

आयकर अपीलिय 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. 75/JP/2023
निर्धारण वर्ष/Assessment Year : 2011-12.

Smt. Bhanwari Devi, Rajiv Nagar, Shahjahanpur, Alwar.	बनाम Vs.	The Income Tax Officer, Ward 2(2), Alwar.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No. AZRPB 5567 B		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri Rajesh Agarwal(CA)

राजस्व की ओर से / Revenue by : Smt. Monisha Choudhary (Addl.CIT)

सुनवाई की तारीख / Date of Hearing : 22/03/2023

उदघोषणा की तारीख / Date of Pronouncement: 3/05/2023

आदेश / ORDER

PER: SANDEEP GOSAIN, J.M.

This appeal by the assessee is directed against the order dated 06.12.2022 of Id. CIT (A), National Faceless Appeal Centre (NFAC), Delhi passed under section 250 of the IT Act, 1961 for the assessment year 2011-12. The assessee has raised the following grounds :-

1. Under the facts and circumstances of the case, the Id. CIT (A) erred in confirming the action of Assessing Officer of passing order u/s 271(1)(c) without serving the notice and providing opportunity to the assessee.
2. Under the facts and circumstances of the case, the Id. CIT (A) erred in confirming the action of Assessing Officer in imposing penalty of Rs. 4,64,530/-.

3. The appellant prays to leave to add, alter or amend foresaid grounds of appeals at or before the time of hearing of appeal.

2. The appeal filed by the assessee is delayed by 11 days. The assessee has explained the delay by filing an application dated 17th February, 2023 for condonation of delay along with supporting affidavit of the assessee and requested for condonation of delay. The contents of the application for seeking condonation of delay are reproduced as under :-

- “ 1. The assessee is illiterate lady aged 63 years. She is housewife and has no source of earning. The assessee was not aware of the assessment order dated 06.12.2022. The assessee is neither having her personal email id nor having any person conversant with email. She has mentioned email id of her family member.
2. While checking ITD portal in the proceeding Tab, the assessee's counsel came to know about the passing of order by the Id. CIT (A).
3. During the year under consideration, the rural agriculture land outside the municipal limits in which she was co-owner was compulsorily acquired by the Government of Rajasthan and the sale proceeds invested in term deposit with bank. The AO completed the assessment order u/s 147 r.w.s. 144 even any notice was never served to the assessee. The AO imposed penalty u/s 271(1)(c) in respect of addition made. Assessee filed appeal against the quantum appeal but learned CIT (A) passed the order without considering the facts of the assessee and confirm the action of the AO and affirm the penalty order u/s 271(1)(c) of the Income Tax Act, 1961.
4. There is no intention of Assessee to avoid the proceedings. Assessee being the old lady and not conversant with the technology, it is kindly requested to condone the delay in filing of appeal and oblige so that justice may be given to the assessee.”

3. Having considered the rival submissions as well as going through the contents of the application, we are satisfied that the assessee has explained a reasonable

cause for not filing the appeal within the period of limitation. Accordingly, we condone the delay of 11 days in filing the present appeal.

Ground nos. 1 & 2 are inter-linked relates to confirming the action of the AO of passing order u/s 271(1)(c) without serving notice and providing opportunity to the assessee and also confirming penalty of Rs. 4,64,530/- imposed by the AO.

4. The brief facts of the case are that the assessee is a lady aged 63 years. She is a housewife and has no source of earning. During the year under consideration, a rural agriculture land situated outside the municipal limits, co-owned by the assessee, was compulsorily acquired by the Government of Rajasthan and the sale proceeds were invested in term deposit for Rs. 10,00,000/- with bank. As she had no income exceeding maximum amount not chargeable to tax and therefore she is not required to file return as per the Income tax law. The AO received information from departmental software that assessee made time deposit of Rs. 20,00,000/- in the Punjab National Bank during the financial year 2010-11. Since, the assessee had not filed her return of income for A.Y. 2011-12, the AO presumed that investment was made out of income from undisclosed source which escaped assessment. The AO issued a notice u/s 148 asking the assessee to file return, however such notice was never served to the assessee. Thereafter, the AO completed the assessment under section 144 as a best judgment assessment treating Rs. 20,00,000/- as Income from undisclosed sources and issued penalty notices u/s 271(1)(c) alleging that the assessee willfully concealed the particulars of income. Being aggrieved by the order of the AO, the assessee preferred appeal before the Id. CIT (A). The Ld. CIT(A) did not accept the contention of assessee holding that penalty has been levied u/s

271(1)(c) of the Income Tax Act, 1961 worth Rs. 4,64,530/-. The CIT(A) without considering the reply of the assessee, dismissed the appeal of the assessee. Now the assessee is in appeal before us.

5. Before us, the Id. Counsel for the assessee submitted his written submissions, which are reproduced hereunder :-

" 1. As per the Order u/s 271(1)(c), AO had issued show cause notice dated 17.12.2018, but the same was not properly served on the assessee and never been received by the assessee.

This is very strange that when penalty order u/s 271F could be served at assessee's premises, why the notice u/s 271(1)(c) could not be served properly. Even the address mentioned in the letter for demand is proper and the assessee is residing at such address. This shows that true and fair efforts were not made by the Ld. AO to serve the notice upon the assessee. In real, the assessee was not provided any opportunity to defend himself at all. This implies that the notices were not real and the AO was in a hurry to complete the assessment u/s 144 and imposing the penalty without giving the assessee a fair chance to present his submission.

