

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर  
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES,"SMC" 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. 418/JP/2024  
निर्धारण वर्ष/Assessment Years : 2012-13

Raksha Kherajani D-111, Shastri Nagar Jodhpur	बनाम Vs.	Circle International Taxation, Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AHXPK 9553 G		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : None  
राजस्व की ओर से / Revenue by : Sh. Gautam Singh Choudhary, JCIT,  
Sr. DR (through V.C.)

सुनवाई की तारीख / Date of Hearing : 03/12/2024  
उदघोषणा की तारीख / Date of Pronouncement: 09/12/2024

आदेश / ORDER

PER: RATHOD KAMLESH JAYANTBHAI, AM

This appeal filed by the assessee arises out of the order 30/01/2024 passed by the Commissioner of Income Tax (Appeal), Delhi-42 [ for short Id. CIT(A) ] for assessment year 2012-13.

Vide impugned order, Learned CIT(A) has dismissed the appeal filed by the assessee against the penalty order dated 31.03.2023 passed by

DCIT, Circle- International Taxation, Jaipur, under section 271(1)(c) of the Income Tax Act,

2. At the outset, it may be mentioned here that there is delay of five days in filing of the appeal by the assessee, for condonation of which the no application has been filed by the assessee. Even none has appeared to represent the appellant-applicant.

Department has no objection to the short delay in filing of the appeal, notwithstanding non filing of any application and non appearance on behalf of the applicant.

3. Record reveals that the penalty order dated 31.03.2023 was passed levying penalty of Rs. 5,71,072/- the Assessing Officer having recorded his satisfaction that the assessee had concealed his income or furnished inaccurate particulars thereof while furnishing ITR for the Financial Year 2011-12.

4. Aggrieved by the penalty order, the assessee challenged the same by way of appeal, but Learned CIT(A) dismissed the same giving following reasons:

"8. I have carefully considered the facts of the case, penalty order, assessment order and written submissions of the appellant.

9. All the grounds are inter-related and challenge the levy of penalty and quantum order of the CIT(A).

10. The Ld. CIT(A) in the appeal order has very categorically stated that it is clear from the redemption warrant that the investment in REC bonds was made only for three months i.e., on 30.06.2011 and the redemption was made on 30.08.2011 along with interest of Rs. 19,537/-. The Ld. CIT(A) has further stated that in the bank statement there is no entry on or about 30.06.2011 showing investment of Rs. 20,00,000/- in the REC bonds. As a result, the CIT(A) has concluded that the source of investment in the REC bonds is, therefore, found unexplained. The CIT(A) has treated the interest earned by the appellant of Rs. 19,537/- on the REC bonds as unexplained as the appellant had not shown it in the RoI. Moreover, as the appellant did not raise any objection on additions of interest income amounting to Rs. 3,21,927/- by the AO hence Ld. CIT(A) confirmed this addition also. Hence, finally out of the additions of Rs. 75,36,360/- made by the AO the Ld. CIT(A) confirmed the addition of Rs. 20,19,537/- and Rs. 3,21,927/-.

11. Subsequently, the Assessing Officer has passed the penalty order u/s 271(1)(c) of the IT Act levying a penalty of Rs. 5,71,072/-. The relevant portion of the penalty order is reproduced as under:

*"9. Here in the present case, the assessee has received credits of Rs. 20,19,537/- and also received interest income of Rs. 3,21,927/- for which the assessee failed in submitting satisfactory justification regarding concealment, hence the assessee's case falls under ambit of section 271(1) (c).*

*10. Considering the above facts and circumstances of the case, I am of the considered opinion and I am fully satisfied that the assessee has concealed his income. Therefore, the case is fit for levy of penalty u/s 271(1)(c) of the Act, which is hereby levied."*

12. Based on the facts above, it is observed that the appellant had ample opportunities-during the assessment proceedings, quantum appellate proceedings and remand proceedings to clearly state the facts of the case and provide evidences with respect to the source of investment in REC bonds. But as observed by the Ld. CIT(A) in his quantum order, the appellant has failed to provide the evidence which proves his investment in REC bonds. Further, during the course of appellate proceedings against the penalty order the appellant has stated that the said investment in REC bonds was made through banking channels and that too way back three years ago out of funds available in bank account, the source of which is self-explanatory. The appellant has failed to appreciate that mere statement that the investment was made three years ago through banking channel in the absence of supporting evidences does not make the transaction explainable.

The appellant has failed to substantiate the source of above- mentioned investment in REC bonds as she has not provided any supporting document to explain the said transaction. The onus of explaining the source of investment in REC bonds was upon the appellant which she has failed to discharge.

13 Therefore, I agree with the Assessing Officer that this is a clear case of concealment of income, as the appellant has wilfully refrained from disclosing the source of the investment in REC bonds. Hence, based on the detailed discussion above, I hereby uphold the action of the AO. With regard to the penalty levied by AO on account of interest income of Rs. 3,21,927/- received by the appellant, the appellant has not contested the imposition of penalty on interest income, hence, the penalty imposed by the AO with respect to this addition of Rs. 3,21,927/- u/s 271(1)(c) of the IT Act is also confirmed. Therefore, penalty imposed by the AO u/s 271(1)(c) of the IT Act amounting to Rs. 5,71,072/- is confirmed.

14. As all the grounds of appeal were inter-related, they are disposed-off, accordingly.

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

5. Feeling dissatisfied with the above findings, the assessee has preferred the present appeal before this Appellate Tribunal, raising following grounds of appeal :

“1. On the facts and in the circumstances of the case, Id. CIT(A) has grossly erred in treating the maturity proceeds of Rs.20,19,537/- of REC bonds, by alleging that entry of making investment in REC bonds was not appearing in bank statement, thus redemption proceeds also remained unexplained. Appellant prays that source of credit entry of redemption proceeds was duly explained by assessee and accepted by Id.AO in remand proceedings, and no explanation whatsoever was sought by Id.CIT(A), prior to taking adverse view regarding source of making such investment in bonds which is gross violation of principle of natural justice and thus the penalty U/s 271 (1) (c) so confirmed deserves to be deleted. It is also a matter of fact that investment in REC Bonds is always with a lock in period and the same can be redeemed only after 3 years of investment.”

When the appeal has been taken up for hearing, no one has appeared to argue on behalf of the appellant, but as per record, quantum

appeal filed by the assessee i.e. ITA No. 11/JP/2023 was disposed of by this Appellate Tribunal vide order dated 04/01/2024, thereby setting aside the quantum assessment and matter remanded to the Assessing Officer for decision afresh having regard to the additional evidence on the point of investment made in the form of REC bond, which was filed under Rule 29 for the first time.

6. In the course of arguments, Ld. DR admits that quantum proceedings are pending before the Assessing Officer in terms of orders passed by co-ordinate Bench of this Appellate Tribunal in ITA No.11/JP/2023. Ld. DR has no objection to the disposal of this appeal for statistical purpose, granting liberty to the Assessing Officer to decide the issue involved afresh, while conducting along with quantum proceedings already pending there.

7. In the given situation, in view of the no objection from the side of Ld. DR , we are of the view that the impugned order deserves to be set aside for fresh adjudication by Ld. AO already seized of the quantum proceeding.

8. As a result, the appeal filed by the assessee is allowed for statistical purposes, with liberty to AO as mentioned above.

Order pronounced in the open court on 09/12/2024.

Sd/-  
(नरेन्द्र कुमार)  
(NARINDER KUMAR)  
न्यायिक सदस्य / Judicial Member

Sd/-  
(राठौड़ कमलेश जयन्तभाई)  
(RATHOD KAMLESH JAYANTBHAI)  
लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 09/12/2024

\*Ganesh Kumar, Sr. PS

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

1. The Appellant- Raksha Kherajani, Jodhpur
2. प्रत्यर्थी / The Respondent- Circle International Taxation, 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. 418/JP/2024)

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar