

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

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

आयकर अपील सं./ITA No. 31/JP/2024
निर्धारण वर्ष / Assessment Years : 2014-15

Assistant Commissioner of Income Tax, Jaipur	of	बनाम Vs.	Jaipur Telecom Private Limited, Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AABCJ 0763 D			
अपीलार्थी / Appellant			प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Sh. Tarun Mittal, CA
राजस्व की ओर से / Revenue by : Sh. Anoop Singh, Addl. CIT

सुनवाई की तारीख / Date of Hearing : 03/06/2024
उदघोषणा की तारीख / Date of Pronouncement: 01/07/2024

आदेश / ORDER

PER: RATHOD KAMLESH JAYANTBHAI, AM

The present appeal is because the revenue dissatisfied with the order of the National Faceless Appeal Centre, Delhi dated 04/12/2023 [here in after 'NFAC'] for assessment year 2014-15. The said order of the Id. CIT(A)/ NFAC arises as against the order dated 10.12.2021 passed under section 271(1)(c) of the Income Tax Act, by the National Faceless Assessment Centre [here in after referred as Id. AO].

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

“1. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) is justified in deleting the penalty of Rs. 50,78,834/- u/s 271(1)(c) of IT. Act ignoring the fact that department has filed appeal before Hon’ble High Court against the order dated 15.03.2023 of Hon’ble ITAT and the matter is subjudice?”

3. Succinctly, the fact as culled out from the records is that in this case, the assessee filed return of income for A.Y. 2014-15 on 17.11.2014 declaring total income of Rs.1,42,40,840/-. Assessment u/s. 143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') was completed on 28.12.2016 assessing total income of Rs.1,69,76,200/-. Thereafter, the Pr.CIT-2, Jaipur passed order u/s. 263 of the Act on 08.03.2019 setting aside the assessment order directing the assessing officer to verify and examine the claim made by the assessee regarding computation of book profit u/s. 115JB and calculation of MAT and finalize the assessment. Assessment order u/s. 143(3) r.w.s. 263 of the Act was completed on 02.12.2019 determining total income at Rs. 1,69,76,201/- and determining Book Profit at Rs.3,88,43,584/- Penalty proceedings u/s. 271(1)(c) of the I.T. Act was initiated by the assessing officer for concealment of particulars of income. In response to the penalty notice, the assessee vide its submission dated 28.07.2021 uploaded on ITBA on 29.07.2021 stated that the assessee has not intentionally escaped any income for A.Y 2014-15

and the addition was made only due to MAT calculation on sale of fixed assets which was Tax neutral over the succeeding years by MAT credit. The assessee requested to drop the penalty proceedings initiated against the AY 2014-15. The Id. AO noted that the assessee itself included the income arising on sale of building in its profit & loss account, submitted with the auditors's report and in the computation of income the assessee reduced the same amount of Rs.2,66,53,550/- which is not correct and by this way, the assessee furnished inaccurate particulars of income, hence penalty u/s. 271(1)(c) of the Act is leviable. He further noted that had the case not been revised by the Pr.CIT-2, Jaipur, the income taxable to the extent of Rs. 2,66,53,550/- would not have been taxed in the hands of the assessee resulting into leakage of revenue for national exchequer. Non levying penalty on the assessee would lead to an injustice for other honest taxpayers and there is likely possibility of repetition of offence by the assessee, in case penalty is not levied. Considering the above discussion, the Id. AO satisfied this is a fit case for levy of penalty u/s 271(1)(c) of the Act as the assessee has deliberately furnished inaccurate particulars of income. As per the provisions of Section 271(1)(c), minimum penalty leviable is 100 per cent of the tax sought to be evaded and the maximum penalty leviable is 300 per cent of the tax sought to be evaded.

Accordingly, a penalty of Rs. 50,78,834/- (being 100% of tax sought to be evaded) u/s 271(1)(c) of the Income Tax Act, 1961.

