

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

श्री कुल भारत, न्यायिक सदस्य एवं श्री विक्रम सिंह यादव, लेखा सदस्य के समक्ष  
BEFORE: SHRI KUL BHARAT, JM & SHRI VIKRAM SINGH YADAV, AM

आयकर अपील सं./ITA No. 412/JP/2015  
निर्धारण वर्ष / Assessment Year : 2009-10.

Shri Ajesh Agarwal, Prop. M/s Shree Narayan Gems, Khandaka Bhawan, Bordi Ka Rasta, Jaipur.	बनाम Vs.	The ITO, Ward-1(2), Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN No. ABJPA7832C		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri S.L. Poddar (Advocate)  
राजस्व की ओर से / Revenue by : Shri Prithvi Raj Meena (Addl. CIT)

सुनवाई की तारीख / Date of Hearing : 02.03.2017.  
घोषणा की तारीख / Date of Pronouncement : 23 /03/2017.

आदेश / ORDER

PER SHRI KUL BHARAT, JM.

The appeal by the assessee is directed against the order of Id. CIT (Appeals)- I, Jaipur dated 02.02.2015 pertaining to assessment year 2009-10. The assessee has raised following grounds of appeal:

1. " That the learned CIT(A) has erred in holding that it has been held that the assessee is not entitled for exemption u/s 10(37) of the Act with respect to certain Khasras and accordingly on proportionate basis exemption to the extent of Rs. 73,38,805/- has been disallowed as ingredient of clause (c) are fulfilled and satisfied so as to justify imposition of penalty. The said finding is illegal and unjustified.
2. That the Id.CIT(A) has erred in holding that mere disclosure of exempt income in Schedule E-1 to ROI will not prove the bonafidely of the full disclosure. The said finding is illegal and unjustified.
3. That the Id. CIT(A) has erred in holding that the assessee has made false claim of exemption and in view of these facts and circumstances penalty under section 271(1)(c) has rightly been levied and confirming the levy of penalty of Rs. 16,43,892/- imposed under the provisions of section 271(1)(c) of the IT Act. The action of the CIT (A) in confirming the levy of penalty is illegal and unjustified."

Vide application dated nil received in the registry on 1/8/2016 under rule 11 of Income Tax Appellate Tribunal's rule, 1960. The assessee has filed an additional ground that read as under:-

"In the facts and circumstances of the case the Id. CIT(A) has erred in confirming the penalty u/s 271(1)(c) which is illegal, unlawful and unjustified."

2. Briefly stated the facts are that the case of the assessee picked up for scrutiny assessment and the assessment u/s 143(3) of the Income Tax Act, 1961 (hereinafter referred to as the Act) was framed vide order dated 30<sup>th</sup> Dec. 2011. While framing the assessment, the Assessing Officer declining the claim of exemption in respect of sale of agriculture land and computed capital gain while framing the assessment the assessing officer initiated the penalty proceedings u/s 271(1)(c) of the Act for concealment and submitting inaccurate particulars of income. Subsequently, the Assessing Officer imposed the penalty of sum of Rs. 24,65,838/-. Aggrieved by this, the assessee preferred an appeal before Id. CIT(A), who after considering the submissions dismissed the appeal.

4. Now, the assessee is in further appeal before this Tribunal. The Id. Counsel for the assessee reiterated the submissions as made in the written submissions.

4.1 On the contrary, the Id. Departmental Representatives opposed the submissions and supported the orders of the authorities below.

4.2 We have heard the rival contentions, perused the material available on records and gone through the orders of the authorities below.

One of the ground is that the initiation of the penalty is not as per the provision of law. It is contended that while issuing the notice for initiating penalty proceeding

the assessing officer has not specified the charge whether the notice was for concealment of income or furnishing the inaccurate particulars of income. He drew our attention to Paper Book Page No. 3 to demonstrate that the notice is issued on pre-typed performa. He submitted in this regard the reliance is placed on the judgment of Hon'ble Karnataka High Court in the case of CIT Vs. Manjunatha Cotton and Ginning Factory 358 ITR 565 (Karn) wherein the Hon'ble High Court has held as under :-

"In the light of the what is stated above, what emerges is as under:

- (a) Penalty under section 271(1)(c) is a civil liability.
- (b) Mens rea is not an essential element for imposing penalty for breach of civil obligation or liabilities.
- (c) Willful concealment is not an essential ingredient for attracting civil liability.
- (d) Existence of conditions stipulated in section 271(1)(c) is a sine qua non for initiation of penalty proceedings under section 271.
- (e) The existence of such conditions should be discernible from the assessment order or the appellate authority or the revisional authority.
- (f) Even if there is no specific finding regarding the existence of the conditions mentioned in section 271(1)(c), at least the facts set out in Explanation 1(A) and 1(B) it should be discernible from the said order which would by a legal fiction constitute concealment because of deeming provision
- (g) Even if these conditions do not exist in the assessment order passed, at least, a direction to initiate proceedings under section 271(1)(c) is a sine qua non for the Assessing Officer to initiate the proceedings because of the deeming provision contained in sub-section(1B).
- (h) The said deeming provisions are not applicable to be orders passed by the Commissioner of Income-Tax(Appeals) and the commissioner.
- (i) The imposition of penalty is not automatic.
- (j) The imposition of penalty even if the tax liability is admitted is not automatic.
- (k) Even is the assessee has not challenged the order of assessment levying tax and interest and has paid tax and interest that by itself would not be sufficient for the authorities either to initiate penalty proceedings or impose penalty, unless it is discernible from the assessment order that, it is on account of such unearthing or enquiry concluded by the authorities it has resulted in payment of such tax or such tax liability came to be admitted and if not it would have escaped from tax net and a opined by the assessing officer in the assessment order.

- (l) Only when no explanation is offered or the explanation offered is found to be false or when the assessee fails to prove that the explanation offered is not bona fide, an order imposing penalty could be passed
- (m) If the explanation offered, even though not substantiated by the assessee, but is found to be bona fide and all facts relating to the same and material to the computation of his total income have been disclosed by him, no penalty could be imposed.
- (N) The direction referred to in Explanation 1(B) to section 271 of the Act should be clear and without any ambiguity.
- (O) If the Assessing Officer has not recorded any satisfaction or has not issued any direction to initiate penalty proceedings, in appeal, if the appellate authority records satisfaction, then the penalty proceedings have to be initiated by the appellate authority and not the assessing authority.
- (P) Notice under section 274 of the Act should specifically state the grounds mentioned in section 271(1)(c), i.e. whether it is for concealment of income or for furnishing of incorrect particulars of income.
- (Q) Sending printed form where all the grounds mentioned in section 271 are mentioned would not satisfy the requirement of law.
- (R) The assessee should know the grounds which he has to meet specifically. Otherwise, the principles of natural justice is offended. On the basis of such proceedings, no penalty could be imposed to the assessee.
- (S) Taking up of penalty proceedings on one limb and finding the assessee guilty of another limb is bad in law.
- (T) The penalty proceedings are distinct from the assessment proceedings. The proceedings for imposition of penalty though emanate from proceedings of assessment, it is independent and separate aspect of the proceedings.
- (U) The findings recorded in the assessment proceedings in so far as "concealment of income" and "furnishing of incorrect particulars" would not operate as res judicata in the penalty proceedings. It is open to the assessee to contest the said proceedings on the merits. However, the validity of the assessment or reassessment in pursuance of which penalty is levied, cannot be the subject matter of penalty proceedings. The assessment or reassessment cannot be declared as invalid in the penalty proceedings."

In the present case also the notice has been issued in the pre-typed performa there is no specific charge. Therefore in our considered view, notice issued u/s 271(1)(c) of the Act is not as per the law laid down by the Hon'ble Karnataka High Court in the case of Manjunatha (supra). Another ground is that the assessee had disclosed all material before the authorities below. Merely that the claim of the assessee for entitlement exemption u/s 10(37) of the Act was rejected by the Assessing Officer

would not be the basis for initiation of proceedings. In this respect the reliance has been placed by the Id. Counsel for the assessee the judgment of the Hon'ble Supreme Court in the case of M/s Reliancepatro Pvt. Ltd. Vs. CIT 322 ITR 158 (SC) has held as under:

"It was tried to be suggested that section 14A of the Act specifically excluded the deductions in respect of the expenditure incurred by the assessee in relation to income which does not form part of the total income under the Act. It was further pointed out that the dividends from the shares did not form the part of the total income. It was, therefore, reiterated before us that the assessing officer had correctly reached the conclusion that since the assessee had claimed excessive deductions knowing that they are incorrect, it amounted to concealment of income. It was tried to be argued that the falsehood in accounts can take either of the two forms; (i) an item of receipt may be suppressed fraudulently; (ii) an item of expenditure may be falsely (or in an exaggerated amount) claimed, and both types attempt to reduce the taxable income and, therefore, both types amount to concealment of particulars of one's income as well as furnishing of inaccurate particulars of income. We do not agree, as the assessee had furnished all the details of its expenditure as well as income in its return, which details, in themselves, were not found to be inaccurate nor could be viewed as the concealment of income on its part. It was up to the authorities to accept its claim in the return or not. Merely because the assessee had claimed the expenditure, which claim was not accepted or was not acceptable to the Revenue, that by itself would not, in our opinion, attract the penalty under section 271(c). If we accept the contention of the Revenue then in case of every return where the claim made is not accepted by the Assessing Officer for any reason, the assessee will invite penalty under section 271(1)(c). That is clearly, not the intendment of the Legislature."

Further he is submitted that in the quantum proceedings appeal has been admitted by the Hon'ble Jurisdictional High Court in Income Tax Appeal No. 221/2016. Therefore the issue of entitlement for exemption u/s 10(37) of the Act is debatable. We find force into the contention of the Id. counsel for the assessee. There is no dispute that the assessee has placed all material before the Assessing Officer merely that the claim of the assessee was not found acceptable by the Assessing Officer on the basis that as required by law the land in question was not an agricultural land.

4.3 It is the case of the assessee, the assessee made on claim of the agricultural land. However, the same was not accepted by the Assessing Officer, it is contented by the Id. Counsel that the Assessing Officer did not considered the relevant Khasara Girdavari therefore on wrong appreciation of facts in quantum proceedings additions came to be confirmed. It is also submitted that the question of law has been admitted by the Jurisdictional High Court in the case of the assessee in DB Income Tax Appeal 221/2016 under these facts it is prayed by the assessee that the penalty has imposed is not justified it is also stated that penalty proceedings and quantum proceedings are two different and distinct proceedings.

4.4 As we observed in the preceding paragraph that the initiation of proceedings by issuing a defective notice is contrary to the view of the Hon'ble Karnataka High Court rendered in the case of Manjunatha (supra) , the imposition of penalty was not justified on merit as well as we are of the considered view that the judgment of the Hon'ble Supreme Court rendered in the case of Reliance Patroproduct (supra) is applicable on the facts of the present case therefore respectively followings the same, the penalty is deleted.

5. In the result, appeal of the assessee in ITA No. 412/JP/2015 is allowed.

Order pronounced in the open court on this 23rd day of March 2017.

Sd/-

(विक्रम सिंह यादव)  
(VIKRAM SINGH YADAV)  
लेखा सदस्य / Accountant Member

Sd/-

( कुल भारत )  
( KUL BHARAT )  
न्यायिक सदस्य / Judicial Member

Jaipur

Dated:- 23 /03/2017.

Pooja

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

1. The Appellant- Shri Ajesh Agarwal, Jaipur.
2. The Respondent- The ITO Ward-1(2),Jaipur.
3. The CIT,
4. The CIT (A)
5. The DR, ITAT, Jaipur
6. Guard File (ITA No. 412/JP/2015)

आदेशानुसार / By order,

सहायक पंजीकार / Assistant. Registrar