

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 Nos. 336 to 339/JP/2023
निर्धारण वर्ष / Assessment Years : 2012-13 to 2014-15 & 2016-17

Vinaya Sharma 431 A, Talwandi Kota	बनाम Vs.	ACIT, Central Circle, Kota
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AFRPS 6215 F		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

आयकर अपील सं./ITA Nos. 340 to 344/JP/2023
निर्धारण वर्ष / Assessment Years : 2012-13 to 2016-17

Asheesh Sharma 431 A, Talwandi Kota	बनाम Vs.	ACIT, Central Circle, Kota
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: ASCPS 8668 Q		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

आयकर अपील सं./ITA Nos. 345 to 347/JP/2023
निर्धारण वर्ष / Assessment Years : 2013-14 to 2015-16

Priyanka Khandelwal 431 A, Talwandi Kota	बनाम Vs.	ACIT, Central Circle, Kota
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AWMPK 3651 K		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : None
राजस्व की ओर से / Revenue by : Smt. Monisha Choudhary (Addl.CIT)

सुनवाई की तारीख / Date of Hearing : 01/08/2023
उदघोषणा की तारीख / Date of Pronouncement: 24/08/2023

आदेश / ORDERPER BENCH:

These twelve appeals are filed by the assessee aggrieved from the order of the Commissioner of Income Tax (Appeal), Udaipur-2 [Here in after referred as Ld. CIT(A)] for the assessment years 2012-13 to 2016-17 dated 27.02.2023 which in turn arises from the order passed by the ACIT, Central Circle, Kota passed under Section 271(1)(c) of the Income Tax Act, 1961 (in short 'the Act') dated 03.11.2020 & 16.12.2020. Details relevant to these appeals is tabulated here in below for the sake convenience so as to decide the issue in appeal:

ITA No.	Section	Penalty Amount	Delay	Submission of condonation	Written submission	Returned filed u/s 153A & assessed at same amount
336/JP/2023	271(1)(c)	4,738/-	25	No	No	Yes*
337/JP/2023	271(1)(c)	30,380/-	25	No	No	Yes
338/JP/2023	271(1)(c)	4,736/-	25	No	No	Yes
339/JP/2023	271(1)(c)	49,521/-	25	No	No	Yes
340/JP/2023	271(1)(c)	10,340/-	25	No	No	Yes

341/JP/2023	271(1)(c)	11,034/-	25	No	No	Yes
342/JP/2023	271(1)(c)	38,035/-	25	No	No	Yes
343/JP/2023	271(1)(c)	1,92,111/-	25	No	No	Yes
344/JP/2023	271(1)(c)	1,72,652/-	25	No	No	Yes
345/JP/2023	271(1)(c)	2,588/-	25	No	No	No**
346/JP/2023	271(1)(c)	17,688/-	25	No	No	No@
347/JP/2023	271(1)(c)	2,862/-	25	No	No	No#

* Addition of short term capital gain of Rs. 9224

** surrendered house property income of Rs. 25,129/- in the assessment proceeding by filing revised computation of income

@ surrendered interest income of Rs. 1,01,430/- in the assessment proceeding by filing revised computation of income and contended that the FDR was renewed and therefore let the attention.

surrendered interest income of Rs. 27,790/- in the assessment proceeding by filing revised computation of income and contended that the FDR was renewed and therefore let the attention.

2. Since the issues involved in all the appeals of the different assessee for all different assessment years involving identical facts, issues and even the grounds of the assessee being similar these twelve appeals were heard together and are being disposed off by this consolidated order.

3. At the outset of the hearing the bench noted the appeal is delay and the assessee has filed the following reply in respect of the delay in bringing this appeal

“With reference to the subject matter, appellant received penalty assessment order on dt. 27.02.2023 and submitted online Form 36 on dt. 25.04.2023 vide acknowledgement No. 1682407829 (with in time) along with all the necessary documents on E-Filing portal of ITAT but hardcopy of documents submitted on dt. 23.05.2023 due to appellant has out of town after filling of online form and after came to appellant, signing of Form 36 submitted on Hon’ble ITAT, Jaipur office so request your honour to kindly condone the request and may proceed the appeal.

If your honour need any more information or explanations require, Please let us know.”

As the assessee contended that the appeal was filed online on 25.04.2023 and the same was physically filed on 23.05.2023 and if consider the online filling the same is within the time. Considering this facet the delay in filling the appeal is condoned and the matter is heard on merits.

4. As the issue in all these appeals are levy of penalty u/s. 271(1)(c) the same is decided together and the matter in ITA no. 336/JP/2023 for A.Y 2012-13 taken as a lead case for discussions as the issues involved in the lead case are common and inextricably interlinked or in fact interwoven and the facts and circumstances of different years are identical except the difference in the amount in other assessment year. The Id. DR did not raise any specific objection against taking that case as a lead case. Therefore,

for the purpose of the present discussions, the case of ITA No. 336/JP/2023 is taken as a lead case.

5. Based on the above arguments we have also seen that for twelve appeals grounds are similar and facts are similar. Therefore, were heard together these twelve appeals and are disposed by taking lead case facts, grounds, and the contentions from the folder in ITA No. 336/JP/2023 and our findings will equally applicable in the case in ITA nos. 337 to 347/JP/2023.

6. Before moving towards the facts of the case we would like to mention that the assessee has assailed the appeal in ITA No. 336/JP/2023 on the following grounds;

“1. The learned CIT(A) has erred in law and on facts in upholding penalty of Rs. 4,738/- levied u/s 271(1)(c) without penalty appreciating the facts of the appellant.

2. The learned CIT(A) has erred in law and on facts in not considering the submission and the supporting decision relied upon by the assessee and ignoring the fact that return income in response to notice u/s 153A is the assessed income u/s 153A(1)(b).

3. On the facts no such penalty u/s 271(1)(c) ought to have been levied.

4. Appellant crave, leave to add amend, alter, substitute, modify any of the ground of appeal on or before the date of hearing with approval of Hon'ble Bench.

7. The fact as culled out from the records is that the appellant filed Income tax return u/s 139 of the Income tax act, 1961 for the assessment year 2012-13 on 30.07.2012 declaring total Income of Rs. 4,56,540/- Thereafter, the appellant filed Income tax return u/s 153A of Income tax Act, 1961 on 27.02.2019 declaring total Income of Rs. 4,84,090/-. Assessment of the same was completed by the Ld. AO vide order dt. 10.12.2019 at the total Income of Rs 4,93,310/- with addition of Rs. 9,220/- on returned income declared in Income tax return filed u/s 153A of Income Tax Act, 1961. The Ld. A.O. issued the penalty notice u/s 271(1)(c) on 08.05.2020 against which the appellant filed the reply and clearly mentioned that the assessment was done on income declared in the return filed u/s 153A of Income Tax Act, 1961 and after considering the revised computation of Income submitted during the course of assessment proceedings by the appellant suo-moto without any further show cause notice by the Ld. AO for an amount of Rs. 9,220/-. The appellant has not concealed the particulars of his income and also not furnished inaccurate particulars of his income. Therefore there is no question of levy of penalty u/s. 271(1)(c). The Ld. AO without considering the reply filed on 20.05.2020 imposed the penalty u/s 271(1)(c) of Income tax Act, 1961 on difference of income (Income 27,550 & Short Term Capital Gain Income Rs. 9,224/-) declared during the course

of assessment proceedings and levied penalty of Rs. 4,738/-. In an appeal Id. CIT(Appeal) confirmed the penalty to the extent of addition of Rs. 9,224/- which is declared in the assessment proceeding by filling the revised computation of income in the assessment proceedings and has deleted the penalty to the extent of the income declared additionally in the return filed u/s 153A of the Act. A propose to this issue the relevant finding of the Id. CIT(A)/NFAC is reiterated here in below:

“4.3. I have considered the facts of the case, gone through the relevant assessment orders, penalty orders and the submission of the appellant and the various case laws relied upon by the appellant.

4.4 The appellant has argued that the AO didn't consider the reply dated 20.05.2020 of the appellant during penalty proceedings. I find the AO has mentioned in the penalty order that the reply of the assessee is considered. Therefore, the argument of the appellant is not found to be acceptable and rejected.

The appellant has further argued that notice does not spell out under which limb of section 271(1)(c) whether it is for concealment of income or for furnishing of inaccurate particulars, the penalty was proposed. It is to be noted that while initiating penalty in the assessment order the AO has clearly mentioned that "penalty u/s 271(1)(c) of the Income Tax Act is initiated for concealment of income by way of issue of notice u/s 274 r.w.s. 271(1)(c) of the Act. Penalty notice u/s 274 r.w.s. 271(1)(c) of the Act issued accordingly. After reading the directions given in the assessment order about initiation of penalty for concealment of income there remains no confusion with regard to limb. Intention of the AO is evident from the assessment order itself. Further, in the penalty notice also the AO has clearly mentioned that the penalty is initiated for concealment of particulars of income. There is no defect found in the initiation of penalty or in the penalty notice. Therefore, the argument of the appellant are found to be not acceptable. The facts of the case laws which is relied upon by the appellant are different from the facts of the case of the

appellant and hence, the decision is not found to be applicable on the facts of the case.

