

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

श्री भागचन्द, लेखा सदस्य के समक्ष
BEFORE: SHRI BHAGCHAND, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No. 802/JP/2016
निर्धारण वर्ष / Assessment Year : 2011-12

Shri Gopal Sharan Gupta 948, Bawanji Ka Mohalla Main Bazar, Manoharpur, Jaipur	बनाम Vs.	The ITO Ward- Behror Behror
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: ABOPG 3955 F		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by: Shri R.N. Maharwal, CA
राजस्व की ओर से / Revenue by : Smt. Poonam Rai, DCIT- DR

सुनवाई की तारीख / Date of Hearing : 08/02/2017
घोषणा की तारीख / Date of Pronouncement : 09 /02/2017

आदेश / ORDER

PER BHAGCHAND, AM

The assessee has filed an appeal against the order of the Id. CIT(A), Alwar dated 21-06-2016 for the assessment year 2011-12 raising therein ground of appeal as under:-

“1. On the facts and in circumstances of the case the Id ITO erred in imposing penalty u/s 271A and simultaneously Id. CIT(A) erred in sustaining such penalty amounting to Rs. 25,000/- in spite of maintenance of books of account and get them audited, which are in record and hence levy of penalty is illegal, unjustified and liable to quash.”

2.1 Apropos solitary ground of the assessee, the facts as emerges

from the order of the Id. CIT(A) is as under:-

“4.3 I have gone through the penalty order as well as submissions made by the appellant and find that a penalty of Rs. 25,000 has been imposed by the AO u/s 271A of the IT Act on the ground that cash transactions made in IndusInd Bank have not been recorded in the books of accounts maintained by the appellant as required under the provisions of section 44AA of the IT Act. AO has stated that in the course of assessment proceedings total cash deposits in the savings bank account of Rs. 1,80,74,580 were found and in reply to the show cause letter appellant has accepted that Rs. 1,83,28,395 are his turnover of another business and Rs. 1,80,78,643 are purchases and GP of Rs. 2,49,752 for the year under consideration, which has not been declared in the return of income filed. AO has estimated in the NP rate of 8% on the total turnover of undisclosed business and estimated the profits at Rs. 14,92,862.

4.4 The appellant has stated that AO has imposed penalty u/s 271A of the IT Act for non maintenance of books of accounts for business, which is not disclosed. It is submitted that no penalty could be imposed considering the fact that only transactions pertaining to this bank account have not been recorded in the regular books of accounts.

4.5 Having considered the material available on record, I find that appellant has accepted that turnover of Rs. 1,83,28,395 pertain to the undisclosed business for which no transactions were recorded in the books of accounts, which were audited. However, there is no dispute that the bank account in which cash deposits of Rs. 1,80,47,580 were found to have been made during the year pertains to this unaccounted business, which has not been disclosed in the return of income.

4.6 It is seen that as per provisions of section 271A of the income tax act, if any person fails to maintain the books of accounts as required u/s 44AA of the income tax act, AO may impose a penalty under the provisions of section 271A of the IT Act. The threshold limit of the turnover for maintaining the books of accounts is Rs. 10 lacs u/s 44AA of the IT Act. Therefore, the books of accounts which were not maintained for the unaccounted business and admittedly the turnover of this business i.e. Rs. 1,83,28,395 exceeds the limit as provided for under the provisions of section

Shri Gopal Sharan Gupta vs. ITO, Ward- Behror, Behror 44AA of the IT Act. It is not a case, where a Tax payer is not aware about the provisions of Section 44AA of the IT Act, as part of the business activities have been disclosed by filing a return of income, maintaining books of accounts and getting the same audited as well.

4.7 In view of the above facts, where appellant has deliberately not declared this bank account pertaining to unaccounted business and is guilty of not maintaining the books of accounts as required u/s 44AA of the IT Act than appellant has to bear the consequence of non compliance with the provisions of the IT Act. Therefore, I hold that AO was justified in initiating the penalty proceedings u/s 271A of the IT Act and accordingly, I confirm the penalty of Rs. 25,000 imposed by the AO.’’

2.2 During the course of hearing, the ld. AR of the assessee prayed for deletion of penalty imposed by the lower authorities for which the ld. AR of the assessee filed the written submission which has been taken into consideration.

2.3 During the course of hearing, the ld. DR relied on the orders of the lower authorities.

2.4 I have heard the rival contentions and perused the materials available on record. It is noted from the assessment order dated 14-02-2014 wherein the AO has mentioned that Shri Ashok Kumar, ld. AR of the assessee alongwith assessee attended the assessment proceedings from the time to time and furnished the audit report obtained u/s 44AB of the Act and details and documents were placed on record. It is also noted that supporting bills and vouchers were produced by the assessee before

the AO for examination on test check basis. It is also noted that the AO had initiated the levy of penalty u/s 271A of the Act for failure to keep or maintain the books of account. It is further noted that the AO in penalty proceedings imposed the penalty of Rs. 25,000/- u/s 271A the Act which has been sustained by the Id. CIT(A) for the reason that the assessee has not maintained the books of account for the unaccounted business and the turnover of the assessee was more than the threshold limit. Taking into consideration all these facts and circumstances of the case, it is observed that the AO has himself admitted that the assessee has maintained the books of accounts and produced the same alongwith bills and vouchers and also the assessee furnished the audit report obtained u/s 44AB of the Act. There may be chances that the books of account may be defective or not reflecting the whole business affairs of the assessee, however, for the same, there is a different provision for imposing the penalty and hence, penalty, for not maintaining the books of account, u/s 271A cannot be levied. In such a situation, I direct to delete the penalty of Rs. 25,000/- imposed by the lower authorities u/s 271A of the Act. Thus the appeal of the assessee is allowed.

3.0 In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open Court on 09 -02-2017.

Sd/-

(भागचन्द)

(Bhagchand)

लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:-

09 /02/ 2017

*Mishra

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

1. अपीलार्थी / The Appellant- Shri Gopal Sharan Gupta, Jaipur
2. प्रत्यर्थी / The Respondent- The ITO, Ward- Behror
3. आयकर आयुक्त(अपील) / CIT(A).
4. आयकर आयुक्त / CIT,
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No. 802/JP/2016)

आदेशानुसार / By order,

सहायक पंजीकार / Assistant. Registrar