

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

डा० एस. सीतालक्ष्मी, न्यायिक सदस्य एवं श्री राठोड कमलेश जयन्तभाई, लेखा सदस्य के समक्ष  
BEFORE: DR. S. SEETHALAKSHMI, JM & SHRI RATHOD KAMLESH JAYANTBHAI, AM

आयकर अपील सं./ITA. No. 290/JPR/2023  
निर्धारण वर्ष / Assessment Years : 2012-13

Nisha Rungta C-73, Dundlod House Colony, Hawa Sarak, Jaipur.	बनाम Vs.	Income Tax Officer Ward-1(2), Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: ACKPL 9655 N		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri Rajeev Sogani (C.A.) &  
Shri Rohan Sogani (C.A.)  
राजस्व की ओर से / Revenue by : Smt. Monisha Choudhary (Addl.CIT)

सुनवाई की तारीख / Date of Hearing : 13/07/2023  
उदघोषणा की तारीख / Date of Pronouncement : 09/10/2023

आदेश / ORDER

PER: DR. S. SEETHALAKSHMI, J.M.

This appeal filed by the assessee is directed against order of the Id.  
CIT(A) dated 20-03-2023, National Faceless Appeal Centre, Delhi [  
hereinafter referred to as (NFAC) ] for the assessment year 2012-13  
wherein the assessee has raised the following grounds of appeal.

*“1. In the facts and circumstances of the case and in law, ld. CIT(A), has erred in confirming the action of ld. AO in levying penalty of Rs. 47,055/-, u/s 271(1)(c) of the Income Tax Act, 1961. The action of ld. CIT(A) is illegal, unjustified, arbitrary and against the facts of the case. Relief may please be granted by deleting the entire penalty levied by ld. AO and confirmed by ld. CIT(A).*

*2. In the facts and circumstances of the case and in law, ld. CIT(A), has erred in confirming the action of ld. AO in completing the assessment under section 144 of the Income Tax Act, 1961. The action of ld. CIT(A) is illegal, unjustified, arbitrary and against the facts of the case. Relief may please be granted by quashing the entire proceedings being against the principles of natural justice.*

*3. In the facts and circumstances of the case and in law the ld. AO has erred in imposing penalty u/s 271(1)(c) without specifically pointing out whether the penalty was proposed on concealment of particulars of income or for furnishing inaccurate particulars of income. The Action of the ld. AO is illegal, unjustified, arbitrary and against the facts of the case. Relief may please be granted by quashing the penalty imposed u/s 271(1)(c).*

*4. The assessee craves her rights to add, amend or alter any of the grounds on or before the hearing.”*

2. The brief fact of the case as mentioned by the AO in his order u/s. 271(1)(c) of IT Act is that assessee had not filed return of income for the assessment year 2012-13. There was information that the assessee had booked profit of Rs. 4,91,360/- by misusing NMCE platform. As such on the basis of above information re-assessment proceedings u/s 147 of the Act was initiated by AO with prior approval of the appropriate authority and notice u/s 148 of the Act was issued to the assessee and thereof the assessee had filed return of income u/s 148 on 08/04/ 2019 showing total

income of Rs. 5,86,450/- and the assessment was completed u/s. 143(3) r.w.s 147 of the I.T. Act, on assessed total income of Rs. 5,86,450/-on 25/11/ 2019. Penalty proceedings u/s 271(1) (c) of the Act was initiated by the AO for furnishing inaccurate particulars of income and accordingly notice u/s 271(1)(c) was issued by the AO to assessee on 25.11.2019. In response to notice assessee filed a reply stating that as there is no addition made in income during assessment proceeding for the AY 2012-13 u/s. 148 of Income Tax Act, 1961, therefore it is requested to drop the penalty u/s 271(1)(c) of Income Tax Act, 1961. The AO observed that it is a fact that the assessee had failed to come up with a true disclosure of income before receipt of notice u/s 148 of the IT Act and noted that had it not been for the re-assessment u/s 147, the said income would have remained undisclosed. This failure on the part of the assessee to come up with a true disclosure before issue of notice under section 148 of the IT Act speaks of nothing but concealment of particulars of income. The AO further held that assessee's failure to offer any acceptable explanation is an indication to the fact that assessee had no substantial explanation to offer. It is held by AO that penalty should be imposed not because of an Act of omission is an offence but because it is an attempt at evasion of tax on the part of the assessee.

4. Aggrieved, from the said order of assessment the assessee has filed an appeal before the Id. CIT(A) who after hearing the contention of the assessee dismissed the appeal of the assessee by giving following findings on the issue:-

“5.5. Consequently, grounds of appeal are disposed considering facts that it was only after initiation of reopening of scrutiny proceedings by department that appellant assessee accepted correct and true amount of income by filing a return on receipt of notice u/s.148 of IT Act, 1961.

5.6. On basis of discussion above, I am in agreement with action of LJAo to impose penalty under section 271(1)(c) by holding that penalty should be imposed not because of an act of omission is an offence but because it is an attempt at evasion of tax on the part of appellant assessee. There has been harping on fact that return was filed on receipt of notice u/s. 148 of IT Act and true income was thus declared for taxation. However, this does not help appellant assessee (AA) in view of ratio laid in following judgments which hold that fact of filing of revised income or after receiving notice from IT Department will not make it free from levy of penalty. It was only because revenue had taken up AA's ROI for scrutiny that concealment came to light. Otherwise, concealed income would not have been offered for taxation. I find further strength from ratio laid down in following cases.

5.7. Head notes of two cases decided by Hon'ble HC are reproduced below for a ready reference-

5.7.1. [2003] 133 Taxman 942 (Madras) High Court of Madras Commissioner of Income-tax Vs. Dr. A. Mohd. Abdul Khadir T.C. Nos. 934 to 937 of 1986 reference nos. 611 to 614 of 1986 Dated August 19, 1998.

Section 271(1)(c) of the Income-tax Act, 1961- Penalty - For concealment of income Assessment years 1972-73 to 1975-76 Pursuant to search at premises of assessee, a doctor, and in view of statement of his accountant that assessee was not fully accounting for his receipts, he offered before Commissioner certain income to be assessed as his income for said assessment years over and above already declared in returns - Commissioner issued directions to Assessing Officer, accordingly, and also directed him to initiate penalty proceedings under section 271(1)(c) Accordingly, Assessing Officer completed reassessments and imposed penalty- Commissioner (Appeals), however, set aside penalty which action was also confirmed by Tribunal - Whether since assessee himself estimated amount of income, which he had concealed, and had offered same as his income, concealment was clear and patent - Held, yes -

Whether mere filing of revised returns after search in his premises could not exonerate him from liability for penalty-Held, yes –

Whether, penalty was to be imposed according to law, as it stood on date of filing of original returns, and, therefore, penalty imposable was to be equal to amount of income concealed-Held, yes

5.7.2. HC judgment [2014] 50 taxmann.com 314 (Kerala) High Court of Kerala Commissioner of Income-tax Vs. L. Vishnudas IT Appeal No. 306 of 2009 January 17, 2014: Section 271(1)(c), read with section 143, of the Income-tax Act, 1961 - Penalty - For concealment of income (Addition to income) - Assessment year 1996-97 - Assessee filed his return by declaring that income of HUF was included in his return - It was observed that only a small portion of HUF income was declared by assessee leaving out a major portion of said income - Further, in response to scrutiny notice, revised return was filed, in which assessee made addition to his income - It was observed that if department had not taken up for scrutiny, additional income from HUF would have gone unnoticed and it would have escaped from computation of tax - Whether therefore, penalty to be leviable under section 271(1)(c) - Held, yes [Paras 10 and 11] [In favour of revenue]

5.8. In view of above discussion, it is held that LJAo was correct in levying penalty of concealed income and thus grounds of appeal are decided in favour of revenue.

6. As a result, appeal of appellant is dismissed against penalty order u/s. 271(1)(c) of IT Act for AY 2012-13.”

5. Before us ld. AR of the assessee submitted that the assessee had in fact filed original return of income under Section 139 of the Act. It was further submitted that the same return was thereafter filed in pursuance to notice issued under Section 148. The Ld. AR of the assessee, further before us submitted the Income Tax Return Acknowledgement generated in the case of the assessee both at the time of filing the original return of income, under Section 139, and also the returns filed pursuant to the

notice issued under Section 148. The original return was filed by the assessee on 30.06.2012, and the return pursuant to notice under Section 148 was filed by the assessee on 08.04.2019.

6. Per contra, the Id. DR supported the orders of the Id. CIT(A).

7. We have heard the rival contentions, perused the material on record and gone through the factual position. The present appeal has been filed by the assessee, against the penalty levied by the AO, under Section 271(1)(c), of Rs. 47,055. In the quantum proceedings, the case of the assessee was reopened under Section 148, pursuant to the information received by the Income Tax Department. Assessment under Section 147, read with Section 143(3), was completed *vide* order dated 25.11.2019 by the AO wherein, the returned income of the assessee was accepted with no additions made. The AO, in the penalty proceedings, levied penalty under Section 271(1)(c) of the Act, on the premise that the assessee had not filed the original return of income, as per the provisions of Section 139 of the Income Tax Act, 1961. As per the AO, assessee had only filed the return pursuant to the notice issued under Section 148. Such penalty levied by the AO was, thereafter, upheld by the National Faceless Appeal Centre. The Bench has gone through both the ITR acknowledgements. There is no difference between the income shown by the assessee in the original return of income and also the returns filed pursuant to notice

issued under Section 148. Further, during the reassessment proceedings, returned income of the assessee was accepted by the AO. Accordingly, there is no income which has been concealed by the assessee for the year under consideration. Resultantly, penalty levied by the AO and upheld by NFAC, under Section 271(1)(c), of Rs. 47,055 is hereby deleted.

8. In the result, appeal of the assessee is allowed.

Order pronounced in the open Court on 09/10/2023.

Sd/-

(राठोड कमलेश जयन्तभाई )  
(RATHOD KAMLESH JAYANTBHAI)  
लेखा सदस्य / Accountant Member

Sd/-

(डॉ.एस.सीतालक्ष्मी)  
(Dr. S. Seethalakshmi)  
न्यायिकसदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 09 /10/2023

\* Santosh

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

1. अपीलार्थी / The Appellant- Nisha Rungta, Jaipur
2. प्रत्यर्थी / The Respondent- ITO, Ward-1(2), Jaipur.
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. 290/JPR/2023 }

आदेशानुसार / By order

सहायक पंजीकार / Asst. Registrar