4. Aggrieved from the order of the Id. AO levying penalty, assessee preferred an appeal before the Id. CIT(A). The Id. CIT(A) deleted the penalty levied by holding as under ;

“7. Decision

7.1 In the grounds of appeal, the appellant has contended the action of AO for levying penalty of Rs. 50,78,834/- u/s 271(1)(c) of the Act.

7.2 During the course of appellate proceedings, the appellant has submitted that the appellant preferred an appeal before the Hon'ble ITAT, Jaipur Benches 'B', Jaipur against the order passed by the PCIT-2, Jaipur u/s 263 of the Act. The Hon'ble ITAT, Jaipur Benches 'B', Jaipur had allowed the appeal in favour of the appellant and disposed off vide order dated 15.03.2023 in ITA No. 274/JPR/2021. The relevant portion of the order i.e Pg 1, Pg 26 & 27 are extracted below:

x x x x

7.3 In pursuant to the decision of Hon'ble ITAT, the jurisdictional AO passed the consequential order u/s 254 rws 143(3)/263 of the Act dated 16.06.2023, in which the JAO had determined the income of the appellant at Rs. 1,69,76,200/- as per the original assessment order passed u/s 143(3) of the Act dated 28.12.2016. The copy of consequential order is extracted below for ready reference.

x x x x

7.4 In view of the above Hon'ble ITAT decision quashing the order of PCIT-2, Jaipur and consequential Order passed by JAO, the re-assessment order passed u/s 143(3)/263 of the Act dated 02.12.2019 in pursuant to the order of PCIT-02, Jaipur, has become null and void. Further, as seen from the material available on record, the appellant has no pending appeal against the quantum addition made vide order (supra) u/s 143(3) of the Act dated 28.12.2016 and penalty against such aforesaid quantum addition.

7.5 Under the given set of facts and circumstances, I am of the considered opinion that since the addition made vide order u/s 143(3) rws 263 of the Act dated 02.12.2019 has been deleted then the penalty levied on such addition has no basis and have no legs to stand on. Accordingly, the AO is hereby directed to delete the penalty of Rs. 50,78,834/- levied vide order u/s 271(1)(c) of the Act. Therefore, the grounds of appeal raised by the appellant are allowed.”

5. The revenue aggrieved from the above order of Id. CIT(A), preferred the present appeal on the grounds as stated hereinabove. The Id. DR representing the revenue submitted that the assessee has not challenged the order of the assessing officer which is consequent to the order of the Id. PCIT. So, as the order of the Income Tax Tribunal, is under challenge before the Hon'ble Rajasthan High Court. Based on this set of facts the action of the Id. CIT(A) is in not correct. The Id. DR submitted that Id. CIT(A) has not decided the issue of levy of penalty on its merit and has merely deleted the penalty based on the facts that the order passed u/s. 263 quashed by the ITAT, cancelling the order of the penalty is not correct. When the assessee has also not filed any appeal consequent to the order passed u/s 143(3) read with section 263 of the Act and since the revenue preferred an appeal before the jurisdictional High Court the order quashing the levy of penalty being pre-mature or either required to be sustained, or set aside to be decided on merits. Based on these set of facts the Id. DR supported the finding of the Id. AO.

6. Per contra, the Id. AR representing the case of the assessee, heavily relied upon the reasoned finding of the Id. CIT(A). The Id. AR of the assessee also submitted that though the revenue has challenged the order of the ITAT but since there is no stay or till the hearing of this appeal revenue could not bring on record any contrary material. So, the finding of Id. CIT(A) is based on the set of facts discussed in his order is required to be sustained. The Id. AR of the assessee filed a detailed event chart stating as to why the order of the Id. CIT(A) is required to be sustained. The chart of event filed by the assessee reads as under :

