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

श्री संदीप गोसाई, न्यायिक सदस्य एवं श्री राठौड़ कमलेश जयंतभाई,लेखा सदस्य के समक्ष
BEFORE: SHRI SANDEEP GOSAIN, JM & SHRI RATHOD KAMLESH JAYANTBHAI, AM

आयकर अपील सं./ITA No. 939/JP/2024
निर्धारण वर्ष/Assessment Years :2014-15

Sh. Anoop Kumar Gupta 2nd Floor, Gurukripa- Anasagar Circular Road, Ajmer.	बनाम Vs.	The ITO, Ward-2(1), Ajmer.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: ABMPG5571H		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/Assesseeby : Sh. P.C. Parwal (C.A.)
राजस्व की ओर से/Revenue by: Smt. Monisha Choudhary (Addl. CIT)

सुनवाई की तारीख/Date of Hearing : 27/08/2024
उदघोषणा की तारीख/Date of Pronouncement: 29/08/2024

आदेश/ORDER

PER: RATHOD KAMLESH JAYANTBHAI, AM

This is an appeal filed by the assessee against the order of the Learned Commissioner of Income Tax Act (Appeals)-5, Jaipur [hereinafter referred to as "CIT(A)"], dated 08.05.2024 for the assessment years 2014-15, which in turn arise from the order dated 18.03.2019 passed under section 271(1)(c) of the Income Tax Act, 1961 (here in after " Act"), by the ITO, Ward-1(1), Ajmer.

2. The assessee has raised the following grounds:-

"1. The ld. CIT(A) has erred on facts and in law in dismissing the appeal filed by the assessee on the ground that assessee has remained non-complaint without considering the fact that against the notice dt. 29.04.2024, assessee sought adjournment on 07.05.2024 which is not considered.

2. The Ld. CIT(A) has erred on facts and in law in confirming the levy of penalty of Rs. 2,57,261/- u/s 271(1)(c) of the IT act. He has further erred in ignoring the fact that addition of Rs. 8,32,568/- on which penalty has been levied is reduced to Rs. 1,49,008/- by AO vide its order dt. 24.06.2020 passed u/s 143(3)/250/254 of IT Act, 1961.

3. Under the facts & circumstances of the case, the notice issued u/s 271(1)(c) and the order passed there against without specifying whether the charge is for concealment of income or furnishing inaccurate particulars of income is illegal & bad in law and be quashed."

3. The brief fact of the case is that assessee filed return of income on 23.11.2014 at Rs. 12,31,450/- for the year under consideration. In the case of the assessee assessment was completed u/s 143(3) of the Act on 27.12.2016 after making an addition of Rs. 8,32,568/- on account of disallowance out of expenditure incurred on interest as the assessee had not proved the nexus between the interest-bearing funds and its investment of funds which leads to addition. Consequent to that addition penalty proceedings u/s 271(1)(c) was initiated by the ld. AO. Pursuant to that notice u/s 271(1)(c) read with section 274 of the act was issued and served upon the assessee. In response to show cause notice, the assessee submitted that the assessee has sufficient interest free advances and investment made by the assessee is covered from that free fund available

with the assessee and there was no concealment or providing inaccurate particulars of income.

Without prejudice the quantum addition was challenged by the assessee. The matter was reached to ITAT and the co-ordinate bench while dealing with that matter of quantum addition set aside the matter to the file of the AO to compute the disallowance of interest based on the facts argued in the quantum proceedings.

In the meanwhile, ld. AO passed the order levying the penalty in the case of the assessee on the amount of Rs. 8,32,568/- for an amount of Rs. 2,57,261/-.

4. Aggrieved from that order of levying penalty assessee preferred an appeal before the ld. CIT(A). Based the grounds so taken and the submission so made by the assessee, the appeal of the assessee was decided on 08.05.2024 and the relevant finding of the ld. CIT(A) reads as under:-

> "5. DECISION:
> 5.1 Despite of the various opportunities, the appellant has neither filed any reply nor any documentary evidences in support of his pending appeal. Hence the appeal is decided on the basis of material available on record.
> 5.2 The non-compliance by the appellant clearly indicates that he has nothing to say in this regard and making efforts to hide the real facts of the case.
> 5.3 In the instant case, an addition of Rs. 8,32,568/- on account of disallowance out of expenditure incurred on interest was made as the appellant had not proved

the nexus between the interest-bearing funds and its application. It is important to mention here that the assessee had filed an appeal before the Ld.CIT(A), Ajmer against the assessment order passed u/s143(3) of the I.T. Act, 1961 by the A.O., the same was dismissed by the Ld.CIT(A), Ajmer vide order dated 26.09.2017 in appeal No.625/2016-2017.

5.4 The AO had also mentioned in the penalty order that "the contention of the assessee had been duly considered but it was not found tenable. The assessee had given interest free advances of Rs. 1,35,91,216/-. The assessee had paid interest of Rs. 13,42,887/- on the unsecured loans of Rs. 2,19,21,894/- During the course of assessment proceedings as well as appellate proceedings the assessee had not been able to show that the interest free advances were given for business purposes. Neither the assessee furnished any Fund Flow statement to show that the interest free advances were given by the assessee out of his own capital or out of interest free funds. The above act of the assessee clearly falls under the ambit of furnishing of inaccurate particulars of income' as well as 'concealed the particulars of his income.

In view of the above facts and circumstances of the case, it was a fit case for imposing of penalty under section 271(1)(C) of the Income-tax Act 1961 and accordingly a penalty of Rs.2,57,261/- was imposed under section 271(1)(c) of the Income-tax Act.1961."

5.5 The appellant has remained non-compliant at the appellate stage, without taking the chance to represent his case. Such non-compliance indicates that the appellant has no explanation to offer in the matter and there is no factual basis of the claims made in the grounds of appeal, and I am constrained to agree with the decision of the AO for imposing penalty of Rs. 2,57,261/- u/s 271(1)(c) of the I.T. Act, 1961.

Following the above discussion, I uphold the decision of the AO for imposing penalty of Rs. 2,57,261/- u/s 271(1)(c) of the I.T. Act, 1961.

Thus, grounds of appeal 1 is hereby dismissed.

6. In the result, the appeal is treated as dismissed."

5. As the assessee did not receive any favors from the appeal so filed before ld. CIT(A). The present appeal is filed against the said order of the ld. CIT(A) before this tribunal on the grounds as reiterated in para 2 above.

To the support the contention raised in this appeal, the ld. AR of the assessee filed the following written submission:-

"Facts:-

1. The assessee filed the return on 23.11.2014 declaring total income of Rs.12,31,450/-. In course of assessment proceedings AO disallowed the interest expenditure to the extent of Rs.8,32,568/- and assessed the total income vide order dt. 27.12.2016 at Rs.20,64,020/-. On the disallowance so made, the penalty proceedings u/s 271(1)(c) was initiated for concealment and furnishing inaccurate particulars of income. However, the notice u/s 274 dt. 27.12.2016 **(PB 11)** was issued for concealing particulars of income or furnishing inaccurate particulars of income.

2. The Hon'ble ITAT vide order dt. 26.09.2019 **(PB 3-8)** set aside the matter to AO to recompute the disallowance of interest, if any, after verification and consideration of the facts submitted before it. In pursuance to the direction of Hon'ble ITAT, the income was assessed at Rs.13,80,458/- vide order dt. 24.06.2020 **(PB 10)** and thus the difference between the returned income and assessed income is of Rs.1,49,008/- only (13,80,458-12,31,450).

3. The AO before the order passed by Hon'ble ITAT imposed penalty of Rs.2,57,261/- u/s 271(1)(c) vide order dt. 18.03.2019 by considering the disallowance of interest of Rs.8,32,568/- as furnishing of inaccurate particulars of income as well as concealing the particulars of income.

4. The Ld. CIT(A) observed that assessee has not responded to notice dt. 19.01.2021, 27.06.2023 & 19.04.2024 and without even considering the order dt. 24.06.2020 whereby the disallowance was reduced to Rs.1,49,008/- and thus confirmed the penalty of Rs.2,57,261/- imposed by the AO.

Submission:-

1. At the outset it is submitted that the first notice was issued on 19.01.2021 and after around 2.5 years second notice was issued on 27.06.2023. Thereafter third notice was issued after 10 months on 29.04.2024. Thus the only effective notice issued is 29.04.2024 where the date of hearing was fixed on 07.05.2024. The assessee moved an application for adjournment on 07.05.2024 **(PB 1-2)** but the Ld. CIT(A) without considering the same has dismissed the appeal which is against the principle of natural justice and therefore the order passed by Ld. CIT(A) be quashed by allowing the appeal of assessee.

2. Without prejudice to above, it is submitted that after giving the effect of direction of Hon'ble ITAT, the disallowance out of interest was restricted to

Rs.1,49,008/-. Therefore, penalty confirmed by Ld. CIT(A) by considering the disallowance of interest at Rs.8,32,568/- is factually incorrect.

3. It is submitted that assessee has total interest free funds of Rs.1,43,08,760/- comprising of own capital of Rs.60,48,228/-, advance received against sale of property Rs.31,50,000/- and interest free advance of Rs.51,10,532/- which is more than the investment of Rs.1,35,91,216/- made by the assessee. However, the Hon'ble ITAT at Pg 5 of the order has held that advance received against sale of property cannot be regarded as interest free funds available with the assessee for making investment in the shares of company. It is for this reason that ultimately the disallowance was restricted to Rs.1,49,008/- but when assessee has truly and correctly disclosed all the facts, only because the contention of assessee is not fully accepted, it would not mean that assessee has concealed any income or furnished inaccurate particulars of income. For this purpose, reliance is placed on the following cases:-

CIT Vs. Reliance Petroproducts Pvt. Ltd. 322 ITR 158 (SC)
A glance at the provisions of section 271(1)(c) of the Income-tax Act, 1961suggests that in order to be covered by it, there has to be concealment of the particulars of the income of the assessee. Secondly, the assessee must have furnished inaccurate particulars of his income. The meaning of the word "particulars" used in section 271(1)(c) would embrace the details of the claim made. Where no information given in the return is found to be incorrect or inaccurate, the assessee cannot be held guilty of furnishing inaccurate particulars. In order to expose the assessee to penalty, unless the case is strictly covered by the provision, the penalty provision cannot be invoked. By no stretch of imagination can making an incorrect claim tantamount to furnishing inaccurate particulars. There can be no dispute that everything would depend upon the return filed by the assessee, because that is the only document where the assessee can furnish the particulars of his income. When such particulars are found to be inaccurate, the liability would arise. To attract penalty, the details supplied in the return must not be accurate, not exact or correct, not according to the truth or erroneous. Where there is no finding that any details supplied by the assessee in its return are found to be incorrect or erroneous or false there is no question of inviting the penalty under section 271(1)(c). A mere making of a claim, which is not sustainable in law, by itself, will not amount to furnishing inaccurate particulars regarding the income of the assessee. Such a claim made in the return cannot amount to furnishing inaccurate particulars.

Equest India (P) Ltd. Vs. ITO (2011) 136 TTJ 574/48 DTR 386 (Mum.) (Trib.)
Merely because the assessee has a different perception of the situation than the AO, even though, in the ultimate analysis, the stand of the AO is to be upheld, it cannot be said that the assessee has concealed any particulars. The admission or rejection of a claim is a subjective exercise and whether a claim is accepted or rejected has nothing to do with furnishing of inaccurate particulars of income. What is a correct claim and what is an incorrect claim is a matter of opinion.

Raising a legal claim, even if it is ultimately found to be legally unacceptable, cannot amount to furnishing of inaccurate particulars of income. The development of law is a dynamic process which is affected by the innumerable factors, and it is always an ongoing exercise. In such circumstances, a bona fide legal claim by the assessee being visited with penal consequences only because it has not been accepted thus far by the tax authorities or judicial authorities is an absurdity. In any event, the connotations of expression 'particulars of income' do not extend to the issues of interpretation of law and as such making a claim, which is found to be unacceptable in law, cannot be treated as furnishing of inaccurate particulars of income.

4. Otherwise also, in the notice issued u/s 274 read with sec. 271(1)(c), penalty proceedings u/s 271(1)(c) is initiated for concealment of income or furnishing of inaccurate particulars of income. Thus, in the absence of any specific charge against the assessee in the penalty notice, consequent penalty imposed by AO is illegal and bad in law. Reliance in this connection is placed on the following cases:-

CIT Vs. SSA'S Emerald Meadows (2016) 242 Taxman 180 (SC)
Where Tribunal relying on decision of Division Bench of Karnataka High Court rendered in case of CIT Vs. Manjunatha Cotton & Grinning Factory 359 ITR 565, allowed appeal of assessee holding that notice issued by AO u/s 274 r.w.s. 271(1)(c) was bad in law, as it did not specify under which limb of section 271(1)(c) penalty proceedings had been initiated, i.e. whether concealment of particulars of income or furnishing of inaccurate particulars of income and High Court on appeal held that matter was covered by aforesaid decision of Division Bench and therefore there was no substantial question of law arising for determination, there was no merit in SLP filed by revenue and same was liable to be dismissed.

PCIT Vs. Blackroak Securities (P.) Ltd. (2024) 297 Taxman 69 (Delhi) (HC)
Where AO initiated penalty proceedings u/s 271(1)(c) without specifying as to whether penalty was being levied on account of concealment of income or for reason that assessee had furnished inaccurate particulars, impugned penalty order had rightly been set aside by Tribunal.

PCIT Vs. Unitech Reliable Projects (P) Ltd. (2023) 294 Taxman 507 (Delhi) (HC)
Where AO had triggered penalty proceedings u/s 271(1)(c) against assessee, it was necessary for him to indicate broadly as to the limb under which penalty proceedings were triggered. Tribunal having found that notice issued u/s 274 did not specify as to limb under which penalty was sought to be imposed quashed penalty proceedings, no substantial question of law arose for consideration.

Kaveri Associates Vs. ACIT (2020) 275 Taxman 545 (Kar.) (HC)

Where notice issued by AO u/s 274 r.w.s. 271(1)(c) did not mention under which limb of section 271(1)(c) penalty proceedings had been initiated, penalty order passed u/s 271(1)(c) was to be quashed.

Omprakash T. Mehta Vs. ITO (2020) 193 DTR 25 (Bom.) (HC)
Two limbs i.e. concealment of particulars of income and furnishing inaccurate particulars of income carry different connotations. AO has to indicate in the statutory notice for which of the two limbs he proposes to impose the penalty and for this the notice has to be appropriately marked. If in the printed format of the notice the inapplicable portion is not struck off thus not indicating for which limb the penalty is proposed to be imposed, it would lead to an inference as to non-application of mind, thus vitiating imposition of penalty. Further, the assessee had declared the full facts and never suppressed any material fact. Penalty u/s 271(1)(c) was therefore not sustainable.

5. It is prayed that since all facts are on record, the appeal be decided on merit instead of remanding the matter back to the AO/CIT(A) for which reliance is placed on the following cases:-

Zuari Leasing & Finance Ltd. Vs. ITO (2008) 112 ITD 205 (Del.) (Trib.) (TM)
The Honb'le ITAT at Para 10 of the order held as under:-

"10. It is clear from above that primary power, rather obligation of the Tribunal, is to dispose of the appeal on merits. The incidental power to remand, is only an exception and should be sparingly used when it is not possible to dispose of the appeal for want of relevant evidence, lack of finding or investigation warranted by the circumstances of the case. Remand in a casual manner and for the sake of remand only or as a short cut, is totally prohibited. It has to be borne in mind that litigants in our country have to wait for long to have fruit of legal action and expect the Tribunal to decide on merit. It is, therefore, all the more necessary that matter should be decided on merit without allowing one of the parties before the Tribunal to have another inning, particularly when such party had full opportunity to establish its case. Unnecessary remands, when relevant evidence is on record, belies litigant's legitimate expectations and is to be deprecated. Having regard to aforesaid principle, it is necessary to look into records to see whether there is sufficient material on record to dispose of the issue on merit and there is no need to remand the issue to provide a fresh inning to the Revenue."

Srimanta Shankar Academy Vs. ITO (2007) 107 ITD 99 (Gauhati) (Trib.) (TM)
The Honb'le ITAT at Para 10 of the order held as under:-

"It is true that remand of a matter is discretionary. But such discretion is required to be shown to be exercised in a judicial manner. In the case of Saurashtra Packaging (P) Ltd. vs. CIT (1996) 131 CTR (Guj) 40 : (1993) 204 ITR 443 (Guj), their Lordships of Gujarat High Court have observed that where matter can be disposed of by the Tribunal on the basis of material already on record, a remand

should not be resorted to. It is always necessary to avoid multiplicity of proceeding and to save time. There are large number of decisions of High Courts and Supreme Court where instead of directing the Tribunal to make a reference of question under s. 256(2), the Courts while disposing of reference application answered the question sought to be referred and directed the Tribunal to proceed in a particular manner. All this is done to save time and multiplicity of proceeding. I am convinced that such a course to save time should have been adopted in this case and remand of the matter is totally unnecessary. I say so for the reasons and after noting following facts available on record."

In view of above, penalty imposed is unjustified and the same be deleted."

6. To support the various contentions so raised in the written submission the ld. AR of the assessee relied upon the following evidences: -

S. No.	Particulars	Page No.	Filed before AO/CIT(A)
1.	Copy of acknowledgment for adjournment submitted against notice u/s 250	1-2	CIT(A)
2.	Copy of ITAT order dt. 26.09.2019 in assessee's own case for AY 2014-15	3-8	Both
3.	Copy of assessment order dt. 30.09.2021 passed u/s 143(3) r.w.s. 153A of IT Act.	9-10	Both
4.	Copy of notice u/s 274 r.w.s. 271 dt. 27.12.2016	11	Both

7. During the course of hearing, the ld. AR of the assessee in addition to the written submission so filed stated that the matter was listed in 2021, 2023 and 2024 on the last date of hearing the assessee sought adjournment application and therefore, the assessee effectively could not get chance to plead the facts of the case that the in effect the penalty levied

on the amount has been reduced and thereby the penalty levied is also required to be reduce. The ld. AR of the assessee submitted that the assessee has also merits on the technical ground and therefore, he prayed that the matter be decided by the bench as the notice issued to the assessee without specifying the charge of providing inaccurate particular or concealment of income was not specified and therefore, the assessee has merits on that matter. Thus, he prayed the matter be decided based on the facts available on record before the bench.

8. Per contra, the ld. DR objected to the prayer of the assessee stating that the assessee filed adjournment at 1.45 PM [as is evident from the page 1 of paper book]and the order is passed at 12.33 PM [as evident from the digital signature date and time stamp]. Therefore, the prayer of the assessee by passing the ld. CIT(A) without dealing with the adjournment is not correct and the ld. DR objected to the prayer of the assessee, that the assessee cannot bye pass the appellate authority before whom the contention raised were not discussed or decided and if at all bench considered it deem fit the matter be restored to the file of the ld. CIT(A).

9. We have heard the rival contentions and perused the material placed on record. The Bench noted that the assessee in addition to the written submission so filed stated that the matter was listed in 2021, 2023 and 2024 on the last date of hearing the assessee sought adjournment application which was but in the meanwhile the ld. CIT(A) dismissed the appeal of the assessee. The ld. CIT(A) has not dealt with the fact that even the addition which was basis for levy of the penalty has been reduced. The ld. CIT(A) has not discussed the grounds of the assessee and merely at the last notice assessee filed the adjournment application at 1.45PM whereas the order was passed at 12.33PM on the same date.

Considering that aspect of the matter that the time of seeking the adjournment was at 1.45 PM but before that the order has been passed at 12.33PM. Based on that aspect the assessee was deprived of the hearing before the ld. CIT(A) and therefore, bench feels that the assessee should get one more opportunity of being heard on merits as the contention that the assessee has taken ground for merits as well as on facts and the same has not been decided by the ld. CIT(A). In the light of these facts, we hold to remand back the matter to the file of the ld. CIT(A) who will decide the issue based on evidence and submission of the assessee. However, the

assessee will not seek any adjournment on frivolous ground and remain cooperative during proceedings before the ld. CIT(A).

In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the open court on 29/08/2024.

Sd/-	Sd/-
(संदीप गोसाई)	(राठौड कमलेष जयंतभाई)
(Sandeep Gosain)	(Rathod Kamlesh Jayantbhai)
न्यायिक सदस्य / Judicial Member	लेखा सदस्य / Accountant Member

जयपुर / Jaipur
दिनांक / Dated:- 29/08/2024
*Santosh
आदेश की प्रतिलिपि अग्रेशित / Copy of the order forwarded to:

1. The Appellant- Sh. Anoop Kumar Gupta, Ajmer.
2. प्रत्यर्थी / The Respondent- ITO, Ward-2(1), Ajmer.
3. आयकर आयुक्त / The ld CIT
4. आयकर आयुक्त(अपील) / The ld CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No. 939/JPR/2024)

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar