

आयकरअपीलीय अधिकरण, जयपुरन्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL,
JAIPUR BENCHES, "SMC" JAIPUR

श्रीसंदीपगोसाई, न्यायिकसदस्य एवंश्रीराठोडकमलेशजयन्तभाई, लेखा सदस्य के समक्ष
BEFORE: SHRI SANDEEP GOSAIN, JM & SHRI RATHOD KAMLESH JAYANTBHAI, AM

आयकरअपील सं./ITA No. 545 & 546/ JP/2023
निर्धारणवर्ष/AssessmentYear : 2013-14

Smt. Manjeet Kaur 277, Scheme No. 2 Alwar – 301 001 (Raj)	बनाम Vs.	The ITO Ward 1(1) Alwar
स्थायीलेखा सं./जीआईआर सं./PAN/GIR No.: AIIPK 9193 N		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओरसे / Assesseeby : Shri P.C. Parwal, CA
राजस्व की ओरसे / Revenue by: Smt. Monisha Choudhary, Addl.CIT

सुनवाई की तारीख / Date of Hearing : 21/09/2023
उदघोषणा की तारीख / Date of Pronouncement: 03 /10/2023

आदेश / ORDER

PER: RATHOD KAMLESH JAYANTBHAI, AM

Both these appeals have been filed by the assessee against two different orders of the Id. CIT(A) dated 29-07-2023, National Faceless Appeal Centre, Delhi [hereinafter referred to as (NFAC)] for the assessment years 2013-14. The assessee has raised following grounds of appeal in the respective appeals.

ITA NO. 545/JP/2023
SMT. MANJEET KAUR VS ITO, WARD 1 (1), ALWAR
Appeal No. 545/JP/2023 –A.Y. 2013-14

“1. The ld. CIT(A) has erred on facts and in law in confirming the addition of Rs.20,57,003/- on account of alleged long term capital gain arising on sale of alleged long term capital gain arising on sale of property by not accepting the contention of assessee that she has not sold any property rather has purchased the property for Rs.6,23,000/- on the ground that the purchase deed furnished by the assessee is a scanned document which does not prove the authenticity of the same and by making various incorrect and irrelevant observations.

2. The lower authorities have erred on facts and in law in raising the above demand without giving credit of advance tax of Rs.30,000/- paid by the assessee.

Appeal No. 546/JP/2023 –A.Y. 2013-14

1.The ld. CIT(A) has erred on facts and in law in confirming the levy o penalty of Rs.5,000/- u/s 271F of I.T. Act, 1961

2.1 With a view to disposing off both the appeals, the Bench firstly decided to adjudicate upon appeal of the assessee in ITA No. 545/JP/2023 hereunder.

3.1 During the course of hearing, the Bench noted that the ld. AR of the assessee has not pressed the Ground No. 2. Hence, the same dismissed being not pressed.

4.1 Apropos Ground No. 1 of the assessee brief facts of the case are that e assessee filed her return of income on 27.09.2013 declaring total income of

Rs.4,29,180/- (PB 1-4). The AO on the basis of information that assessee had sold immovable property of Rs.20,57,003/- issued notice u/s 148 of IT Act. 1961 dt. 18.03.2020 stating that assessee's income to the extent of Rs.20,57,003/- chargeable to tax has escaped assessment. Since the assessee did not comply with the notices issued, he made addition of Rs.20,57,003/-

4.2 Before the Ld. CIT(A) it was stated that assessee has not sold any property rather she has purchased the property for Rs.6.23,000/- as per sale deed dt. 05.10.2012. Copy of sale deed was filed to Ld. CIT(A) (PB 5-12). The Ld. CIT(A), however, held at Para 5.3 of the order that it is a scanned document which does not prove its authenticity. The transaction of this property could not be located on the website of Government of Rajasthan. No bank account details of buyer or seller are provided. The video conferencing was sought by the assessee but due to technical lapse the same could not be provided. The assessee also did not respond to the questionnaire dt. 22.06.2023. The remand report asked from the AO was also not responded by him. The conduct of assessee has been non-compliant during assessment proceedings and partially complied during appellate proceedings. Therefore, in the absence of authenticity of the document and bank account detail in the purchase deed, the authenticity of purchase deed could not be established and thus addition made by ld.AO confirmed by the ld. CIT(A). The relevant finding of the ld. CIT(A) at para 5.13 & 5,14 are as under:-

“5.13 It may be possible that the appellant and individual may not have any books of account but the appellant can still furnish its bank account details to support her case. The conduct of the appellant has been non-compliant during the assessment proceedings and partially compliant during the appellate proceedings. The appellant chose to respond when it wishes to by requesting for a VC and chooses not to respond when specific clarificatory queries were asked based on questionnaire. It appears the appellant has nothing to say and has not provided sufficient details to prove her transaction.

5.14 The purchase deed as provided does not mention the Aadhar number, no bank account, the locality for which the property has been purchased is unverifiable as per state govt website, there is no online confirmation for the buyer or seller on the property website of the State Government of Rajasthan. The appellant by a mere purchase deed, the sanctity of which cannot be ascertained based on the website, and neither the appellant has made any effort to further answer questions by submitting due documents based on debit or credit entries in its bank account. In the light of these facts, since the appellant has not provided details and has been uncooperative to prove her stand, the order of the AO is confirmed.

4.3 During the course of hearing the ld. AR of the assessee prayed that the ld. CIT(A) has erred in confirming the addition made by the AO for which the ld. AR filed the following written submission

“1. It is submitted that assessee has not sold any property during the year under consideration. The AO in the assessment order also has not provided any detail of the property which is alleged to have been sold by the assessee. It appears that assessment order has been passed by the jurisdictional AO without service of any notice on the assessee. Hence the assessment order passed by AO without any evidence in his possession that assessee has sold any property is illegal & bad in law.

2. In fact assessee has purchased the house property no.25 at NEB Extension Scheme, Alwar measuring 77.5 sq. yd. having constructed area of 388,12 sq. ft. from Smt. Sunita Singhal vide sale deed dt. 05.10.2012 (PB 5-12) for Rs.6,23,000/-. The payment was made through cheque no.239513 dt. 05.10.2012 of Punjab National Bank, Manu Marg. Alwar. It is registered by

the sub-registrar and its value is assessed by the sub-registrar. Alwar at Rs.6,72,047/-. Therefore, the Ld. CIT(A) has erred in doubting the authenticity of the sale deed by making irrelevant observations more particularly when there is no procedure to put all the transaction of purchase or sale of immovable property in the website of Government of Rajasthan. The assessee could not reply to the questionnaire dt. 22.06.2023 as it never came to her notice. However, the payment for purchase of property by the assessee is evident from her bank statement (PB 15) and her Balance Sheet as on 31.03.2013 (PB 13). The payment was made out of Rs.6,25,000/- received by the assessee from M/s N.S. Tyre in which she is a partner

3. It is further submitted that when the Ld. CIT(A) has tried to get verification of the purchase of property from the website of Government of Rajasthan, he should have also got the similar verification for alleged sale of the property. Further when the AO has not submitted the remand report even when specifically asked from him, the order of AO confirmed by Ld. CIT(A) is on surmises & conjectures ignoring that there is no evidence on record that assessee has sold any property.

In view of above, addition made by AO and confirmed by ld. CIT(A) be directed to be deleted.’’

4.4 On the other hand, the ld. DR supported the order of the ld. CITA).

4.5 We have heard both the parties and perused the materials available on record. Brief facts of the case are that assessee filed her return of income on 27.09.2013 declaring total income of Rs.4,29,180/- (PB 1-4). The AO on the basis of information that assessee had sold immovable property of Rs.20,57,003/- issued notice u/s 148 of IT Act. 1961 dt. 18.03.2020 stating that assessee's income to the extent of Rs.20,57,003/- chargeable to tax has escaped assessment. Since the assessee did not comply with the notices issued, ld. AO made addition of

Rs.20,57,003/- which has been confirmed by the ld. CIT(A). It is not imperative repeat the facts of the case provided it is necessary on the part of the AO to enquire into the matter that the assessee had sold the immovable property of Rs. 20,57,003/- rather the assessee has purchased the property for Rs.6,23,000/- as per sale deed dated 5-10-2012 and the ld. CIT (A) has also raised doubt about the veracity of the documents submitted online. In this view of the matter, this ground of appeal is restored to the file of the AO with direction to decide afresh in accordance with law and the doubt raised by the ld. CIT(A) should also be dispelled by bring necessary evidence on record. Thus the appeal of the assessee is allowed for statistical purposes.

5.1 Now we take up the appeal in ITA No. 546/JP/2023 of the assessee u/s 271F of the Act wherein brief facts of the case are that the assessee filed her return of income on 27.09.2013 declaring total income of Rs.4,29,180/-(PB 1-4). Thereafter notice u/s 148 was issued on 18.03.2020. No return was filed u/s 148. In penalty proceedings assessee requested to keep the proceedings in abeyance till disposal of appeal. The ld. AO held that assessee has filed the submission on merit and failed to furnish return of income as required us 139(1) of the Act. Accordingly he imposed penalty u/s 271F of the Act for an amount of Rs.5,000/-

5.2 In first appeal the Ld. CIT(A) confirmed the levy of penalty by holding that video conferencing as sought by the assessee could not be provided due to

technical glitches and the assessee has not given any reasonable cause for not filing the return in response to notice u/s 147 of the Act.

5.3 During the course of hearing the ld. AR of the assessee prayed that because of non-compliance of notice issued u/s 148 of the Act, the penalty-imposed u/s 271F is unjustified and the same deserves to be deleted. He took reference Section 271F as under:-

If a person who is required to furnish a return of his income, as required under section (1) of section 139 or by the provisos to that subsection, fails to furnish such return before the end of the relevant assessment year, the Assessing Officer may direct that such person shall pay by way of penalty, a sum of five thousand rupees.

The ld. AR further submitted that from plain reading of the section it is evident that penalty u/s 271F can be levied if a person has failed to furnish the return required u/s 139(1) of the Act. In the present case, assessee has filed the return on 27.09.2013 which is within the due date prescribed u/s 139(1) of the Act. The return u/s 148 could not be furnished as just after the issue of notice u/s 148 dt. 18.03.2020, the entire country was grappling with Covid2019 and this notice did not come to the knowledge of assessee till the assessment order was passed on 29.09.2021. Thus there is a reasonable cause for not filing the return in response to notice u/s 148. Hence, simply because of non filing of return u/s 148, penalty cannot be imposed u/s 271F of the Act particularly when the original return was filed u/s 139(1) of the Act. To this effect, the ld. AR relied upon Hon'ble Supreme

Court in case of Hindustan Steel Ltd. Vs. State of Orissa in (1972)83 ITR 26

wherein at Para 5 of the order held that "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 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". Hence only because of non compliance of notice issued u/s 148, penalty imposed u/s 271F is unjustified and the same be directed to be deleted.

5.4 On the other hand, the ld. DR supported the order of the ld. CIT(A).

5.5 We have heard both the parties and perused the materials available on record. The main issue in this case is that the AO imposed penalty u/s 271F

amounting to Rs.5,000/- on the ground that the assessee failed to furnish return of income as required u/s 139(1) of the Act which has been confirmed by the Id. CIT(A). In this case, the submission of the assessee is that penalty u/s 271F can be levied if a person has failed to furnish the return required u/s 139(1) of the Act. In the present case, assessee has filed the return on 27.09.2013 which is within the due date prescribed u/s 139(1) of the Act. The return u/s 148 could not be furnished as just after the issue of notice us 148 dt. 18.03.2020, the entire country was grappling with Covid2019 and this notice did not come to the knowledge of assessee till the assessment order was passed on 29.09.2021. Thus there is a reasonable cause for not filing the return in response to notice u/s 148. Hence, simply because of non filing of return u/s 148, penalty cannot be imposed u/s 271F of the Act particularly when the original return was filed u/s 139(1) of the Act. The Bench has taken into consideration the view of the Id. AR of the assessee but it is imperative on the part of the AO enquire whether the assessee has filed the return of income u/s 139 of the Act being grappled under COVID 19 and if the fact is found genuine then the AO will grant relief to the assessee in accordance with the law as discussed here in above. Hence, this appeal of the assessee is restored to the file of the AO decide as per direction given hereinabove.

6.0 In the result, both the appeals of the assessee are allowed for statistical purposes.

Order pronounced in the open court on 03/10/2023

Sd/-
(संदीप गोसाईं)
(Sandeep Gosain)
न्यायिकसदस्य / Judicial Member

Sd/-
(राठोडकमलेशजयन्तभाई)
(Rathod Kamlesh Jayantbhai)
लेखासदस्य / Accountant Member

जयपुर / Jaipur
दिनांक / Dated:- 03/10/2023

*Mishra

आदेश की प्रतिलिपिअग्रेषित / Copy of the order forwarded to:

1. The Appellant- Smt.Manjeet Kaur, , Alwar
2. प्रत्यर्था / The Respondent- The ITO, Ward 1(1), Alwar
3. आयकरआयुक्त / The Id CIT
4. विभागीय प्रतिनिधि, आयकरअपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
5. गार्डफाईल / Guard File (ITA No.514/JP/2023)

आदेशानुसार / By order,

Asstt. Registrar