Sharma were from interest free funds received available was also submitted during the course of assessment proceedings which was duly considered by the AO and it is also evident that the assessee has fill fully shown less income to lessen the taxable income and provide profit to his family members. Therefore, I am satisfied that the assessment has concealed his income to the extent of Rs. 3,85,674/- and it is a fit case

for levy of penalty u/s 271(1)(c) of the Act and accordingly, penalty of Rs. 1,19,175/- is levied on the assessee.

5. In addition, the above CIT(A) order drawn our attention to the captioned which is extracted here in below:

<i>Appeal No.</i>	<i>CIT(A), Kota/10111/2018-19</i>
<i>Status/ Deductor category</i>	<i>Firm</i>
<i>Residential Status</i>	<i>Resident</i>
<i>Nature of Business</i>	<i>N.A.</i>
<i>Section under which the order appealed against was passed.</i>	<i>271(1)(c)</i>
<i>Date of order under which the order appealed against was passed.</i>	<i>19/06/2018</i>
<i>Income/Loss Assessed (in Rs.)</i>	<i>0</i>
<i>Tax/penalty/fine/Interest Demanded (in Rs.)</i>	<i>119175</i>
<i>Present for the appellant</i>	<i>Not applicable</i>
<i>Present for the Department</i>	<i>Not applicable</i>

6. Per contra, the ld. DR relied on the order of the lower authorities.

7. We have heard both the parties, perused materials available on record. The Bench noted that in the appeal the assessee has filed u/s 271(1)(c) of the IT Act, aggrieved from the order of the Assessing officer, wherein the ld. CIT(A) order also confirms that the appeal is against the order of u/s 271(1)(c) of the IT Act as written on first page, but on going through order placed before us, We noted that the findings

of the ld. CIT(A) order is related to the order of the assessee in quantum proceedings and there is no findings of penalty order. Considering this apparent mistake as per agreement of both the parties the matter is set aside to the file of the ld. CIT(A) to decide afresh as there is no finding of ld. CIT(A) on order of the Assessing Officer passed U/s 271(1)(c) of the IT Act in terms of these observation.

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

Order pronounced in the open Court on 28/02/2023.

Sd/-

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

Sd/-

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

जयपुर / Jaipur

दिनांक / Dated:- 28/02/2023.

***Santosh**

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

1. अपीलार्थी / The Appellant- M/s Ramavtar Krishnavtar, Kota.
2. प्रत्यर्थी / The Respondent- ITO, Ward-1(3), Kota.
3. आयकर आयुक्त / CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.
5. गार्ड फाईल / Guard File { ITA No. 24/JP/2023 }

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar