

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

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

आयकर अपील सं./ITA No. 126/JP/2023
निर्धारण वर्ष/Assessment Years : 2012-13

Rajesh Kumar Agarwal Inside Sharma Building, M.I. Road, Jaipur	बनाम Vs.	DCIT-1 C.R. Building, Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AAVPA 5331 R		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Smt. Suhani Meharwal (CA)
राजस्व की ओर से / Revenue by : Smt Monisha Choudhary (Addl. CIT)

सुनवाई की तारीख / Date of Hearing : 25/04/2023
उदघोषणा की तारीख / Date of Pronouncement: 03/05/2023

आदेश / ORDER

PER: RATHOD KAMLESH JAYANTBHAI, AM

This appeal is filed by assessee and is arising out of the order of the National Faceless Appeal Centre, Delhi dated 28/02/2023 [here in after (NFAC)/ Id. CIT(A)] for assessment year 2012-13 which in turn arise from the order dated 07.01.2022 passed under section 271(1)(c) of the Income Tax Act, by National Faceless Assessment Centre, Delhi(NeFAC).

2. In this appeal, the assessee has raised following grounds: -

- “1. Ground 1: On the facts and in the circumstances of the case Ld. CIT(A) as well as Id. AO erred in imposing penalty of Rs. 54,879/- without establishing the actual concealment and in spite of making voluntary and bonafide disclosure which is grossly unjustified and liable to be quashed.”
2. Ground assessee request you to add, alter, delete and modify any ground of appeal on or before the date of hearing of appeal.”
3. Succinctly, the fact as culled out from the records is that the return of income in this case was e-filed on 29.11.2012 declaring total income of Rs. 18,84,340/-. The assessment was re-opened in this case vide notice u/s 148 dated 18.10.2018 was issued after getting approval from the Principal Commissioner of Income Tax-1, Jaipur. As per the notice u/s 148, the assessee was required to furnish a return of Income in the prescribed format within 30 days from the service of the notice i.e. upto 18.11.2018. The assessee filed return as required u/s 148 of the Act on 17.11.2019 declaring total income of Rs. 20,40,640/- as declared in the original return of income filed. The assessee also requested for the reasons for opening of the assessment u/s 148 through letter dated 02.01.2019. Accordingly, notice u/s 143(2) along with notice u/s 142(1) of the IT. Act was issued to the assessee on 07.01.2019 and copy of reasons was provided on 07.01.2019 to furnish submissions by 21.01.2019. The assessee furnished the required details on 23.01.2019. The assessment was completed on 11.11.2019 determining total income at Rs. 20,61,940/- [the assessee has increased the returned income on account of STCG of Rs. 1,56,298/-] by

making addition of Rs. 21,300/- being the amount of income received from sale of penny stock. As the additions were made penalty proceedings u/s. 271(1)(c) of the Act for furnishing inaccurate particulars of income were initiated. The notice for penalty proceeding were issued and in response the assessee filed its objection to the levy of penalty. Based on the discussion the made in the order of levying penalty 100 % tax sought to be evaded was charged u/s. 271(1)(c) of the Act for an amount of Rs. 54,879/-.

4. Aggrieved from the order of the assessing officer levying penalty assessee preferred an appeal before the Id. CIT(A). Apropos to the grounds of the appeal so raised the relevant finding of the Id. CIT(A) is reiterated here in below :

“The appellant along with a co-owner sold a property for Rs. 40,00,000/-. The Sub-registrar registered the property for Rs. 43,12,517/-. As the appellant was 50% owner, the AO brought Rs. 43,12,517-40,00,000 3,12,517/ 2= 1,56,298/- to the income of the appellant. The assessment was computed u/s 147/143(3) on 11.11.2019. The appellant accepted this addition. Further, the AO added Rs. 21,300/- received on sale of penny stock, Divine Multimedia (India) Ltd. The appellant accepted this addition also

The AO passed penalty order u/s 271(1)(c) of the Act on account of the above two additions on 07.01.2022. The appellant now submits that section 50C creates deeming fiction and that the AO has not brought on record that he has received anything over and above the actual sale consideration declared in the sale deed. The appellant also submits that Rs. 40 Lakh was within the 10% tolerance band as provided by Finance Act, 2021.

Facts on record and appellant's submission are perused. The appellant has not suo motto filed revised return rather he filed it in response to AO's notice u/s 148 of the Act. Further, there is no case regarding excess cash received over

stamp duty valuation or sale deed consideration. The case is that the appellant declared Rs. 40 Lakh only as sale consideration whereas legal requirement was to declare the stamp duty value which was Rs. 43,12,517/- At the registry office the appellant pays stamp duty @ Rs. 43,12,517/- but in Income Tax Return he forgets declaring Rs. 43,12,517/- and declares Rs. 40,00,000/- only. This 'inadvertence' on the part of appellant does not seem logical. Further, 10% band has come from the Finance Act 2021. It cannot have retrospective application. AO's action is therefore upheld.

The other issue is addition on account of capital gains in Multimedia (India) Ltd. This share has been held by AO as penny stock. The appellant submits that he agreed upon the addition only with a view to avoid litigation and that the sale of the said shares were made in ordinary course and hence the penalty should be dropped.

Facts on record and appellant's submission are perused. The fact remains that the appellant has indulged in penny stock which is a colourable device. The assessment order is not challenged either. AO's action is therefore upheld. In sum, appellant's appeal is dismissed.”

5. As the assessee not received any favour from the appeal filed before NFAC. The present appeal filed against the said order of the NFAC dated 28.02.2023 before this tribunal on the grounds as reiterated in para 2 above. The Id. AR appearing on behalf of the assessee has placed their written submission which is extracted in below;

“Assessee has been filing return of income regularly u/s 139(1) of the I.T Act, 1961. Assessment for the AY 2012-13 was reopened on the basis of difference between actual sale consideration and consideration u/s 50C of the I.T Act, 1961.

When re-assessment notice u/s 148 was received, assessee thoroughly investigated the financial affair again and corrected Suo moto the mistake, which had been inadvertently done by assessee in declaring the value u/s 50C for plot sold during the year. However, Id. AO initiated penalty proceedings u/s 271(1)(c) and imposed also. The penalty was levied upon the entire value of sale of shares amounting to Rs. 21300/-, which had also offered for tax to avoid litigation. The appeal is filed by raising single ground against the levy of penalty.

Your honour, Ld. CIT(A) upheld the levy of penalty by passing an order, which is not the speaking order. He failed to deal with the arguments raised by appellant.

He also failed to deal with the decisions relied upon by assessee. The ratio of order of CIT (A) is as under:-

“The appellant has not Suo moto filed revised return rather he filed ROI u/s 148 of the I.T Act, 1961. Further, there is no case regarding excess cash received or sale consideration. The case is that appellant declared Rs 40 lakhs only as sale consideration, whereas, legal requirement was to declare the stamp duty value which was 4312517/-. This inadvertence on the part of assessee does not seem logical. Further 10 % tolerance band has come from Finance Act 2021. It cannot have retrospective application”. Regarding addition on account of sale of shares in concerned, Ld. CIT (A) said that assessee even did not raise issue by filing of appeal against order u/s 143(3)/ 148 of the I.T Act, 1961.

Your honour, assessee: -

- 1) Even without obtaining reasons for re-opening, Suo moto declared the stamp duty value as sale consideration, paid tax along with interest and filed ROI. (Copy of computation and ITR V are enclosed on page no.1-4 of Paper Book). I may rely upon the decision of Apex Court in case of Suresh Chand Mittal vs CIT, Hindustan Steel Ltd. vs state of Orissa 83 ITR 26 and K.C Builders vs ACIT 2004, 265 ITR 526.
- 2) Your honour, section 50 C of the I.T Act, 1961 provides the deeming fiction, where the assessee sells the land and building, the sale consideration will be replaced by stamp duty value where it exceeds the actual sale consideration. Your honour deeming fiction denotes what, which is not the real. In this case it was incumbent on AO to bring any evidence that assessee had received over and above to the actual sale consideration for assuming legal jurisdiction to levy penalty. For making addition no such duty is casted upon AO. But making addition and imposing penalty are different aspect and independent proceedings. The income presumed by fiction of law is not the real income unless otherwise prove by adducing additional evidences. For levying penalty income should be income as contemplated u/s 5 of the I.T Act, 1961. Here, I may rely upon:
 - A. ACIT vs N. Meenakshi 319 ITR 262 (Chennai) held that addition made on value adopted by deputy registrar being the deemed value and even the addition is accepted by the assessee, it can not be said of filing of inaccurate particulars for levying penalty. It was held that assessee has not suppressed the accounting values of sale.
 - B. PCIT vs Sun on Peak Hotel (2018) 95 TAXMANN.COM
 - C. Virendra Singh Verma vs ITO Appeal No. ITA No. 962/JP/2019 allowed by deleting penalty relying upon S.C decision of Reliance petro products and some other decisions. (Copy of judgement is enclosed on page 5-11 of Paper Book)
 - D. CIT vs Fortunes Hotel & Estate Pvt Ltd. (2014) 52 TAXMANN.COM 330 (Bombay High Court)
 - E. CIT vs Madan Theater Ltd (2014) TAXMANN.COM 382 Calcutta High Court
 - F. Prakash Chand Nahar vs ITO (2007)

- 3) Your honour, Finance Act, 2021 provided a tolerance band of 10%. It is now law that where difference within 10% in actual sale consideration and value u/s 50C than the difference will be ignored. This is the beneficial provision brought in statue to avoid reasonable hardship. Your honour, as per ratio of Apex Court judgement in case of CIT vs Vatika Township the lordship has laid down the principle that the provisions which is inserted to avoid hardship and beneficial to assessee are in the nature of benevolent to assessee and derificatory in nature and apply retrospectively.
- 4) Cases relied upon by AO are not applied here
- a) Dharmendra Textile Mills Ltd (S.C) dealing with situation after holding the fact that the concealment of income or filing of inaccurate particulars is actually happened.
 - b) Ratio of MAC Data Ltd. (SC) is also not applied being the assessee has declared voluntarily.
- Similarly Zoom communication Ltd. (Delhi High Court) is not applicable since here assessee disclosed income prior to serving of reason by AO.
- 5) Your honour, the addition on account of sale of equity amounting to Rs 21300/- is by paying STT. It was done through registered stock broker. Purchases, holding and sales are done through proper channels. Nothing contrary was brought by AO. This meagre amount should not be treated to build up the capital advertently. Assessee accepted this meagre amount of addition as he thought that cost of litigation will be much more than cost of tax.

Prayer

Please delete the penalty.”

6. The Id DR is heard who relied on the findings of the lower authorities and more particularly advanced the similar contentions as stated in the order of the Id. CIT(A).

7. We have heard the rival contentions and perused the material placed on record. The bench noted that the as regards the capital gain on account of the applicability of section 50C of the Act, the assessee has already showed the income in response to the notice issued u/s. 148 of the Act. The

Id. AR of the assessee also emphasized that the difference is less than 10 % as changed in the law and even though the assessee has paid the tax and now in accordance in the change in price range the assessee should get the benefit at least in the levy of penalty based on the decision of apex court in the case of CIT Vs. Vatika Township beneficial provision should be read liberally. The bench also noted that decision relied upon by the lower authority are having the different facts and are not applicable to the facts of this case. As regards the balance addition of Rs. 21,300/- this has been made on account of the meager amount and on account of difference of opinion only. Based on the various decision cited by the Id. AR of the assessee the decision in the case of apex court in the case of CIT Vs. Reliance Petroproducts Private Limited we vacate the levy of penalty u/s. 271(1)(c) of the Act for an amount of Rs. 54,879/-.

In the result, appeal of the assessee is allowed.

Order pronounced in the open court on 03/05/2023.

Sd/-

(संदीप गोसाई)

(Sandeep Gosain)

न्यायिक सदस्य / Judicial Member

Sd/-

(राठौड कमलेश जयंतभाई)

(Rathod Kamlesh Jayantbhai)

लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 03/05/2023

*Ganesh Kumar

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

1. The Appellant- Rajesh Kumar Agarwal, Jaipur
2. प्रत्यर्थी / The Respondent- DCIT-1, C. R. Building, Jaipur
3. आयकर आयुक्त / The Id CIT
4. आयकर आयुक्त(अपील) / The Id CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No. 126/JP/2023)

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar