

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, JM

आयकर अपील सं./ITA No. 1070/JP/2024
निर्धारण वर्ष/Assessment Year : 2016-17.

Income-tax Officer, Ward 1(2) Jaipur.	बनाम Vs.	Sandhya Patni, 101, A-20 Samridhi Enclave, Panchsheel Colony, Behind Old Octroi Post, Ajmer Road, Jaipur.
स्थायी लेखा सं./जीआईआर सं./ PAN/GIR No. AAOPP 0447 J		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

राजस्व की ओर से / Revenue by : Shri Gautam Singh Choudhary, JCIT D/R

निर्धारिती की ओर से / Assessee by : Shri Sanjay Godha, CA

सुनवाई की तारीख / Date of Hearing : 24/09/2024

उदघोषणा की तारीख / Date of Pronouncement : 17/10/2024

आदेश / ORDER

PER: SANDEEP GOSAIN, J.M.

This appeal by the Revenue is directed against the order dated 25.06.2024 of Id. CIT (Appeals), National Faceless Appeal Centre (NFAC), Delhi passed under section 250 of the Income Tax Act, 1961 for the assessment year 2016-17. The grounds raised in the appeal are reproduced as under :-

1. Whether on the facts and in the circumstances of the case, the Ld. CIT (A) is justified in deleting the penalty of Rs. 8,25,061/- imposed u/s 271(1)(c) of

- the I.T. Act for concealing the particulars of income of Rs. 26,70,100/- ignoring the facts that the assessee was involved in the sale of penny stock which has been treated as undisclosed income of the assessee while passing order u/s 147 read with section 144B of the Income Tax Act.
2. Whether on the facts and in the circumstances of the case, the Ld. CIT (A) is justified in deleting the penalty u/s 271(1)(c) of the I.T. Act for concealing the particulars of income ignoring the facts that no appeal has been filed by the assessee against the addition of Rs. 26,70,100/- made vide order passed u/s 147 read with section 144B of the Income Tax Act.

2. The brief facts of the case are that the assessee is an Individual, filed her return of income for the year under consideration on 14.09.2016 declaring total income of Rs. 4,13,120/-. Thereafter, the assessee revised her return of income on 30.09.2017 declaring total income of Rs. 30,40,550/-. On receipt of information by the AO that the assessee has earned income of Rs. 26,70,100/- on sale of shares in the script GBFL and EML which has been established as penny stock, issued notice under section 148 of the IT Act, 1961 on 29.03.2021 after taking approval from the competent authority. In response to the said notice under section 148, the assessee filed her return of income on 06.04.2021 declaring total income of Rs. 30,40,550/-. Thereafter, the AO issued notice under section 142(1) of the IT Act, 1961 on 14.12.2021, 31.12.2021 and 20.01.2022. Since no reply/explanation was furnished by the assessee, the AO completed the assessment under section 147 read with section 144B of the IT Act, 1961 at an income of Rs. 57,10,650/- on 25.03.2022 by making an addition of Rs. 26,70,100/- on account of unexplained transaction of sale of shares under section 68 of the IT Act, 1961. The AO, thereafter, initiated penalty proceedings under section 271(1)(c) of the IT Act, 1961 and issued notice under section 274 read with section

271(1)(c) of the IT Act, 1961 on 25.03.2022. No response was made by the assessee to this notice. It is pertinent to mention here that the assessee has filed writ petition before the Hon'ble Rajasthan High Court, Jaipur Bench vide DB Civil Writ Petition No. 3664/2022 challenging the reassessment notice under section 148 of the IT Act dated 29.03.2021 and the consequent assessment order passed under section 147 read with section 144B of the IT Act, 1961. On change of incumbent, fresh notice dated 29.08.2022 was issued to the assessee asking the assessee as to why penalty under section 271(1)(c) should not be imposed on her but no compliance was made by the assessee. Since the assessee has failed to furnish any explanation, the AO completed the penalty proceedings and imposed penalty of Rs. 8,25,061/- @ 100%, holding that the assessee has concealed the particulars of income of Rs. 26,70,100/- within the meaning of Section 271(1)(c) and evaded tax of Rs. 8,25,061/-. Aggrieved by the said penalty order, the assessee preferred appeal before the Id. CIT (A). The Id. CIT (A) after considering the submissions of the assessee, allowed the appeal of the assessee. Now the revenue is in appeal before the Tribunal.

3. Before me, the Id. D/R supported the order of the Assessing Officer and submitted that the order of the Id. CIT (A) be set aside.

4. On the other hand, the Id. A/R of the assessee reiterated his submission as made before the Id. CIT (A) and also submitted his written submission as under :-

"1. That the assessee is a regular assessee with the above PAN and regularly filing Income tax return.

2. That the assessee filed Income tax return online u/s 139(1) declaring total income of Rs. 413120/- on dt. 14/09/2016 showing income as follows.:-

Income from business (share trading)	Rs. (-)277135
Income from Interest Private Parties	Rs. 771250/-
Income from Bank Interest	Rs. 11806/-
Exempt Income from Long term Capital gain on sale of 4000 Appu Marketing Shares (AMM Ltd.)	Rs.2627430/-

3. That the assessee revised her return u/s 139(5) of income voluntary declaring total income of Rs. 3040550/- on dated 30/09/2017 showing following Income and paid the full tax **(copy enclosed)**

Income from business(shares)	Rs. (-)277135/-
Income from other sources	
Int. from S.B. A/c	Rs. 11806/-
Int. from Private parties	Rs. 771250/-
Int. on I.T. Refund	Rs. 735/-
Profit from AMM Ltd.	Rs. 2627430/-

And also shown reason of revising the return on account of surrender of long term capital gain claimed on sale of these 4000 shares of AMM Ltd. amounting of Rs. 2627430/- and shown as Income from other sources as mentioned above which was claimed as exempt long term capital gain in the original return filed on 14/09/2016.

4. That the assessee is in receipt of notice u/s 148 dt.:- 29/03/21 for this year by ITO, Ward 1(2), Jaipur.

5. That this case was referred to Faceless authorities.

6. That the assessee again filed e-return of income on dt.:- 06/04/2021 declaring Income of Rs.3040550/- showing following Income in response to notice u/s 148.

Income from business(shares)	Rs. (-)277135/-
Income from other sources	
Int. from S.B. A/c	Rs. 11806/-
Int. from Private parties	Rs. 771250/-
Int. on I.T. Refund	Rs. 735/-
Profit from AMM Ltd.	Rs. 2627430/-

7. That the assessee filed letter dt. 06/04/2021 informing to ITO, Ward 1(2) for filing return u/s 148 and requested to issue copy of reasons recorded.

8. That the assessee is in receipt of reasons from AO faceless on dt. 28/12/2021 stating about sale of penny stock of company's namely GBFL & EML for Rs. 2670100/- and to be treated as bogus.

9. That the assessee filed objections on dt.19/01/2022 and inform that the assessee has voluntary surrendered the gain amount of Rs.2627430/- in respect of sale of 4000 equity shares of AMM Ltd. shares and also informed that the assessee does not transact in the company GBFL & EML Ltd as mentioned in the reasons and also requested to kindly give the full details of shares and full name of the company.

10. That the AO rejecting the objection and not accepting the factual position.

11. That the assessee filed detailed reply of show cause notice dt.:- 23/03/2022 explaining about long term capital gain as mentioned in the notice and whereas the assessee himself surrendered the same in revised return u/s 139(5) and also inform about writ petition filed on 25/02/2022 before Rajasthan High Court for challenging the issue.

12. That the assessee filed writ petition before Rajasthan High Court for challenging the rejection order on dt. 25/02/2022. But before that the AO, Faceless passed the order on dt.25/03/2022 on total income of Rs.5710650/- after adding amount of Rs.2670100/- treating sale proceeds for sale of these named share company and created a demand of Rs.1430232/- along with interest. Further, during the proceedings before the Rajasthan high Court it came to the notice that the name of Appu Marketing & Manufacturing Ltd. (AMM Ltd.) is changed to EML.

13. Thus this addition of Rs. 2670100/- was again added by the AO, Faceless taking sale price of 4000 equity shares of EML(new name) company shares, whereas the assessee himself has already considered/shown Rs. 2627430/- (2670100-40000-2670) for gain on sale of these 4000 AMM Ltd.(old name)/ new name EML company in the return filed u/s 139(5) on dt.30/09/2017 and paid full tax thereon. Thus, this a double addition of Rs.2670100/-.

14. That the assessee is in receipt of notice u/s 148A(a) & (b) on dt.:- 10/03/2023 for the share transactions. In compliance to this notice the final reply was filed on 24/03/2023 along with the global report of Hem Securities Ltd. for the amount of Rs. 2670100/- of AMM Ltd. (old name) and the same is fully explained and accepted by the AO while passing the order u/s 148A(d) dt.:- 30/03/2023(**Copy enclosed**) which confirms that there is no any other transaction except as mentioned above.

That the assessee has filed appeal before CIT against the order passed u/s 147 r.w.s. 144B dt.:- 25/03/2022 on dt.:- 13/08/2024 as per direction given by the Hon'ble Rajasthan High Court. **The copy of order of Rajasthan High Court is enclosed and also copy of CIT(A) filed on dt.:- 13/08/2024 is enclosed.**

That the Learned CIT(A)(Faceless) vide order dt.25/06/2024 deleted the penalty u/s 271(1)(c) of Rs. 825061/- stating as under.:-

"It is apparent that the appellant had already offered the above gain to tax in the revised return of income. It is also undisputed that the appellant had filed the revised

return on 30/09/2017 offering Rs. 2627430/- being gain from sale of shares of AMM Ltd. (new name EML Ltd.) much before the issuance of notice u/s 148 on 29/03/2021. Therefore, it cannot be said that the revised return was not voluntary and the AO has also not stated anything otherwise. Under such facts, penalty u/s 271(1)(c) cannot be sustained. The AO is accordingly directed to delete the penalty of Rs. 825061/-."

Therefore, in view of the above facts the assessee has not concealed any income nor file wrong particulars of income. Therefore, we pray to your honour that appeal be allowed and order of CIT(Appeal) be sustained."

5. I have heard the rival submissions, perused the material on record and gone through the orders of the revenue authorities. The Id. CIT (A) has discussed the issue in his order and decided this ground by observing in para 9.4 and 9.5 of his order as under :-

"9.4 I have considered the facts of the case. The reasons recorded u/s.148 was on account of information related to gain on sale of shares of scrips GBFL and EML considered as Penny Stocks. The appellant had denied that it had not transacted in any shares of GBFL and EML at that stage. But the A.O. while disposing the objection to the reasons recorded and notice issued u/s. 148 had also not provided any further detail with respect to the above information related to these companies held as Penny Stocks and whose shares were allegedly sold by the appellant to make the above alleged gain. The penalty order u/s. 271(1)(c) is also silent on the above details. The appellant has also submitted that during the proceedings before the Hon'ble High Court Rajasthan, it came to the notice that the name of M/s. Appu Marketing and Mfg. Ltd. (AMM Ltd.) is changed to EML (new name). The appellant had already offered the gain of Rs.26,27,430/- (Rs.26,70,100 Rs. 40,000 - Rs.2670) for gain on sale of these 4000 shares of AMM Ltd. (old name) and new name EML company in the revised return filed u/s.139(5) on 30.09.2017 and paid full tax

thereon and any addition made in the assessment order for the same amount results into double addition of Rs.26,70,100/-.

9.5 From the above submissions, it is apparent that the appellant had already offered the above gain to tax in the revised return of income. It is also undisputed that the appellant had filed the revised return on 30.09.2017 offering Rs.26,27,430/- being gain from sale of shares of AMM Ltd. (new name EML Ltd.), much before the issuance of notice u/s.148 on 29.03.2021. Therefore, it cannot be said that the revised return was not voluntary and the A.O. has also not stated anything otherwise. Under such facts, penalty u/s. 271(1)(c) cannot be sustained. The A.O. is accordingly directed to delete the penalty of Rs.8,25,061/-. The grounds of appeal are allowed.”

On careful consideration of the order of the Id. CIT (A) and in the totality of facts and circumstances of the case, I find substance in the order of the Ld. CIT (A) and there is no infirmity in the order. I, therefore, finding in agreement with the order of the Id. CIT (A) deleting the addition of penalty, upheld the order.

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

Order pronounced in the open court on 17/10/2024.

Sd/-
(संदीप गोसाईं)
(SANDEEP GOSAIN)
न्यायिक सदस्य/Judicial Member

जयपुर/Jaipur

दिनांक/Dated:- 17/10/2024.

Das/

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

1. अपीलार्थी / The Appellant- The ITO Ward 1(2), Jaipur.
2. प्रत्यर्थी / The Respondent- Sandhya Patni, Jaipur.
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.
6. गार्ड फाईल / Guard File {ITA No. 1070/JP/2024}

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar