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. 160/JP/2023
निर्धारण वर्ष/Assessment Years : 2014-15

Sh. Swapnil Agarwal 1, Agarwal Dharam Kanta, Adarsh Nagar, Ajmer	बनाम Vs.	ITO (TDS), Ajmer
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AFNPA 9330 H		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/ Assessee by : Sh. P. C. Parwal (CA)
राजस्व की ओर से/ Revenue by : Smt Monisha Chaudhary (Addl. CIT)

सुनवाई की तारीख/ Date of Hearing : 27/04/2023
उदघोषणा की तारीख/Date of Pronouncement: 10/05/2023

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 01/03/2023 [here in after (NFAC)/ ld. CIT(A)] for assessment year 2014-15 which in turn arise from the order dated 16.12.2020 passed under section 271C of the Income Tax Act, by Addl. CIT, Range TDS, Udaipur.

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

"1. The ld. CIT(A), NFAC has erred on facts and in law in upholding the penalty order passed by Add. CIT, Range-TDS, Udaipur ignoring the penalty proceedings initiated after 7 years of the transaction is illegal & bad in law.
2. The Ld. CIT(A), NFAC has erred on facts and in confirming the levy of penalty of Rs. 57,940/- u/s 271C of the IT. Act, 1961.
3. The appellant craves to alter, amend & modify any ground of appeal.
4. Necessary cost be awarded to the assessee."

3. Succinctly, the fact as culled out from the records is that in this case, the return of income was e-filed on 30.09.2014 declaring total income at Rs. 10,47,410/-. The return of income was processed u/s 143(1) of the Act, 1961 on 11.04.2015. This case was selected for scrutiny through CASS for 'Complete Scrutiny'. Accordingly, a notice u/s 143(2) of the Income Tax Act, 1961 was issued on 28.08.2015 and case fixed for hearing on 08.09.2015. This notice was duly served upon the assessee. The notice was duly complied with by the assessee. Thereafter, a notice u/s 142(1) along with a detailed questionnaire was issued on 17.06.2016. Simultaneously, due to change of incumbent a fresh opportunity vide notice u/s 143(2) of the I.T. Act dated 17.06.2016 was provided to the assessee. Assessment order was passed on 31.10.2016 under section 143(3) of the Act.

3.1 After culmination of the assessment in this case the ACIT, Circle-2, Ajmer referred letter no. 197 dated 30.07.2019 that the revenue audit party has raised minor audit objection in this case that the assessee has

purchased a property for purchase consideration of Rs. 57,94,000/- but failed to deduct TDS @ 1% i.e. 57,940/- as per provision of section 194IA the assessee was liable to deduct TDS @ 1% but failed to do so. Therefore, the case was transferred to the office of the Additional Commissioner of Income Tax, TDS Range, Udaipur. Based on these set of facts a show cause notice under section 274 read with section 271C of the I.T. Act, 1961 was issued on 21.01.2020 to the deductor by the office of the Addl. CIT requesting to show cause why penalty should not be levied for the default fix the hearing of case on 28.01.2020. In response to above, the A/R of the assessee requested for adjournment by filing a letter on 11.02.2020. Again, Second notice under section 274 read with section 271C of the I.T. Act, 1961 was issued on 17.02.2020, fixing the date of hearing on 24.02.2020. In response to this, the assessee filed a letter by e-mail on 24.02.2020 in which he asked to intimate him about the default for which penalty u/s 271C is leviable. Therefore notice under section 274 read with section 271C of the I.T. Act, 1961 was issued on 02.03.2020, fixing the date of hearing on 06.03.2020 and intimated the assessee about objection raised by revenue audit party on TDS default on purchase consideration of property purchase of Rs. 57,94,000/- by the assessee during F.Y 2013-14, but neither submitted any written reply nor presented himself in the office of the Addl.

CIT for determining TDS default and to pass the order u/s 201(1)/201(1A) of the I.T. Act, 1961, the case was forwarded to the ITO (TDS), Ajmer vide letter No. 1337 dated 12.03.2020. Later, the ITO(TDS), Ajmer referred vide letter no. 229 dated 02.11.2020 that order u/s 201(1)/201(1A) of the I.T. Act, 1961 was passed on 28.10.2020. The copy of same was endorsed to the office of undersigned for initiating penalty proceedings u/s 271C of the I.T. Act, 1961. It was reported that deductor has not deducted tax at source u/s 194IA of the I.T. Act, 1961 on immovable property worth Rs. 57,94,000/- at the time of purchase of property from Sh. Indrajeet S/o Sh. Girdhari Lal resident of Dholabhata, Ajmer on 05.08.2013. The deductor assessee was treated as assessee in default as per provisions of section 201(1) of the Act, 1961 for not deducting of TDS amount of Rs. 57,940/- on the payment made of Rs. 57,94,000/- at the time of purchase of immovable property. Therefore order u/s 201(1)/201(1A) of the I.T. Act, 1961 was passed on 28.10.2020 by creating demand of Rs. 57940/- of TDS default u/s 201(1) and Rs. 49828/- u/s 201(1A) as interest @ 1.00% per month of the I.T. Act, 1961. Therefore, penalty notice u/s 271C of the I.T. Act, 1961 issued on 24.11.2020 to the deductor by the office of the undersigned fixing date of hearing on 01.12.2020. Despite giving due opportunities the assessee failed to represent its case. No compliance made by the assessee till date,

which shows that the assessee has nothing to say in this regard and default of the assessee is established. From the above, it is clear that the deductor has to deduct TDS of Rs. 57,940/- @ 1% u/s 194IA of the IT Act, 1961 at the time of payment of sale consideration to the seller and deposit the same in Central Govt. Account, but deductor failed to do so. Relying on the case of Classic Concepts Home India (P) Ltd. vs. CIT of the Kerala High Court, IT Appeal No. 89, 90, 91 & 92 of 2015 dated 21 May, 2015, wherein it is held that the tax was deducted at source and the same was remitted belatedly, though with interest, authorities were fully justified in levying penalty u/s 271C of the I.T. Act, 1961 and thereby imposed penalty of Rs. 57,940/- which is equivalent to the amount of TDS which the deductor failed to deduct and deposit into Central Govt. A/c within the stipulated time as prescribed under the Chaper XVII-B of the I.T. Act, 1961.

4. Aggrieved from the order of the levy of demand of TDS and order levying penalty, the assessee preferred an appeal before the ld. CIT(A)/NFAC. The ld. CIT(A) has dismissed both the appeal of the assessee. Apropos to the grounds of the appeal related to the levy of penalty the relevant finding of the ld. CIT(A)/NFAC is reiterated here in below :

"6. I now take up the appeal against levy of penalty u/s 271C. Both grounds in this appeal are related to the action of the Addl.CIT, TDS, Udaipur in levying penalty u/s 271C. During appeal proceedings, the assessee has filed written submissions which are identical to those filed before me in his appeal decided above and are therefore not reproduced for the sake of brevity. The assessee has made identical arguments as to why he did not deduct tax at source. However, on examination of section 271C, I find that words used therein are * If any person fails to...

(a).....

(b)...

then, such person shall be liable to pay, by way of penalty....". The words in section 271C are shall be liable to pay, which means there is no discretion given to any authority under the Act for not levying penalty. The only exception is by way proving reasonable cause u/s 273B. As discussed in the appeal earlier decided, the assessee has attempted to prove reasonable cause by stating that the government authorities were not aware and that the provisions and that section 1941A has been introduced only two months before date of transaction. I am not inclined to agree with the assessee on this count as ignorance of law is no excuse and the ignorance by any authority or any other person does not dilute the obligation cast on the assessee to deduct TDS. Based on the discussion above, I am of the view that the assessee has not able to demonstrate reasonable cause u/s 273B and I therefore uphold the levy of penalty of Rs.57,940.

7. In the result, both appeals are dismissed."

5. As the assessee did not received relief in respect of levy of penalty u/s. 271C he has preferred this appeal before this tribunal. Apropos to the grounds so raised by the assessee, the ld. AR appearing on behalf of the assessee has placed their written submission on record in support of the grounds so raised which is extracted in below;

1. The assessee is engaged in real estate business. Assessment u/s 143(3) of IT Act was completed on 31.10.2016 at income of Rs.10,77,780/- against returned income of Rs.10,47,410/-.

2. Thereafter on the basis of audit objection, the ACIT, Circle-2 vide letter dt. 30.07.2019 made reference to Additional Commissioner of Income Tax, Range-TDS, Udaipur (Addl. CIT-TDS) to initiate penalty proceedings u/s 271C of the IT Act for failure to deduct tax at source u/s 194-IA of Rs.57,940/- on land purchased on 05.08.2013 at Mangliyawas for Rs.57.94 lacs.
3. Accordingly, Addl. CIT-TDS issued show cause notice u/s 271C of the Act dt. 21.01.2020, 17.02.2020 & 02.03.2020 and forwarded the case to ITO(TDS) for passing order u/s 201/201(1A). ITO(TDS) passed the order u/s 201(1)/201(1A) on 28.10.2020 and raised demand of Rs.57,940/- u/s 201(1) & interest u/s 201(1A) at Rs.49,828/- and communicated this fact to Addl. CIT-TDS vide letter dt. 02.11.2020.

4. The Addl. CIT-TDS again issued notice u/s 271C of the Act on 24.11.2020 & 03.12.2020 but in the absence of reply, relying on the decision of Kerala High Court in case of Classic Concepts Home India (P) Ltd. Vs. CIT, he imposed penalty of Rs.57,940/- u/s 271C of IT Act, 1961 for the reason that it is a time barring matter.

5. The Ld. CIT(A) held that the words in section 271C are ‘shall be liable to pay’ which means there is no discretion given to any authority under the Act for not levying penalty. The only exception is by way of proving reasonable cause u/s 273B. The assessee has attempted to prove reasonable cause by stating that the government authorities were not aware of the provisions and that section 194IA has been introduced only two months before date of transaction. However, ignorance of law is no excuse and the ignorance by any authority or any other person does not dilute the obligation cast on the assessee to deduct TDS. The assessee has not able to demonstrate reasonable cause u/s 273B and thus levy of penalty of Rs.57,940/- is hereby upheld.

Submission:-

1. At the outset it is submitted that assessee has purchased the land from Sh. Indrajeet for Rs.57.94 lacs on 05.08.2013. The show cause notice for levying penalty u/s 271C was issued on 21.01.2020. The notice so issued is after 6 years of the transaction entered by the assessee. It is a settled law that where the statue does not provide any time limitation for issue of notice, such notice should be issued within a reasonable time. Hon’ble Supreme Court in case of State of Punjab Vs.

Bhatinda District Cooperative Milk Producers Union Limited (2007) 11 SCC 363 at para 17 & 18 of its order held as under:-

17. It is trite that if no period of limitation has been prescribed, statutory authority must exercise its jurisdiction within a reasonable period. What, however, shall be the reasonable period would depend upon the nature of the statute, rights and liabilities thereunder and other relevant factors.

18. Revisional jurisdiction, in our opinion, should ordinarily be exercised within a period of three years having regard to the purport in terms of the said Act. In any event, the same should not exceed the period of five years. The view of the High Court, thus, cannot be said to be unreasonable. Reasonable period, keeping in view the discussions made hereinbefore, must be found out from the statutory scheme. As indicated hereinbefore, maximum period of limitation provided for in sub-section (6) of Section 11 of the Act is five years.

Hon'ble Delhi High Court in case of CIT Vs. NHK Japan Broadcasting Corporation (2008) 305 ITR 137 after considering the said decision of Hon'ble Supreme Court with reference to the proceedings initiated u/s 201 where no time limit for initiation of proceedings is prescribed at para 19 to 22 of its order held as under:-

19. Even though the period of three years would be a reasonable period as prescribed by s. 153 of the Act for completion of proceedings, we have been told that the Tribunal has, in a series of decisions, some of which have been mentioned in the order which is under challenge before us, taken the view that four years would be a reasonable period of time for initiating action, in a case where no limitation is prescribed.

20. The rationale for this seems to be quite clear—if there is a time-limit for completing the assessment, then the time-limit for initiating the proceedings must be the same, if not less. Nevertheless, the Tribunal has given a greater period for commencement or initiation of proceedings.

21. We are not inclined to disturb the time-limit of four years prescribed by the Tribunal and are of the view that in terms of the decision of the Supreme Court in Bhatinda District Coop. MIL P. Union Ltd. (supra) action must be initiated by the competent authority under the IT Act, where no limitation is prescribed as in s. 201 of the Act within that period of four years.

22. Learned counsel for the Revenue submitted that the Department came to know that the assessee was an assessee in default only in November, 1998 when a survey was conducted and it came to be known only then that the assessee had not deducted tax at source on the global salary. We are of the opinion that the date of knowledge is not relevant for the purposes of exercising jurisdiction insofar as the provisions of the IT Act are concerned. If it were so, the limitation period, as for example prescribed under s. 147/148 of the Act would become meaningless if the concept of knowledge is imported into the scheme of the Act.

Further Hon'ble ITAT, Chennai Bench in case of RMG Benefit Fund Ltd. Vs. ACIT (2018) 53 CCH 0269 has held that penalty proceeding should have been initiated within reasonable time even though no limitation was provided in Income-tax Act. Threat of initiating penalty proceeding could not be allowed to hang over head of assessee for an unreasonable period of time. There should be an end to proceeding, that also within a reasonable period. Penalty proceeding initiated by AO after expiry of almost six years was barred by limitation.

Hence, penalty order passed ignoring that penalty proceeding is initiated after 6 years of the transaction is illegal & bad in law.

2. Section 271C provides that if any person fails to deduct the whole or any part of the tax as required under the provisions of Chapter XVII-B, then such person shall be liable to pay, by way of penalty, a sum equal to the amount of tax which such person failed to deduct. Section 273B provides that no penalty shall be imposable on the person or the assessee for any failure referred to in section 271C if he proves that there was reasonable cause for the said failure. Section 194-IA which casts an obligation on the buyer of immovable property to deduct TDS @ 1% where the purchase consideration exceeds Rs.50 lakhs was introduced by FA, 2013 w.e.f. 01.06.2013. The assessee entered into the transaction for purchase of immovable property on 05.08.2013, i.e. 66 days after the introduction of section 194-IA. As the liability to deduct TDS arises for the first time in the year under consideration, it escaped the assessee's attention. This was explained by the assessee vide letter dt. 05.03.2020 (copy enclosed) where it was also stated that neither the sub-registrar nor the AO while completing the assessment raised any objection on this default and only on the basis of audit objection the proceedings were initiated. Assessee paid the tax & interest on such default u/s 201(1)/201(1A) and therefore under such circumstances, ignorance of law is a reasonable cause for not complying with section 194-IA so as to levy penalty u/s 271C of the Act. For this reliance is placed on the following cases:-

Hindustan Steel Ltd. Vs. State of Orissa in (1972) 83 ITR 26 (SC) where it was held as under:-

"An order imposing penalty for failure to carry out a statutory obligation is the result of a quasi-criminal proceeding, and penalty will not ordinarily be imposed unless the party obliged, either acted deliberately in defiance of law or was guilty of conduct contumacious or dishonest, or acted in conscious disregard of its obligation—Penalty will not also be imposed merely because it is lawful to do so—Whether penalty should be imposed for failure to perform a statutory obligation is a matter of discretion of the authority to be exercised judicially and on a consideration of all the relevant circumstances—Even if a minimum penalty is prescribed, the authority competent to impose the penalty will be justified in refusing to impose penalty, when there is a technical or venial breach of the provisions of the Act or where the breach flows from a bona fide belief that the offender is not liable to act in the manner prescribed by the statute."

Motilal Padampat Sugar Mills Co. Ltd. Vs. State of UP & Ors. (1979) 118 ITR 326 (SC) where at Para 7 it was held as under:-

Moreover, it must be remembered that there is no presumption that every person knows the law. It is often said that every one is presumed to know the law, but that is not a correct statement : there is no such maxim known to the law. Over a hundred and thirty years ago, Maula, J. pointed out in Martindale vs. Falkner (1846) 2 CB 706 : "There is no presumption in this country that every person knows the law : it would be contrary to common sense and reason if it were so. "Scrutton, L.J. also once said : "It is impossible to know all the statutory law, and not very possible to know all the common law. "But it was Lord Atkin who, as in so many other spheres, put the point in its proper context when he said in Evans vs. Bartlam (1937) AC 473 :"..... the fact is that there is not and never has been a presumption that every one knows the law. There is the rule that ignorance of the law does not excuse, a maxim of very different scope and application." It is, therefore, not possible to presume, in the absence of any material placed before the Court, that the appellant had full knowledge of its right to exemption so as to warrant an inference that the appellant waived such right by addressing the letter dt. 25th June, 1970. We. accordingly, reject the plea of waiver raised on behalf of the State Government.

3. The Addl. CIT-TDS initiated penalty proceedings u/s 271C vide notice dt. 21.01.2020. Penalty u/s 271C is independent of assessment proceedings and thus the limitation for levy of penalty u/s 271C would be governed by clause (c) of section 275(1). This clause provides that no order imposing the penalty shall be

passed after the expiry of the financial year in which the proceedings, in the course of which action for the imposition of penalty has been initiated, are completed or six months from the end of the month in which action for imposition of penalty is initiated, whichever period expires later. In the present case, since penalty u/s 271C has not been initiated during the course of any proceedings, first part of sec. 275(1)(c) would have no application and it is only the second part which would apply. Thus the penalty order ought to have been passed within a period of six months beginning from the end of the month in which the action for imposition of penalty was initiated. Since the show cause notice u/s 271C was issued on 21.01.2020, the period of six months would have to be reckoned from 01.02.2020 that would end to 31.07.2020. Therefore, penalty order passed on 16.12.2020 is barred by limitation.

In view of above, penalty levied u/s 271C be directed to be deleted."

6. In addition, the ld. AR of the assessee vehemently argued that before levy of demand of TDS default notice for penalty was issued. On being pointed out the additional CIT referred the matter first for demanding the TDS from the assessee and after that again notice for levy of penalty u/s. 271C was issued which is beyond six years. The assessment of the assessee completed u/s. 143(3) wherein there is no whisper of the alleged default by the assessee. If the ld. AO being officer of the filed the assessee also be given the benefit of ignorance of the law and assessee has already paid the alleged amount of TDS levied.

7. The ld. DR is heard who has relied on the findings of the lower authorities and also submitted that ignorance of law is not an excuse. Ld.

has not jurisdiction for levy of TDS and as pointed by the revenue audit party the demand and penalty has rightly been levied as the assessee failed to demonstrate the voluntary compliance of law which is mandate to the assessee.

8. We have heard the rival contentions and perused the material placed on record. The bench noted from the records that Addl.CIT-TDS initiated penalty proceedings u/s 271C vide notice dt. 21.01.2020. The Penalty in question u/s 271C is independent of assessment proceedings and thus the limitation for levy of penalty u/s 271C would be governed by clause (c) of section 275(1). This clause provides that no order imposing the penalty shall be passed after the expiry of the financial year in which the proceedings, in the course of which action for the imposition of penalty has been initiated, are completed or six months from the end of the month in which action for imposition of penalty is initiated, whichever period expires later. In the present case, since penalty u/s 271C has not been initiated during the course of any proceedings, first part of sec. 275(1)(c) would have no application and it is only the second part which would apply. Thus the penalty order ought to have been passed within a period of six months beginning from the end of the month in which the action for imposition of

penalty was initiated. Since the show cause notice u/s 271C was issued on 21.01.2020, the period of six months would have to be reckoned from 01.02.2020 that would end to 31.07.2020. Therefore, penalty order passed on 16.12.2020 is barred by limitation and therefore, the same is quashed.

In the result, appeal of the assessee is allowed.

Order pronounced in the open court on 10/05/2023.

Sd/-	Sd/-
(संदीप गोसाई)	(राठौड कमलेश जयंतभाई)
(Sandeep Gosain)	(Rathod Kamlesh Jayantbhai)
न्यायिक सदस्य/Judicial Member	लेखा सदस्य/Accountant Member

जयपुर/Jaipur
दिनांक/Dated:- 10/05/2023
*Ganesh Kumar
आदेश की प्रतिलिपि अग्रेशित/Copy of the order forwarded to:

1. The Appellant- Sh. Swapnil Agarwal, Ajmer
2. प्रत्यर्थी/ The Respondent- ITO, TDS, Ajmer
3. आयकर आयुक्त/ The ld CIT
4. आयकर आयुक्त(अपील)/The ld CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर/DR, ITAT, Jaipur
6. गार्ड फाईल/ Guard File (ITA No. 160/JP/2023)

आदेशानुसार/ By order,

सहायक पंजीकार/Asst. Registrar