S. No	Particulars	Date of order	APB
1.	Assessment Order passed u/s 143(3) of the Income Tax Act, 1961	28.12.2016	01-07
2.	Order of Ld. CIT (A) against the order passed u/s 143(3) of the Income Tax Act, 1961 [appeal preferred by assessee]	31.01.2018	
3.	Order of Ld. PCIT u/s 263 of the Income Tax Act, 1961	08.03.2019	10-15
4.	Penalty order u/s 271(1)(c) in consequence to assessment order u/s 143(3) of the Income Tax Act, 1961	26.03.2019	08-09
5.	Assessment order passed u/s 143(3) of the Income Tax Act, 1961 in consequence to direction of Ld. PCIT u/s 263 of the Income Tax Act, 1961	02.12.2019	16-18
6.	Penalty order passed u/s 271(1)(c) in consequence to assessment order u/s 143(3) / 263 of the Income Tax Act, 1961	10.12.2021	
7	Order of Hon'ble Income Tax Appellate Tribunal challenging the order u/s 263 of the Income Tax Act, 1961 dated 08.03.2019	15.03.2023	19-45

8	Order u/s 254 r.w.s 143(3)/263 of the Income Tax Act, 1961 giving effect of Hon'ble ITAT order dated 15.03.2023	16.06.2023	
9	Order of Ld. CIT(A) against the Penalty Order passed u/s 271(1)(c) of the Income Tax Act, 1961 dated 10.12.2021	04.12.2023	

7. In furtherance to what has been stated in the above chart, the Id. AR of the assessee also supported the order of the Id. CIT(A) by filing the following written submission:

“Brief facts of the case are that assessee is a private limited company and is engaged in the business of lease rental and real estate development. Return of Income for the year under consideration was filed on 17.11.2014 declaring total income of Rs. 1,42,40,840/-. Case of assessee was selected for scrutiny assessment, which was completed vide order dated 28.12.2016 passed u/s 143(3), whereby total income of assessee was assessed at Rs. 1,69,76,200/-. Thereafter, Id. PCIT (admn.) revised assessment vide order dated 08.03.2019 passed u/s 263 of the Income Tax Act. An appeal was preferred by assessee, before Hon'ble ITAT against order so passed by Id. PCIT, which was decided by this hon'ble bench vide order dated 15.03.2023 passed in ITA No. 274/JPR/2021, whereby order passed u/s 263 was quashed.

It is submitted that during the pendency of appeal before hon'ble ITAT, Id.AO had completed proceedings u/s 143(3) r.w.s.263 and had also levied penalty of Rs. 50,78,834/- u/s 271(1)(c) of the Income Tax Act. Aggrieved of penalty so imposed, assessee preferred appeal before Id. CIT(A). By the time, case was fixed for hearing before Id. CIT(A), Hon'ble ITAT had already quashed order u/s 263, and Id.AO had passed order u/s 254 r.w.s.143(3)/263 of the Income Tax Act, wherein Total income of assessee was determined at Rs.1,69,76,200/-, i.e. at income originally assessed. Therefore Id. CIT(A), vide order dated 04.12.2023 deleted the penalty imposed by Id. AO.

Now, department has preferred appeal against order so passed by Id. CIT(A). The only ground of appeal raised by the department reads as under:

"Whether on the facts and in the circumstances of the case and in law, the Id. CIT(A) is justified in deleting the penalty of Rs.50,78,834/- u/s 271(1)(c) of L.T. Act ignoring the fact that department has filed appeal before Hon'ble High Court against the order dated 15.3.2023 of Hon'ble ITAT and the matter is subjudice?"

Your honours would appreciate that order passed by Hon'ble ITAT is binding on revenue authorities including Commissioner of Income Tax (Appeals) unless operation of the same is stayed by Hon'ble High Court (which is not the case here). Moreover, Id.AO himself has recomputed income of assessee in order 254 r.w.s.143/263 of the Income Tax Act, which implies that additions made vide such orders stood deleted. It is submitted that once Revision order u/s 263 itself is quashed and order passed u/s 143(3) r.w.s.263 (whereby penalty was initiated) has been modified by Id.AO to give effect to the order of Hon'ble ITAT, penalty order passed u/s 271(1)(c) loses its very foundation and penalty initiated vide such order also has no basis to stand. In such circumstances, Id. CIT(A) has rightly deleted the penalty, which was initiated vide order passed u/s 143(3) r.w.s.263.

In view of above, it is also submitted that since appeal filed by the department (against 263 order) before Hon'ble High Court has not been decided so far, order passed by this Hon'ble ITAT is operative and has been rightly relied upon by Id. CIT(A) while deleting penalty. It is therefore requested that order so passed by Id. CIT(A) deserves to be upheld."

8. To support the contention so raised in the written submission reliance was placed on the following evidence / records / decisions:

S. No.	PARTICULARS	PAGE NOS.
1.	Copy of Assessment order passed u/s 143(3) of the IT Act, 1961 dated 28.12.2016	01-07
2	Copy of Order u/s 271(1)(c) of the Income Tax Act, 1961 dated 26.03.2019 in consequence to assessment order passed u/s 143(3) dated 28.12.2016	08-09
3.	Copy of order u/s 263 of the Income Tax Act, 1961 dated 08.03.2019.	10-15

4.	Copy of Assessment order passed u/s 143(3)/263 of the IT Act,1961 dated 02.12.2019	16-18
5.	Copy of order of Hon'ble Income Tax Appellate Tribunal, Jaipur Bench, Jaipur in the case of assessee (M/s Jaipur Telecom Pvt. Ltd.) dated 15.03.2023 challenging the order u/s 263 of the Income Tax Act, 1961 dated 08.03.2019	19-45

9. Before us both the parties have supported the orders of lower authorities as favorable to them.

10. We have heard the rival contentions and perused the material available on record. The bench noted that the order of penalty which is under challenge is passed consequent to an order passed u/s 143(3) of section 263 of the Act. In the meanwhile, the assessee challenged the order of the PCIT in an appeal before the ITAT, Jaipur Bench. In that appeal the order of Id. PCIT passed u/s 263 of the Act was quashed by the ITAT. In appreciation of these set of facts the consequential assessment order passed is not sustainable and as such when the very basis for levy of penalty, which is the assessment order in this case is not sustainable the consequent levy of penalty has not leg to stand. The Id. CIT(A) in appreciation of this factual aspect of the matter quashed the order of the Id. AO levying the penalty. On being asked to Id. DR on the aspect of the

matter that whether any stay is granted or any order passed against the appeal so filed by the revenue from the High Court? The Id. DR fairly admitted the fact "he is not aware about any stay or consequential order after filing the appeal. Thus, the facts mentioned in the order of the Id. CIT(A) becomes final that the order for levying the penalty consequent to order passed u/s. 143(3) r.w.s. 263 has been quashed and thereby the order of the penalty has no leg to stand. Even the jurisdictional assessing officer passed the consequential order u/s 254 r.w.s. 143(3)/263 of the Act dated 16.06.2023, in which the JAO had determined the income of the appellant at Rs. 1,69,76,200/- as per the original assessment order passed u/s 143(3) of the Act dated 28.12.2016. The copy of consequential order placed on record by the assessee. In the light of these facts we note that the very basis for levy of penalty is the quantum proceeding order which arises on account of order passed u/s. 143(3) r.w.s. 263 is quashed by the ITAT 08.03.2019. Thus, the consequential levy of penalty also has no leg to stand and the same has rightly been quashed by the Id. CIT(A). Based on these set of facts discussed we do not find any infirmity in the order of the Id. CIT(A) and therefore, the ground upon which this appeal is filed by the revenue devoid of merit and therefore, the same is dismissed.

In the result, the appeal of the revenue is dismissed.

Order pronounced in the open court on 01/07/2024.

Sd/-

(डा० एस. सीतालक्ष्मी)
(Dr. S. Seethalakshmi)
न्यायिक सदस्य / Judicial Member

Sd/-

(राठोड कमलेश जयन्तभाई)
(Rathod Kamlesh Jayantbhai)
लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 01/07/2024

*Ganesh Kumar, Sr. PS

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

1. The Appellant- Assistant Commissioner of Income Tax, Jaipur
2. प्रत्यर्थी / The Respondent- Jaipur Telecom Private Limited, Jaipur
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 No. 31/JP/2024)

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar