

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

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

आयकर अपील सं./ITA No. 762/JP/2024
निर्धारण वर्ष / Assessment Year : 2011-12

Income Tax Officer, Ward-6(2), Jaipur	बनाम Vs.	Medical Designs India P. Ltd., Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AACCM 7178 G		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Sh. Tarun Mittal, CA
राजस्व की ओर से / Revenue by : MS. Alka Gautam CIT (V.H)

सुनवाई की तारीख / Date of Hearing : 16/10/2024
उदघोषणा की तारीख / Date of Pronouncement: 22/10/2024

आदेश / ORDER

PER: RATHOD KAMLESH JAYANTBHAI, AM

Present appeal is by the revenue, as the department is feeling dissatisfied with the order of National Faceless Appeal Centre, Delhi dated 04/04/2024 [here in after 'NFAC'] for assessment year 2011-12.

Said order of Id. CIT(A)/NFAC arose out of the appeal filed by the assessee-respondent herein. The assessee was in appeal having challenged the order dated 27.06.2019 passed under section 271(1)(c) of the Income Tax Act,[for short Act] by ITO, Ward, Bhiwadi [for short Id.

AO]. Learned CIT(A), NFAC allowed the appeal and set aside the penalty order dated 27.06.2019.

2. In this appeal, the revenue has raised following grounds: -

"1. On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the penalty of Rs. 1,67,30,892/- levied u/s 271(1)(c) of Act in spite of the fact that addition of Rs. 5,57,69,640/- made by the AO on the basis of information received from the Sub-registrar, Bhiwadi vide letter dated 04.09.2012 in the assessment proceeding and the assessee remained non-compliant during entire penalty proceedings.round

2. On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the penalty of Rs. 1,67,30,892/- levied u/s 271(1)(c) of Act in spite of the fact that addition of Rs. 5,57,69,640/- was made by the AO in spite of the fact the assessee has not declared LTCG/STCT in either AY 2007-08 or A.Y. 2011-12 and not filed its ITR.

3. On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in deleting the addition penalty of Rs. 1,67,30,892/- levied u/s 271(1)(c) of Act in spite of the fact that deleting of quantum addition of Rs. 5,57,69,640/- has been challenged before the Hon'ble ITAT."

3. Succinctly, the facts as culled out of the records are that proceedings u/s 147 of the Act were initiated by issuing a notice u/s 148 of the Act dated 28.03.2018 after recording proper reasons and getting approval from the Appropriate Authority.

The case was re-opened on the ground that there was information available with the department that the assessee had purchased immovable property for a value of Rs.5,57,69,640/-. Further, on verification of records

and data available on AST system, it was noticed that the assessee had not filed its return of income for the year under consideration, and as such, the source of investment in purchase of property remained unexplained.

That is how, notice u/s 148 of the Income Tax Act was issued on 28.03.2018 to the assessee to furnish the return of income for the A.Y. 2011-12, to ascertain the tax liability on such property transaction.

Since, the assessee did not file any return of income nor any submissions were filed in spite of repeated notices issued u/s 148 read with section 142(1) of the Act from time to time, the tax liability on such transaction remained un-explained, and therefore, assessment was completed u/s 144/147 of the Income Tax Act on the basis of material available on record at Rs.5,57,69,640/- vide order u/s 144 of the Act dated 13.12.2018.

While completing the assessment, penalty proceedings u/s 271(1)(c) of the Act were also initiated separately for concealment of income.

4. After receipt of the order of Id. CIT(A) in the appeal on merits of the case, opportunity of being heard was afforded by the Assessing Officer to the assessee by issuing letter bearing No. 713 dated 22.05.2019, for appearance on 04.06.2019. Such letter is stated to have been served upon

the assessee at its last known address by way of affixture, on 28.05.2019. The report in this regard was placed on record and declared valid service.

Further show cause notice dated 27.05.2019 was sent to the assessee at the known address i.e. A-1, Mahaveer Udhan Marg, Gandhi Nagar, Jaipur, which was served through postal authorities. The assessee was allowed to file his reply on 07.06.2019. On the date(s) of hearing, nobody attended the hearing nor was any adjournment sought. Also no written submission was filed. Therefore, there was no alternate left with the Id. AO except to complete the penalty proceedings on the basis of material available on record and on merits.

As the addition was made for an amount of Rs. 5,57,69,640/- penalty for an amount of Rs. 1,67,30,892/-, i.e. @ 100% of the tax sought to be evaded was levied u/s 271(1)(c) of the Act vide order dated 27.06.2019

5. Aggrieved by the order of the Assessing Officer, levying penalty u/s. 271(1)(c) of the Act the assessee preferred appeal before Id. CIT(A). Apropos to the grounds so raised by the assessee, the relevant findings of Id. CIT(A) are reiterated and same read as under:

“6. Decision: The brief fact of the instant case is that; the appellant is a company whose case was re-opened on the basis of information available with the Department that the appellant company had purchased immovable property for Rs.5,57,69,640/- and not filed its return of income for the relevant assessment

year. During the assessment proceedings, the assessee did not replied to any notice issued by the AO and therefore the AO has made addition of Rs. 5,57,69,640/- on account of unexplained investment u/s 69B of the Act and initiated penalty u/s 271(1)(c) of the Act. Aggrieved by the said addition the assessee has filed appeal before NFAC. During the appellate proceedings, on the basis of documentary evidences submitted by the appellant, remand report submitted by the AO, the NFAC had allowed the quantum appeal filed by the appellant vide DIN & Order No. ITBA/NFAC/S/250/2023- 24/1059409169(1) dated 05/01/2024. It is pertinent to note that the quantum appeal has been allowed by the NFAC vide order as detailed above, thus, the addition, on which penalty has been imposed by the Assessing Officer does not survive. Therefore, present penalty appeal of the assessee is allowed.

7. In the result the appeal of the appellant is Allowed.”

6 As the appeal filed by the assessee was decided in its favour, holding that in the quantum proceedings, the appeal of the assessee was decided in favour after obtaining the remand report from the Assessing Officer therefore, the order levying penalty did not survive.

Since, the revenue filed an appeal before the ITAT challenging the finding of the Id. CIT(A) in quantum proceeding, the Id. AO also ordered for levy of penalty. In the meantime, the penalty order was also challenged before the Id. CIT(A) who while considering the facts of the case that the quantum appeal was allowed by the Id. CIT(A) and the order levying penalty does not survive, quashed the penalty order.

As the revenue dissatisfied with that finding of Id. CIT(A) quashing the penalty order, the department has preferred the present appeal.

Apropos to the grounds so raised by the revenue, Id. DR filed a paper book containing following evidences in support of the contention so raised:

S. No.	Documents	Page No.
1	Letter No. 438 dated 18.07.2012 issued to Sub Registrar Bhiwadi by ACIT, Circle-2, Alwar	1
2	Letter No. 412 dated 04.09.2012 of Sub-Registrar Bhiwadi (On this information proceeding u/s 148 were initiated)	2
3	Proposal and approval for initiating the proceeding u/s 148 of the Act.	3-4
4	Notice of the 148 dated 28.03.2018	5
5	Assessment order passed by the ACIT, Circle-1, Alwar on 13.12.2018	6-9
6	Copy of Registered Deed	10-14
7	Penalty order u/s 271(1)(c) of the Act passed by 27.06.2019	15-18
8	Order of Ld. CIT(A) NFAC, Delhi dated 05.01.2024 against the Assessment order	19-39
9	Order of Id. CIT(A) NFAC, Delhi dated 04.04.2024 against the Penalty order	40-44

7. Ld. DR also filed a written submission which reads as under:-

“Kindly refer to your office letter no. 330 dated 16.07.2024 on the above mentioned subject.

In this connection it is submitted that assessee company has not filed its return of Income for A.Y 2011-12. The department has information that assessee company had purchased immovable property during the F.Y 2010-11 amounting to Rs. 5,57,69,640/-. For verification of financial transaction, AO had issued notice u/s 133(6) of the income tax act, 1961 dated 16.04.2012, the notice remained unserved and returned. Subsequently, vide letter no. 438 dated 18.07.2012, the AO issued letter to Sub registrar Bhiwadi for providing complete postal address of the assessee alongwith other relevant details. The sub-registrar provided complete address and other relevant details wherein the assessee has been mentioned as a purchaser (letter no. 412 dated 04.09.2012 from sub registrar - (copy enclosed) and jumbo chemical and Allied Industries Pvt Ltd as a seller. On the basis of above information the case of the assessee was re-opened. After taking approval from

the competent authority notice u/s 148 of the Act was issued to the assessee on 28.03.2018.

During the assessment proceeding AO issued notice u/s 142(1) of the Income-tax Act on 21.08.2018 and 24.09.2018 issued to the assessee, but the assessee did not file any reply therefore AO passed an order u/s 144 r.w.s 148 of the Act on 13.12.2018 at the income of Rs. 5,57,69,640/-.

The assessee company did not filed an appeal against the assessment order passed by the AO, therefore the AO imposed the penalty u/s 271(1)(c) of the Act on 27.06.2019 amounting to Rs. 1,67,30,892/-. Notices and orders duly served upon the assessee through affixture.

Later on assessee filed an appeal before Ld. CIT (A) NFAC, where additional grounds were raised. Ld. CIT (A) NFAC remanded the comments of the AO on the additional documents provided by the assessee. During remand proceedings it is clear that assessee sold the land vide registered sale deed dated 29.12.2010 and the details of payment received is as under :-

Sr. No.	Details of payment on sale	Amount
1	As per agreement dated 12.06.2006 (Excluding RIICO Dues)	55,01,000
2	RIICO Dues on 01.06.2010	2,78,68,224
3	RIICO Dues on 01.06.2010	4,32,901
Total		3,38,02,125

The stamp duty authority has determined value of property at Rs. 5,57,69,640/- for purpose of stamp duty. The assessee company failed to file return and disclosed capital gain.

At the initial stage AO rightly took the action, as per law and the information available with him, further, it is clear that assessee has failed to report his capital gain income arising from the sale of the said land.

Later on Id. CTT (A) NFAC Delhi vide his DIN & Order No. ITBA/NFAC/S/250/2023- 24/1039409169(1) dated 05.01.2024 allowed the appeal of the assessee, on the basis of judgement of Hon'ble Delhi High Court in the case of Krishna Diagnostic Pvt. Ltd. Vs. ITO reported in 294 Tasman 109 wherein it has been held as under:

"Where AO issued notice under section 148A(b) on ground that assessee sold an immovable property but failed to disclose capital gains earned on said sale but assessee had purchased property and not sold property, since AO missed most crucial part of transaction that it was a purchase and not a sale transaction and impugned order under section 148A(b) did not align with notice issued under section 148A(b), impugned order and consequential notice were to be set aside."

From the above discussion it is clear that the alleged property in question for the reassessment was sold by the appellant and not purchased by the appellant. Therefore, the ground raised by the appellant is hereby allowed.

The department has filed an appeal against the order of Ld. CIT (A) NFAC Delhi in the ITAT Jaipur vide acknowledgement number 1709295493 on 01.03.2024, which is still pending. Meanwhile Id. CIT (A) NPAC Delhi vide his DIN & Order No. ITBA/NFAC/S/250/2023-24/1063903583(1) dated 04.04.2024 allowed the appeal of the penalty on the ground that "quantum of addition was allowed". The department has also filed an appeal against the order of penalty before hon'ble ITAT. Jaipur on 24.05.2024 vide acknowledgement number 1716540636, which is still pending."

8. In addition to the above submissions, Learned DR vehemently submitted that the revenue has preferred an appeal before ITAT against the order of Id. CIT(A) in quantum proceedings and that no order having yet been received, the penalty appeal was filed by the revenue to keep the issue alive. In this regard, DR relied upon the order of Assessing Officer.

9. Per contra, Id. AR of the assessee has filed a detailed written submission supporting the order of the Id. CIT(A), which reads as under:-

"Assessee company is a private limited company incorporated under the Companies Act, 1956 having its registered office at A1/A, Mahaveer Udyan Path, Bajaj Nagar, Jaipur. During the year under consideration assessment was completed u/s 144 r.w.s 148 of the Act vide order dated 13.12.2018 wherein addition of Rs. 5,57,69,640/- were made by the Id. AO. Thereafter assessee company has preferred an appeal before the Id. CIT(A) wherein Id. CIT(A), NFAC vide order dated 05.01.2024 decided the matter in the favour of assessee. Aggrieved by the order of Id. CIT(A) department has preferred an appeal before the Hon'ble ITAT, Jaipur Bench wherein Hon'ble ITAT appeal decided the matter against the revenue and in the favour of assessee in ITA No. 236/JPR/2024 dated 27.09.2024.

It is further submitted that during the course of pendency of quantum appeal, Penalty order u/s 271(1)(c) was passed by Id. AO vide order dated 27.06.2019 wherein 100% penalty is levied on tax amount of assessed income i.e. Rs. 1,67,30,892/-. Aggrieved by the order of Id. AO assessee company has preferred an appeal before the Id. CIT(A), NFAC wherein Id. CIT(A) vide order dated 04.04.2024 deleted the Penalty of Rs. 1,67,30,892/- levied u/s 271(1)(c) by observing as under—

“6. Decision: The brief fact of the instant case is that; the appellant is a company whose case was re-opened on the basis of information available with the Department that the appellant company had purchased immovable property for Rs.5,57,69,640/- and not filed its return of income for the relevant assessment year. During the assessment proceedings, the assessee did not reply to any notice issued by the AO and therefore the AO has made addition of Rs. 5,57,69,640/- on account of unexplained investment u/s 69B of the Act and initiated penalty u/s 271(1)(c) of the Act. Aggrieved by the said addition the assessee has filed appeal before NFAC. During the appellate proceedings, on the basis of documentary evidences submitted by the appellant, remand report submitted by the AO, the NFAC had allowed the quantum appeal filed by the appellant vide DIN & Order No. ITBA/NFAC/S/250/2023-24/1059409169(1) dated 05/01/2024. It is pertinent to note that the quantum appeal has been allowed by the NFAC vide order as detailed above, thus, the addition, on which penalty has been imposed by the Assessing Officer does not survive. Therefore, present penalty appeal of the assessee is allowed.

7. In the result the appeal of the appellant is Allowed.”

Aggrieved by the order of Id. CIT(A), NFAC department has preferred an appeal before the Hon'ble Bench.

Ground-wise Submission is as under:

Departmental Grounds of Appeal No. 1 to 3

In these grounds of appeal, department has collectively challenged the action of Id. CIT(A), NFAC in deleting the penalty of Rs. 1,67,30,892/-.

Brief facts of the case, as stated above, is that present penalty appeal is initiated against the order of Id. CIT(A) dated 04.04.2024 u/s 250 r.w.s 271(1)(c) of the Act wherein Penalty levied u/s 271(1)(c) is deleted on account of fact that the National Faceless Appeal Centre (NFAC) had allowed the quantum appeal filed by the appellant vide Order dated 05/01/2024 where in addition of Rs. 5,57,69,640 on which penalty levied is deleted. Thus, the addition, on which penalty has been imposed by the Assessing Officer does not survive and same was rightly deleted.

At this juncture it is again reiterated that co-ordinate bench has decided the quantum appeal in favour of the assessee. It is also submitted that it is a settled issue that when the additions or disallowances are deleted in the quantum appeal,

the penalty proceedings would not survive. Relevant operating para of the order of Hon'ble ITAT in the case of assessee's quantum appeal is reproduced as under for ready reference—

"12.The Id. CIT(A) has perused all the documents and concluded that, assessment was reopened without appreciating the correct set of facts and the satisfaction of escapement was recorded was not verified properly with the information available. The AO was in receipt of information which contained in the sale deed received from the registrar, wherein the appellant was seller and not the purchaser, however it was wrongly held as the purchaser which is the contrary to the reasons recorded for reopening of assessment. This fact is clarified by the AO in the remand report also.

Considering that factual aspect of the matter and relying on the decision of the Krishna Diagnostic Pvt. Ltd. vs. ITO reported at 294 Taxman 109 wherein the High Court of Delhi has held as under:-

"Where AO issued notice under section 148A(b) on ground that assessee sold an immovable property but failed to disclose capital gains earned on said sale but assessee had purchased property and not sold property, since AO missed most crucial part of transaction that it was a purchase and not a sale transaction and impugned order under section 148A(b) did not align with notice issued under section 148A(b), impugned order and consequential notice were to be set aside."

Based on the above discussion and the overall factum of the detailed discussion so recorded the appeal of the assessee has rightly been allowed by the Id. CIT(A)/NAFC. The order has been passed after giving due opportunity to the assessee to deal with the facts presented by the assessee. Thus, we do not find any infirmity in the order of the Id. CIT(A) and therefore, the appeal filed by the Revenue stands dismissed on both grounds so raised.

In the result the appeal of the Revenue stands dismissed."

Thus on the basis of facts & circumstances of the case, it is humbly requested to uphold the order of the Id. CIT(A), NFAC and dismiss the appeal of the revenue."

10. Ld. AR of the assessee also submitted that since the appeal filed by the revenue in the quantum proceeding also decided in favour of the assessee and therefore, the levy of penalty has rightly been quashed by Id. CIT(A) and thereby he supported the order of Id. CIT(A).

11. We have heard the rival contentions and perused the material placed on record. Indisputably, the quantum proceedings for Assessment Year 2011-12 were quashed by Id. CIT(A) vide order dated 05.01.2024 and thereupon the revenue preferred an appeal against that quantum proceedings before this tribunal.

The tribunal vide order dated 27.09.2024 dismissed the appeal of the revenue and as such, the view taken by Id. CIT(A) favouring the assessee was confirmed. Ld. DR has not controverted this fact before us and even copy of order has also been supplied to Id. DR by the assessee. Based on these facts, we do not find any infirmity in the findings of Id. CIT(A) in quashing the penalty order passed by Id. Assessing Officer. In view of this fact, the appeal filed by the revenue is dismissed.

Order pronounced in the open court on 22/10/2024.

Sd/-

(नरेन्द्र कुमार)

(NARINDER KUMAR)

न्यायिक सदस्य / Judicial Member

Sd/-

(राठौड़ कमलेश जयन्तभाई)

(RATHOD KAMLESH JAYANTBHAI)

लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 22/10/2024

*Ganesh Kumar, Sr. PS

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

1. The Appellant- Income Tax Officer, Ward-6(2), Jaipur
2. प्रत्यर्थी / The Respondent- Medical Designs India P. Ltd., Jaipur
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. 762/JP/2024)

आदेशानुसार/ By order,

सहायक पंजीकार/Asst. Registrar