

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES," A"-Bench" JAIPUR

श्री राठौड़ कमलेश जयन्तभाई, लेखा सदस्य एवं श्री नरेन्द्र कुमार, न्यायिक सदस्य के समक्ष
BEFORE: SHRI RATHOD KAMLESH JAYANTBHAI, AM & SHRI NARINDER KUMAR, JM

आयकर अपील सं./ITA. No. 849/JPR/2024
निर्धारण वर्ष / Assessment Year : 2013-14

Income Tax Officer Ward-6(2), Jaipur.	बनाम Vs.	Birma Devi 136, Surya Nagar, Tonk Road, Durgapura, Jaipur.
स्थायीलेखा सं./जीआईआर सं./PAN/GIR No.: BKCPD2758M		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओरसे / Assessee by : Shri S.L. Poddar, Adv.
राजस्व की ओरसे / Revenue by: Shri Anil Bhardwaj (CIT)

सुनवाई की तारीख / Date of Hearing : 23/07/2024
उदघोषणा की तारीख / Date of Pronouncement: 24/07/2024

आदेश / ORDER

PER: NARINDER KUMAR, JUDICIAL MEMBER

Department- the Revenue is feeling aggrieved by order dated 27.04.2024 passed by Learned CIT(A), NFAC, Delhi, u/s 250 of the Income Tax Act, 1961 (hereinafter referred to as the "Act").

2. Vide impugned order, Learned CIT(A) has set aside the order of penalty passed by the Assessing Officer u/s 271(1)(c) of the Act, while observing that the Appellate Tribunal upheld the claim of the assessee-

respondent as regards deductions claimed u/s 54B of the Act, and setting aside of the quantum addition.

3. Arguments heard. File perused.

4. As is available from the penalty order dated 29.03.2019, relating to assessment year 2013-14, the Assessing Officer levied penalty of Rs. 1,11,10,900/-u/s 271(1)(c) of the Act, having arrived at the conclusion that the assessee furnished inaccurate particulars of income, without any reasonable cause.

5. As is available from the order of penalty, the assessee had challenged the assessment framed u/s 143(3) of the Act, by filing the appeal before Learned CIT(A)-2, Jaipur. That appeal was partly allowed by the Learned CIT(A) in view of the mistake made by the Assessing Officer in calculations.

6. It was thereafter that the Assessing Officer issued show cause notice to the assessee on 22.02.2019. The assessee did not respond the said show cause notice. Ultimately, penalty came to be levied, as noticed above.

7. Feeling aggrieved by the order of penalty, the assessee preferred appeal before Learned CIT(A), NFAC. As noticed above, said appeal was allowed.

8. Ld. DR for the appellant has submitted that vide order dated 12.04.2019 passed by this Appellate Tribunal in ITA No. 678/JP/2018 i.e. the appeal of the assessee, was allowed as regards the quantum addition, but said order has been challenged by the department before the Hon'ble High Court.

On merits, Ld. DR stands by the observations made by the Assessing Officer in the order of penalty, and has urged for allowing of this appeal. In the alternative, Ld. DR for the appellant has submitted that the appeal be kept in abeyance, to be taken up after disposal of the appeal filed by the department before the Hon'ble High Court.

9. As regards pendency of the appeal before the Hon'ble High Court against the order dated 12.04.2019 passed by this Appellate Tribunal setting aside the quantum addition, it has not been submitted on behalf of the department-appellant that there is any order of stay of proceedings in this appeal. Therefore, there is no merit in the contention raised on behalf of the assessee-appellant that this appeal may be kept in abeyance. Even otherwise, on dismissal of an appeal by the Hon'ble High Court, the authorities below are bound to give effect to the decision by the Hon'ble High Court as per directions contained therein.

10. On the other hand, Ld. AR for the assessee has referred to the provisions of section 275(IA) of the Act and urged that this appeal filed by the department is not maintainable.

Ld. DR for the appellant has submitted that provisions of section 275(1A) of the Act do not apply to the given situation, and as such, there is no merit in the contention raised on behalf of the assessee.

11. Sub-section (1A) of Section 275 of the Act reads as under:-

"[(1-A) In a case where the relevant assessment or other order is the subject matter of an appeal to the Commissioner (Appeals) under section 246 or section 246-A or an appeal to the Appellate Tribunal under section 253 or an appeal to the High Court under section 260-A or an appeal to the Supreme Court under section 261 or revision under section 263 or section 264 and an order imposing or enhancing or reducing or cancelling penalty or dropping the proceedings for the imposition of penalty is passed before the order of the Commissioner (Appeals) or the Appellate Tribunal or the High Court or the Supreme Court is received by the Chief Commissioner or the Commissioner or the order of revision under section 263 or section 264 is passed, an order imposing or enhancing or reducing or cancelling penalty or dropping the proceedings for the imposition of penalty may be passed on the basis of assessment as revised by giving effect to such order of the Commissioner (Appeals) or, the Appellate Tribunal or the High Court, or the Supreme Court or order of revision under section 263 or section 264:]"

Having regard to the provisions of sub-section (1A) of section 275 of the Act, we find merit in the contention raised on behalf of the appellant that said provisions do not apply to the given situation, and it cannot be said the present appeal filed by the department is not maintainable.

12. Admittedly, the quantum addition, on being challenged by the assessee before this Appellate Tribunal has been set aside vide order dated 12.04.2019, while allowing in ITA No. 678/JP/2018 filed by the assessee and thereby allowing deductions claimed u/s 54B of the Act. Ld. AR for the respondent-assessee has submitted copy of order dated 12.04.2019. Its copy was also submitted before Learned CIT(A) and taken into consideration.

13. When the claim of the assessee as regards deductions u/s 54B of the Act has been allowed by this Appellate Tribunal vide judgment dated 12.04.2019 i.e. subsequent to passing of the order of penalty i.e. dated 29.03.2019, there is merit in the contention raised on behalf of the assessee that the penalty order has been rightly set aside by Learned CIT(A).

Result

14. As a result, this appeal filed by the department-Revenue is hereby dismissed.

Order pronounced in the open court on 24/07/2024.

Sd/-

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

Sd/-

(नरेन्द्र कुमार)
(NARINDER KUMAR)
न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 24/07/2024

*Santosh

आदेश की प्रतिलिपिअग्रेषित / Copy of the order forwarded to:

1. The Appellant- ITO, Ward-6(2), Jaipur.
2. प्रत्यर्थी / The Respondent- Birma Devi, Jaipur.
3. आयकरआयुक्त / The Id CIT
4. विभागीय प्रतिनिधि, आयकरअपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
5. गार्डफाईल / Guard File ITA No. 849/JPR/2024)

आदेशानुसार / By order,

सहायक पंजीकार / Asstt. Registrar