

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

श्री संदीप गोसाई, न्यायिक सदस्य के समक्ष  
BEFORE: Hon'ble SHRI SANDEEP GOSAIN, JUDICIAL MEMBER

आयकर अपील सं./ITA No. 90/JP/2024  
निर्धारण वर्ष/Assessment Year : 2016-17

Shri Kailash Prashar Kapda Bazar, Badi Basti Pushkar, Ajmer	बनाम Vs.	The ITO Ward – 1(3) Ajmer
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AKIPP 8496 P		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारित की ओर से / Assessee by : Shri P.C. Parwal, CA  
राजस्व की ओर से / Revenue by: Mrs. Monisha Choudhary, Addl. CIT-DR

सुनवाई की तारीख / Date of Hearing : 13/06/2024  
उदघोषणा की तारीख / Date of Pronouncement: 02 /08/2024

आदेश / ORDER

PER: SANDEEP GOSAIN, JM

This appeal filed by the assessee is directed against order of the ld. CIT(A) dated 09-01-2024, National Faceless Appeal Centre, Delhi [ hereinafter referred to as (NFAC) ] for the assessment year 2016-17 raising solitary ground as under:-

“The only issue in this appeal is against the imposition of penalty u/s 271(1)© of Rs.39,16,484/-.”

2.1 The brief facts of the case are that while filing the return of income the assessee claimed the sale proceeds of agriculture land as exempt from tax. However AO vide order dated 20th December 18 held that agriculture land sold is not exempt from tax as the same is Capital Asset u/s 2(14) of the Act and computed long term capital gain on sale of agriculture land. Thereafter on this amount penalty proceedings were initiated.

2.2 Assessment order was challenged before the Id. CIT(A) who vide order dated 13.03.2019 directed the AO to allow deduction of Rs. 50 lakhs under section 54 of the Act.

2.3 On further appeal, ITAT vide its order dated 23.12. 2019 further allowed claim of brokerage charges of Rs.2,71,000/- and set aside the issue of determination of cost of construction and improvement to the AO for making proper verification and examination. The AO passed the set aside such assessment order vide order dt.14.05.2020 (**PB 24-30**) where as per the direction of Hon'ble ITAT he further allowed the deduction and computed the long term capital gain on sale of agriculture land at Rs.1,68,30,891/-. In this order penalty proceeding was again initiated for furnishing inaccurate / wrong particulars of income. The AO after the ITAT order again issued penalty notice to the assessee on 07.02.2020. In response the assessee stated that Hon'ble ITAT has set aside the case with specific direction and therefore the penalty proceedings initiated vide assessment order dt.20.12.2018 is null and void and the same be dropped. However, the AO in the

penalty order dt.29.04.2020 (**PB 18-23**) observed that on the set aside issue assessment was completed on 20.03.2020 where addition on which penalty proceedings u/s 271(1)(c) comes to Rs.1,68,30,891/-. Accordingly he imposed penalty of Rs.39,16,884/- by considering the same as conceal income of the assessee.

2.4 The ld. CIT (A) during Appellate proceedings confirmed the penalty levied by the AO.

2.5 Now the assessee has challenged the said order before the Bench on the ground mentioned here in above. In support of his ground learned AR relied upon the written submissions filed before the Bench and also reiterated the same arguments as was raised by him before the lower authorities.

2.6 On the other hand, learned DR relied upon the orders passed by the revenue authorities.

2.7 The Bench has heard the ld. counsel for both the parties and also gone through the documents placed on record as well as the orders passed by the lower authorities. At the outset from the records, the Bench noticed that that AO passed the penalty order on 29.04.2020 with reference to the penalty proceedings initiated vide assessment order dt.20.12.2018. However the ITAT vide its order dt.23.11.2019 has set aside the issue to the AO for further verification and examination regarding the cost of construction & improvement. Thus when the assessment order has been set aside, the penalty notice dt.20.12.2018 does not

survive and therefore the penalty levied by the AO is illegal and bad in law. Apart from above and from the records, the Bench also noticed that the AO passed the set aside assessment order on 14.05.2020 (**PB 24-30**) and in this order he has separately initiated the penalty proceedings for furnishing inaccurate / wrong particulars of income. However at Page 4 of the penalty order it is wrongly stated that set aside assessment has completed on 20.03.2020 whereas it is a fact on record that set aside assessment order was passed on 14.05.2020. Hence, the penalty imposed by the AO with reference to assessment order dt.20.12.2018 where the quantum of addition is under dispute is illegal and bad in law. Even otherwise in the assessment order penalty proceedings was initiated by AO for furnishing wrong particulars of income. However in notice u/s 274, penalty proceeding was initiated for concealment of particulars of income. In the penalty order AO in last two line at Page 3 has held that assessee has intentionally furnished inaccurate particulars of income whereas on Page 4 he imposed the penalty by holding that assessee intentionally concealed his income. Thus when both at the time of initiation and at the time of imposition of penalty, the AO is not clear whether the charge is for furnishing inaccurate particulars of income or for concealment of income, the penalty so imposed is illegal and bad in law. The Bench relies following case laws.-

**(1) Kshema Geo Holdings Pvt. Ltd. vs. ITO (2023) 151 Taxman.Com 293 (Kar.) (PB 49-53)**

The relevant Para 9-13 of this order reads as under:

*“9. The principal contention urged by Shri. Chythanya is that the penalty proceedings have been initiated based on the satisfaction recorded in para 4 of the assessment order. A careful perusal of the same shows that the Assessing Officer was of the view that assessee has concealed true and correct particulars of its income whereas the ground on which the notice is issued is 'have furnished inaccurate particulars of income'. It is relevant to note that five words 'have concealed particulars of income' have been struck off in the notice.*

10. We may record that in paras 60 and 67 of Dilip Shroff, it has held as follows:

*60. It is furthermore interesting to note that this Court in D.M. Manasvi (supra) categorically opined that it would be the satisfaction of the Income Tax Officer in the course of the assessment proceedings regarding the concealment of income which would constitute the basis of foundation of the proceedings for levy of penalty. It was furthermore observed :*

*"It may also be observed that what is contemplated by Sections 271 and 274 of the Act is that there should be, prima facie, satisfaction of the Income Tax Officer or the Appellate Assistant Commissioner in respect of the matters mentioned in sub section (1) before he hears the assessee or gives him an opportunity of being heard. The final conclusion on the point as to whether the requirements of clauses (a), (b) and (c) of Section 271(1) have been satisfied would be reached only after the assessee has been heard or has been given a reasonable opportunity of being heard."*

*67. 'Concealment of income' and 'furnishing of inaccurate particulars' are different. Both concealment and furnishing inaccurate particulars refer to deliberate act on the part of the assessee. A mere omission or negligence would not constitute a deliberate act of suppressio veri or suggestio falsi. Although it may not be very accurate or apt but suppressio veri would amount to concealment, suggestio falsi would amount to furnishing of inaccurate particulars.*

11. A similar question arose for consideration before this Court in Manjunatha Cotton and Ginning factory. The relevant portion of the order concerning a notice under Section 274 reads as follows:

*60. Clause (c) deals with two specific offences, that is to say, concealing particulars of income or furnishing inaccurate particulars of income. No doubt, the facts of some cases may attract both the offences and in some cases there may be overlapping of the two offences but in such cases the initiation of the penalty proceedings also must be for both the offences. But drawing up penalty proceedings for one offence and finding the assessee guilty of another offence or finding him guilty for either the one or the other cannot be sustained in law. It is needless to point out satisfaction of the existence of the grounds mentioned in Section 271(1)(c) when it is a sine qua non for initiation or proceedings, the penalty proceedings should be confined only to those grounds and the said grounds have to be specifically stated so that the assessee would have the opportunity to meet those grounds. After, he places his version and tries to substantiate his claim, if at all, penalty is to be imposed, it should be imposed only on the grounds on which he is called upon to answer. It is not open to the authority, at the time of imposing penalty to impose penalty on the grounds other than what assessee was called upon to meet. Otherwise though the*

*initiation of penalty proceedings may be valid and legal, the final order imposing penalty would offend principles of natural justice and cannot be sustained. Thus once the proceedings are initiated on one ground, the penalty should also be imposed on the same ground. Where the basis of the initiation of penalty proceedings is not identical with the ground on which the penalty was imposed, the imposition of penalty is not valid. The validity of the order of penalty must be determined with reference to the information, facts and materials in the hands of the authority imposing the penalty at the time the order was passed and further discovery of facts subsequent to the imposition of penalty cannot validate the order of penalty which, when passed, was not sustainable.*

*(Emphasis Supplied)*

12. *A combined reading of the authorities in Dilip Shroff and Manjunatha Cotton & Ginning Factory, leads us to an inference that the satisfaction of existence of ground under Section 271(1)(c) is the sine qua non for initiation of proceedings and the penalty proceedings should be confined only to those grounds specifically stated in the notice. As recorded hereinabove, the Assessing Officer had issued notice only with regard to furnishing in accurate particulars. Whereas the satisfaction recorded is with regard to concealment of income particulars and the very ground has been struck-off. The notice has been issued on the specific premise that assessee had furnished inaccurate particulars of income.*

13. *In view of the law laid down in the authorities referred by us, we are of the view that the penalty order is not sustainable in law."*

**(2) Ventura Textiles Ltd. Vs. CIT (2020) 190 DTR 165 (Bom.) (HC)**

Proceedings were initiated for furnishing inaccurate particulars of income. However, in the order of penalty, AO held that assessee had concealed its income as well as furnished inaccurate particulars of income. It is trite that penalty cannot be imposed for alleged breach of one limb of sec. 271(1)(c) while penalty proceedings were initiated for breach of the other limb of sec. 271(1)(c). Penalty was therefore not sustainable.

**(2) CIT Vs. Jyoti Ltd. (2013) 216 Taxman 64 (Guj.) (HC) (Magz.)**

AO disallowed assessee's claim of payment of commission. Such disallowance was made on the ground that assessee could not even obtain confirmation from commission recipient. AO also passed a penalty order u/s 271(1)(c). Tribunal set aside penalty order holding that in order of penalty AO had not given a clear finding whether penalty was imposed on assessee for having concealed particulars of income or having furnished inaccurate particulars of income. HC upheld the order of Tribunal.

**(3) HPCL Mittal Energy Ltd. Vs. Addl. CIT (2018) 169 DTR 1 (Asr.) (Trib.) (TM)**

The AO cannot initiate penalty on the charge of 'concealment of particulars of income', but ultimately find the assessee guilty in the penalty order of 'furnishing inaccurate particulars of income' (and vice versa). In the same manner, he cannot be uncertain in the penalty order as to concealment or furnishing of inaccurate particulars of income by using slash between the two expressions. Such error is not procedural but goes to the root of the matter and is not saved by sec. 292B. The error renders the penalty order unsustainable in law."

Therefore taking into consideration the facts and circumstances of the present case and also the legal proposition as discussed above, the Bench is of the view that when both at the time of initiation and at the time of imposition of penalty the AO is not clear whether the charge is for furnishing inaccurate particulars of income or for concealment of income, the penalty so imposed is illegal and bad in law. Thus the same is hereby direct to be deleted and the appeal of the assessee is allowed.

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

Order pronounced in the open court on 02 /08/2024.

Sd/-

(संदीप गोसाई)

(Sandeep Gosain)

न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 02 /08/2024

\*Mishra

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

1. The Appellant- Shri Kailash Parasar, Pushkar, Ajmer
2. प्रत्यर्थी / The Respondent- The ITO, Ward- 1(3), Ajmer
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. 90/JP/2024)

आदेशानुसार / By order,

सहायक पंजीकार / Asstt. Registrar