It is argued that return of income filed in response to notice u/s 153A is to be considered as return filed u/s 139. By saying so the appellant is trying to say that on the income offered in the return filed u/s 153A but not offered in the return filed u/s 139, penalty u/s 271(1)(c) is not leviable. The issue in this case is partly present in this case. In this case the income offered in the return filed u/s 153A and the income offered in the return filed u/s 139 is not same. However, there is additional income found by the AO during the assessment proceedings and when AO asked for explanation a revised computation was submitted by the appellant. Therefore, the arguments of the appellant are on the basis of wrong appreciation of facts. The appellant has accepted this fact in the reply furnished that the appellant forgot to include this income in the return of income. It is argued that there is nothing to show that disclosure was made after detection by the department. The AO has mentioned that when the assessee was asked to explain the revised computation was furnished. The appellant has failed to controvert this finding of the AO. Therefore, it is evident that the appellant had concealed the particulars of income. It is admitted fact that the appellant forgot to include the STCG income which is added by the AO in the assessment order. The default of forgetting was not only in the return u/s 139 but also in the return filed u/s 153A. Therefore, this is a clear case of concealment of income and the AO has rightly levied penalty for the default. The decisions relied upon by the appellant are on different facts and not found applicable on the facts of the appellant. The penalty levied by the AO of Rs. 1900 on the amount of STCG addition is therefore, confirmed.

On remaining amount of penalty the appellant is trying to say that on the income offered in the return filed u/s 153A but not offered in the return filed u/s 139, penalty u/s 271(1)(c) is not leviable. The appellant has relied upon some judgements in this regard. Further, the appellant argued that during the search no incriminating document was found which resulted in the addition made by the AO. Therefore, Explanation 5A of section 271(1)(c) is not applicable. It is held by the Hon'ble ITAT, Jaipur in the case of Ajay Traders vs. Deputy Commissioner of Income Tax ITA No. 296/JP/2014 that it is necessary that some incriminating documents are found and considered at the time of assessment framed under section 153A; Revenue authorities having found no incriminating material during the course of search, explanation 5A to section 271(1)(c) is not applicable. It is noticed that the AO has not mentioned any

incriminating material found during search in the assessment order while making accepting the returned income of return filed u/s 153A. Therefore, following the judicial precedence the penalty levied by the AO is not sustainable. The AO is accordingly directed to delete the penalty levied u/s 271(1)(c) of Rs. 2,838/- which is only levied on the basis of income offered in the return filed u/s 153A.

This ground of the appeal is treated as partly allowed.”

8. Feeling dissatisfied from the finding of the Id. CIT(A) confirming the penalty amount in part, the assessee filed the present appeal on the grounds as reiterated herein above. In all these bunch of case notices were issued but none appeared nor filed any adjournment application. Therefore, bench considered to dispose all these bunch of cases based on the facts available on record.

9. As the Id. DR ready with the arguments we have considered the arguments of the Id. DR who has relied upon the order of the Id. CIT(A) and submitted that the proceeding in this case are pursuant to search and the case normal levy of penalty and therefore, he relied upon the contentions raised in the orders of the lower authorities.

10. We have heard the rival contentions and perused the material placed on record. We note from the orders of the lower authority that the addition of Rs. 9224/- being the short term capital gain made on this issue we note from the record that the assessee voluntarily surrendered this additional

amount for taxation in the assessment proceedings by filing revised computation of income and the same has been accepted and not found faulty or incorrect. The similar issue is considered by the Hon'ble Gujarat High Court in case of Kirit Dahyabhai Patel Vs. ACIT 80 taxmann.com 162 (Gujarat) wherein the court held that

13. Considering the facts and circumstances of the case and also considering the decisions relied upon by learned senior advocate for the appellant, we are of the considered opinion that the view taken by the Tribunal is erroneous. The CIT (A) rightly held that it is not relevant whether any return of income was filed by the assessee prior to the date of search and whether any income was undisclosed in that return of income. In view of specific provision of Section 153A of the I.T. Act, the return of income filed in response to notice under Section 153(a) of the I.T. Act is to be considered as return filed under Section 139 of the Act, as the Assessing Officer has made assessment on the said return and therefore, the return is to be considered for the purpose of penalty under Section 271(1)(c) of the I.T. Act and the penalty is to be levied on the income assessed over and above the income returned under Section 153A, if any.

14. Further, in the present case, it appears from the record that the assessee had satisfied all the conditions which are required for claiming immunity from payment of penalty under Section 271(1) of the Act. The provision does not specify any time limit during which the aforesaid amount i.e. the amount of penalty with interest has to be paid. Admittedly when the assessee herein have paid the entire amount with interest, the Assessing Officer ought to have granted them immunity available under Section 271(1)(C) of the Income Tax Act.

10.1 Thus, we find that the facts of the case on hand and the facts of the case decided by the Hon'ble Gujarat High Court being similar the view adopted is respectfully considered in this case as in this case the assessee has surrendered the income while filling the return of income in response to notice u/s. 153A of the Act and even on the small addition made in the

assessment proceeding was also pursuant to the revised computation of income filed by the assessee in the assessment proceeding for which the Id. AO did not find any fault and the nature of income added are short term capital gain of minor amount, small amount of rent and interest income on deposit. The assessee has surrendered all these amount for tax by revising the computation of income in the assessment proceeding. This act of the assessee cannot be considered with that of the case where the amount added in the finalizing the assessment by the assessing officer and the assessee has not willingly not disclosed. Thus, the charge of providing concealment of income or furnishing of inaccurate particular of income which was done with deliberate, willful or mala fide intention is not seen in this case. As such the same was not shown due bona-fide error which the assessee corrected voluntarily in the assessment proceedings by filling the revised computation of income. Therefore, in this facts and circumstances, it cannot be held that the assessee has concealed his income and liable to penalty under section 271(1)(c) of the Act. In holding so, we also find support and guidance from the judgment of Hon'ble Gujarat High Court in case of PCIT vs. Gujarat State Electricity Corporation Ltd. reported in 144 taxmann.com 165 where the Hon'ble court held that in no penalty can be imposed where the assessee made bona fide mistake and corrected the

same on realization of mistake. The relevant observation of the Hon'ble court is extracted as under:

11. We have considered the submissions made by learned advocate for the Revenue and in view of finding of fact arrived at by the Tribunal to the effect that the assessee on realisation of the mistake, has rectified the same by offering the provision for interest of Rs. 11.90 crores as prior period income in subsequent year and therefore, in view of such necessary correction done by the assessee on detecting the mistake pointed out by the Assessing Officer during the assessment proceedings for the year under consideration, it can be inferred that there is no mensrea on part of the assessee so as to attract the penalty under section 271(1) (c) of the Act.

10.2 In view of the above facts and circumstances discussed here in above we find that the assessee under the bona fide belief not offered income on short term capital gain which has been corrected in the assessment proceeding by filling the revised computation of income and the same is not disputed further. Thus, there was no will full attempt of the assessee to conceal his income. Therefore, we hereby set aside the finding of the learned CIT(A) and direct the AO to delete the penalty imposed. Hence the grounds of appeal of the assessee raised in ITA NO. 336/JPR/2023 is allowed.

11. The fact of the case in ITA Nos. 337 to 347/JP/2023 are similar to the case in ITA No. 336/JP/2023 and we have gone through the material

placed on record. The bench noticed that the issues raised by the assessee in this appeal No. 337 to 347/JP/2023 are equally similar on set of facts and grounds that is in ITA No. 336/JP/2023. Therefore, it is not imperative to repeat the facts and various grounds raised by different parties. Hence, the bench feels that the decision taken by us in ITA No. 336/JP/2023 shall apply mutatis mutandis in the ITA Nos. 337 to 347/JP/2023. In terms of these observation the appeal in ITA Nos. 337 to 347/JP/2023 stands allowed.

Order pronounced in the open court on 24/08/2023.

Sd/-

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

Sd/-

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

जयपुर / Jaipur

दिनांक / Dated:- 24/08/2023

*Ganesh Kumar, PS

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

1. The Appellant- Sh. Vinaya Sharma, Kota
Sh. Asheesh Sharma, Kota
Sh. Priyanka Khandelwal, Kota
2. प्रत्यर्धी / The Respondent- ACIT, Central Circle, Kota
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 Nos. 336 to 347/JP/2023)

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar