

आयकर अपीलीय 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. 327/JP/2024
निर्धारण वर्ष/Assessment Year : 2015-16

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| M/s. Jaipur Gem Crafts Behind Golimar Garden, Amer Road Jaipur 302 002 | बनाम Vs. | The ITO Ward 5(1) Jaipur |
| स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AABFJ 4618 E | | |
| अपीलार्थी / Appellant | | प्रत्यर्थी / Respondent |

निर्धारिती की ओर से / Assessee by : Shri Sanjay Godha, CA
राजस्व की ओर से / Revenue by: Mrs. Monisha Choudhary, Addl. CIT-DR

सुनवाई की तारीख / Date of Hearing : 06/05/2024
उदघोषणा की तारीख / Date of Pronouncement: 07/08/2024

आदेश / ORDER

PER: SANDEEP GOSAIN, JM

This appeal filed by the assessee is directed against order of the ld. CIT(A) dated 22-01-2024, National Faceless Appeal Centre, Delhi [hereinafter referred to as (NFAC)] for the assessment year 2015-16 raising following grounds of appeal.

“1. That the AO went wrong in intimation of proceedings by issue of notice u/s 274 without striking the specific limb in the notice for concealment of particulars of income or furnishing inaccurate particulars of income which is bad in law.

2. That on the facts and circumstances, the ld.CIT(A) went wrong in confirming the penalty u/s 271C for Rs.45,071/- which is bad in law, should be deleted.

3. That on the facts and circumstances, the ld. CIT(A) went in wrong in confirming the penalty as no penalty can be imposed on estimated trading addition which is arbitrary and illegal.

4. That the ld. CIT(A) did not allow the time. The assessee filed adjournment application on 16-01-2024 for the hearing of the case on 18-01-2024 since the notice received from the assessee on 16-01-2024.”

2.1 Apropos ground of appeal of the assessee, it is noticed that the ld.CIT(A) has dismissed the appeal of the assessee on the ground of not responding to the notice and not furnishing any justification or documentary evidence in order to substantiate its ground of appeal. The narration as made by the ld. CIT(A) in his order at pages 4 & 5 are as under:-

“I have carefully considered the grounds of appeal, statement of facts of the case and Assessment Order. It is a fact on the record that the appellant has contended that the penalty imposed by the Learned AO u/s 271(1) (c) for Rs. 45017/- is bad in law and on facts and no penalty can be imposed on estimated trading addition which is arbitrary and illegal.

In this regard, the Ld. AO has contended that in the absence of compliance from the assessee, it is held that the assessee has no explanation to offer and that he has concealed particulars of his income to the extent of Rs. 1,45,688/-.

Further, it is to be noted that the appellant failed to submit any documentary evidence in spite of various sufficient opportunity given during the penalty proceedings. Further, it is relevant to mention here that even during the appellate proceeding, the appellant has not submitted any documentary evidence in support of his contention by not filing any written submission. Therefore, the contention of the appellant is not found tenable.

In the appellate proceedings, despite being provided a number of opportunities through notices issued to it, the appellant has not responded to any of the notices substantively. It is, thug, evident that the appellant has no evidence to substantiate the grounds taken and it has not even once argued with any supporting, relevant and cogent arguments, constraining me to, therefore, go though the brief submission appearing in the grounds of appeal and statement of facts filed alongwith the impugned appeal to decide on the merits while adjudicating the same. The appellant has not furnished any justification or documentary evidence in order to substantiate its ground of appeal, as mentioned earlier.

It is pertinent to state that to decide this appeal in timely manner several notices/ communications through ITBA Portal were sent to the appellant as noted above. Hence, in view of the aforesaid non-compliance of the instant appeal on the part of the appellant, the appeal adjudicated and disposed of, as under, ex-parte, primary on this documentation available on record.

Therefore, I find no infirmity in the penalty levied by the AO. In this view of the matter, penalty imposed by the ld AO is upheld. Consequently, the grounds of the appellant are dismissed.

5. In the result, the appeal is dismissed.”

2.2 As per the facts of the present case, the assessee firm is into the business of trading and export of carpets, durries etc. The case of the assessee was selected for scrutiny and ultimately order of assessment was passed there by making additions

2.3 Aggrieved by the additions, the assessee preferred appeal before Id. CIT(A). However, Id. CIT(A) while considering the past history of the assessee made adhoc additions by estimating the income of the assessee.

2.4 Consequently after passing the order of Id. CIT(A) in Quantum appeal, the AO imposed penalty under section 271 (1) (c) of the Income Tax Act and on further appeal penalty order passed by AO was upheld.

2.5 Now at the very outset the imposition of penalty was challenged before me on the ground that the additions have been made on estimation therefore no penalty is leaviable in the case of assessee and in this regard the Appellant relied on certain judgements and also filed the written submission to counter the order of the Id CIT(A)

2.6 On the contrary the Ld DR appearing on behalf of the revenue relied upon the decision passed by the revenue authority.

2.7 After having gone through the facts of the present case and also hearing the parties at length I found that it is an undisputed fact that the additions in the present case were made on estimation bases therefore as per the decision in the case of CIT

versus Arrow traders Private Limited 322 ITR 316 the court has held that no penalty under section 271(1)(c) can be imposed where income is determined on estimate and similar view has also been taken by Hon'ble Punjab and Haryana High Court in the case of Hari Gopal Singh vs CIT reported in 258 ITR85 and Hon'ble Gujarat High Court in the case of CIT vs Subhash Trading Company reported in 221 ITR 110. Apart from this, the Co-ordinate bench of ITAT Delhi in the case of Radheshyam vs ITO has held that when the Bedrock of instant penalty is the estimate of net profit, the same cannot be sustained. Thus after going through the facts of the present case, I find that the penalty in the present case was imposed as the assessee could not file his reply before any of the revenue authorities and after considering the factual position as well as legal proposition I am of the view that by now it is a settled law that penalty levied under section 271 (1)(c) of the Income Tax Act is liable to be cancelled in the instant case since the additions have been made on estimated basis and on the country no judgement was cited by the departmental representative to counter the judgements cited by the assessee which are mentioned in the written submissions filed by the appellant. Therefore I am of the view that since the additions in this case were on estimation basis therefore no penalty is leaviable. Hence, I direct the AO to delete the penalty. Since I have deleted the penalty on merit, therefore there is no need to deal with other Grounds raised by the Appellant. Thus the appeal of the assessee is allowed.

3.0 In the result, the appeal of the assessee is allowed with no orders as to costs.

Order pronounced in the open court on 07 /08/2024.

Sd/-

(संदीप गोसाईं)
(Sandeep Gosain)

न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 07/08/2024

***Mishra**

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

1. The Appellant- M/s. Jaipur Gem Crafts, Ajmer
2. प्रत्यर्धी / The Respondent- The ITO, Ward 5(1), Jaipur
3. आयकर आयुक्त / The Id CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
5. गार्ड फाईल / Guard File (ITA No. 327/JP/2024)

आदेशानुसार / By order,

सहायक पंजीकार / Asstt. Registrar