The AO has not mentioned in the penalty order about the efforts of serving the notice that:

- Whether the assessee refused to accept the notice.
- Whether the assessee was not found at the place.
- Whether the assessee was not residing at that place.

All these facts indicate that the service of notice only a formality and no true or genuine efforts were made to serve the notice. In reality no notice was ever served upon the assessee.

OPPORTUNITY OF BEING HEARD IS A PRINCIPLE OF NATURAL JUSTICE

It is also a principal of natural justice to provide an opportunity of being heard before giving any verdict.

Rules of natural justice are embodied in the provision of service of notice on the party likely to be affected by a proceeding conducted and concluded under the provision of Income-tax Act, 1961. Notice is knowledge of facts which would lead a person to make enquiry.

A notice of hearing is a prerequisite for assessment as it will be difficult for any person to avail himself of the opportunity of hearing unless he knows that a hearing is going to take place.

Service of notice is a condition precedent for the making of an order of assessment by the authorities under the Income-tax Act, 1961. The assessee in law is entitled to rebut the material placed before him, if he so chooses and any material placed on record without notice to the assessee cannot be relied upon by the Revenue being violative of the principles of natural justice. The importance of issuing notice in income tax proceedings is so much so that even an order of rectification which has the effect of enhancing the income tax liability of an assessee becomes invalid in law, if passed without issuing a valid notice and affording opportunity of hearing.

Principles of natural justice demand a service of **valid** notice to the assessee before any adverse action is to be taken against the assessee by Income Tax Authorities.

2. The Ld. Assessing officer has completed the assessment by treating Rs. 20,00,000/- as income from unexplained investment, being value reported in AIR as term deposit as against the actual term deposit of Rs. 10,00,000/-.

Assessee invested Rs. 10,00,000/- in the term deposit with Punjab National Bank in two Fixed deposits of Rs. 5,00,000/- each by the assessee. Bank had made two FDs with S. No. 356400PR00006491 and 356400PR00006507 on 06.07.2010. However due to technical error in bank servers these FDs were

closed and new FDs with S. No 356400PR00006534 and 356400PR00006543 were created on 09.07.2010. **(Letter from bank at PB 1)**

The source of investment of Rs. 10,00,000/- of the assessee is as below :-

- (i) The assessee became co-owner of rural agriculture land with Smt. Usha Meena & Others situated at Khasra No. 118, Gram Panchyat Shapura, Tehsil Behror. She acquired the property after death of her father-in-law Sh. Mahaveer Meena along with other heirs. Copy of certificate from Gram Panchyat Shahpura at **PB 2**. This land was compulsorily acquired by the Government of Rajasthan, for which she received consideration of Rs. 2,55,210/-. Copy of Acquisition letter from Land Acquisition Officer Behror (Alwar) is enclosed at **PB 3**. Consideration can be verified from details of Acquisition letter at **PB 4-5** and bank statement at **PB 6-7**. **Rs. 2,55,210/- has been received on 26-05-2010 in bank.**
- (ii) Smt. Usha Meena, Sister-in-law of the assessee received consideration of Rs. 7,65,630/- for compulsory acquisition of same property(**PB 3**). She transferred Rs. 7,64,000/- in the bank account of the assessee on 27.05.2010. Copy of bank pass book of Smt. Usha Meena is enclosed at **PB 8-9**. Smt. Usha Meena surrendered her right in respect of this property in favour of assessee vide Shapath Patra dt. 25/8/2009. Copy at **PB 10-13**. Since Usha Meena was owner in the land records, the acquisition amount was received by her and she gifted the same to her sister-in-law after receipt of money. Bank passbook at **PB 8-9**.

Thus the investment in FDR by the assessee is only of Rs. 10,00,000/- against Rs. 20,00,000/- claimed by AO and the source of investment is fully verifiable. Therefore, there is no concealment of income on part of the assessee and therefore the penalty levied u/s 271(1)(c) is illegal and void.

CIT (A) observation has held that no evidence of the compulsory acquisition of land by government has been filed. All the details were duly filed before the CIT(A) which can be verified from Paper book Index of CIT(A) at **PB 14** and written submission before CIT(A) at **PB 15-19**. The CIT(A) has not considered the reply and passed the order very casually without verifying the facts.

In view of the above, the penalty u/s 271(1)(c) deserves to be deleted.”

6. On the other hand, the Id. D/R supported the orders of the lower authorities.
7. We have heard learned Counsels of both the sides, perused the material available on record and gone through the orders of the revenue authorities. Since we have already set aside the order of the Id. CIT (A) in assessee's case in quantum appeal and restored the matter in ITA No. 76/JP/2023 to the file of the Id. CIT (A) to be decided afresh, therefore, the impugned penalty order has become infructuous and the same is dismissed.
8. In the result, appeal of the assessee is allowed.

Order pronounced in the open court on 3/05/2023.

Sd/-

(राठौड़ कमलेश जयंतभाई)
(RATHOD KAMLESH JAYANTBHAI)
लेखा सदस्य / Accountant Member

Sd/-

(संदीप गोसाईं)
(SANDEEP GOSAIN)
न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 3/05/2023.

Das/

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

1. अपीलार्थी / The Appellant- Smt. Bhanwari Devi, Alwar.
2. प्रत्यर्थी / The Respondent- The ITO Ward 2(2), Alwar.
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.
6. गार्ड फाईल / Guard File {ITA No. 75/JP/2023}

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar