

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

श्री विजय पाल राव, न्यायिक सदस्य के समक्ष
BEFORE: SHRI VIJAY PAL RAO, JUDICIAL MEMBER

आयकर अपील सं./ITA Nos. 1214 to 1219/JP/2018
निर्धारण वर्ष / Assessment Years: 2007-08 to 2012-13

Shri Arun Kala, 250, Vasundhara Colony, Tonk Road, Jaipur.	बनाम Vs.	Deputy Commissioner of Income Tax, Central Circle-2, Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AFCKP 6177 K		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by: Shri Vivek Agarwal (CA)
राजस्व की ओर से / Revenue by : Shri A.K. Mahla (JCIT)

सुनवाई की तारीख / Date of Hearing : 27/09/2019
उदघोषणा की तारीख / Date of Pronouncement : 30/09/2019

आदेश / ORDER

PER: VIJAY PAL RAO, J.M.

These six appeals by the assessee are directed against the composite order dated 28/08/2018 of Id. CIT(A)-IV, Jaipur arising from the penalty order passed U/s 271(1)(c) of the Income Tax Act, 1961 (in short, the Act) for the A.Ys. 2007-08 to 2012-13.

2. All these appeals are being heard together and for the sake of convenience, a composite order is being passed.

3. The assessee has raised common grounds in all these appeals, therefore, grounds raised by the assessee in the appeal for the A.Y. 2007-08 are reproduced as under:

- “1. On the facts and in the circumstances of the case and in law the Id. CIT(A) erred in rejecting the legal contention of the assessee that the initiation and imposing of penalty proceedings is wrong, bad in law, invalid and void ab initio as the Id A.O. initiated/imposed the penalty u/s 271(1)(c) of Income Tax Act, 1961 without specifying the limb of reasons in the penalty notice to impose the penalty i.e. whether it is for concealment of particulars of income or for furnishing of inaccurate particulars of income.*
- 2 On the facts and in the circumstances of the case and in law the Id. CIT(A) erred in confirming the penalty of Rs. 56,000/- imposed u/s 271(1)(c) of I.T. Act, 1961 on the additional income of Rs. 1,82,341/- declared by the assessee in his return of income filed u/s 153A of the Act.*
- 3. The assessee prays for leave to add, to amend, to delete, or modify the all or any grounds of appeal on or before the hearing of appeal.”*

2. The assessee is an individual and derives income from house property and other sources. The assessee filed original return of income U/s 139(1) of the Act for the A.Y. 2007-08 to 2011-12. Subsequently, there was a search and seizure action U/s 132 of the Act in case of Moti Sons Group to which the assessee is one of the members. Pursuant to the search and seizure action, the A.O. issued notice U/s 153A of the Act in respect of six assessment years under consideration. The assessee filed return of income in response to notice U/s 153A of the Act and declared

additional income on account of interest accrued on FDR. The return of income filed U/s 153A was accepted by the A.O. for all the six assessment years and no addition was made. However, the A.O. initiated penalty proceedings U/s 271(1)(c) of the Act and levied penalty in respect of additional income declared by the assessee in the return of income filed in response to notice U/s 153A of the Act on account of interest on FDR. The assessee challenged the action of the A.O. levying the penalty U/s 271(1)(c) of the Act but could not succeed.

3. Before the Tribunal, the Id AR of the assessee has submitted that there was no incriminating material seized or found during the course of search and seizure action disclosing any income on account of interest on FDR. However, the assessee suo moto declared interest income on FDR in the return of income filed U/s 153A which was accepted by the A.O., therefore, when the assessee has declared income suo moto and voluntarily and no addition was made by the A.O. while completing the assessment U/s 143(3) r.w.s. 153A of the Act then the penalty U/s 271(1)(c) of the Act is not justified. In support of his contention, he has relied upon the various decisions. The Id AR has further contended that even otherwise the interest income on FDR was not declared in the original return of income filed U/s 139(1) of the Act due to the reason

that the assessee was under the bonafide belief that no income is accrued or arise until and unless the interest is receipt on maturity of FDR. Therefore, it is a case of bonafide belief and difference of opinion that the assessee was of the view that the interest on FDR is assessable to tax only when it is received on maturity of the FDR. Thus, the subsequent declaration of the income by the assessee on accrual basis would not amount to concealment of income or furnishing of inaccurate particulars of income. It is a bonafide explanation falling under the provisions of Section 273B of the Act. Thus, the Id AR has pleaded that the penalty levied by the A.O. and confirmed by the Id. CIT(A) may be deleted.

4. On the other hand, the Id DR has submitted that this is a case of declaring income in the return of income filed after the search and seizure action, therefore, even if no addition is made by the A.O. while completing assessment, the additional income declared by the assessee after the search is liable for penalty U/s 271(1)(c) of the Act in view of Explanation-5(a) to Section 271(1)(c) of the Act. He has relied upon the orders of the authorities below.

5. I have considered the rival submissions as well as the relevant material on record. The assessee has been regularly filing return of

income U/s 139(1) of the Act and declaring income from house property and income from other sources. Though, there was a search in case of Moti Sons group on 31/10/2012, however, there was no incriminating material either found or seized disclosing any undisclosed income of the assessee as a result of search and seizure action. The assessee was covered by the search carried out U/s 132(1) of the Act and consequently the A.O. was bound to issue notice U/s 153A of the Act for all the six assessment years immediately preceding assessment year relevant to the previous year in which search is conducted. In response to the notice U/s 153A, the assessee filed return and declared additional income on account of interest on FDR. The details of the income declared in the return filed U/s 139(1) of the Act and income declared in the return filed U/s 153A are as under:

S. No.	A.Y.	Income declared in return u/s 139(1)	Income declared in return u/s 153A	Additional income declared	Assessed income by Id. AO	Addition made by Id. AO
1.	2007-08	4,02,140/-	5,84,480/-	1,82,340/-	5,84,480/-	Nil
2.	2008-09	3,74,500/-	5,67,070/-	1,92,570/-	5,67,070/-	Nil
3.	2009-10	4,94,730/-	10,66,340/-	5,71,610/-	10,66,340/-	Nil
4.	2010-11	7,54,390/-	11,38,800/-	3,84,410/-	11,38,800/-	Nil
5.	2011-12	8,15,820/-	12,50,520/-	4,34,700/-	12,50,520/-	Nil
6.	2012-13	Nil	2,72,000/-	2,72,000/-	2,72,000/-	Nil

Thus, the assessee declared interest income for the respective assessment years in the return of income which was accepted by the A.O. while passing the assessment order U/s 143(3) r.w.s. 153A of the Act and no additions were made by the A.O. in any of the assessment years under

consideration. As regards the contention of the Id AR that the A.O. has accepted the return of income and therefore, in absence of any addition, no penalty is leviable U/s 271(1)(c) of the Act. It is to be noted that Explanation 5A to Section 271(1)(c) of the Act specifically provides that even if the assessee has declared additional income in the return of income filed after the date of search, the assessee for the purpose of imposition of a penalty U/s 271(1)(c) be deemed to have concealed the particulars of income or furnished inaccurate particulars of such income. Thus, Explanation 5A to Section 271(1)(c) provides a deeming fiction for treating the assessee to have concealed the particulars of his income or furnishing inaccurate particulars of such income irrespective of the fact that the assessee has declared such additional income in the return of income furnished after the date of search. However, it is also relevant to note that in case in hand, there was no incriminating material found during the course of search and seizure representing any undisclosed income and specifically any income on account of interest on FDR. The A.O. has not made any reference either in the assessment order or in the penalty order to the seized material much less incriminating material, therefore, the condition precedent for invoking Explanation 5A of Section 271(1)(c) as set out in clause (i) and (ii) are not satisfied. Only in the case where in the course of search and seizure action U/s 132 of the Act,

the assessee is found to be the owner of any money, bullion, jewellery or other valuable article or thing or any income based on any entry in the books of account or other documents or transactions represents his income for any previous year if such income was not declared by the assessee in the return of income filed prior to the date of search then even if such income is declared in the return of income filed after the date of search, it will be deemed that the assessee has concealed his particulars of income or furnished inaccurate particulars of such income. In absence of discovery of any money, bullion, jewellery or other valuable article or thing as well as any income based on any entry in the books of account or other documents or transactions, the income offered by the assessee to tax in the return of income filed after the search would not attract the deeming fiction under Explanation 5A to Section 271(1)(c) of the Act. Further when the interest on FDR is not either received or credited to the bank account of the assessee but it is only accumulated to the value of the FDR then the belief of the assessee that said interest income is taxable only when it is finally received by the assessee on maturity of the FDR would be a bonafide belief and therefore, the income on account of interest on the FDR offered the assessee to tax would not lead to the conclusion that the assessee has furnished inaccurate particulars of income or concealed the particulars of income. The case of

the assessee falls in the ambit of reasonable explanation/cause for failure of not declaring the said income as provided U/s 273B of the Act. Hence, in the facts and circumstances of the case when there was no incriminating material found or seized during the course of search disclosing any undisclosed income on account of interest on FDR then the suo moto declaration of such income in the return of income filed U/s 153A of the Act would not attract the penal provision U/s 271(1)(c) of the Act. There is another aspect in this case that had the assessee not declared the said interest income in the return of income filed U/s 153A of the Act then even if the A.O. in the course of assessment proceedings, detected such interest income on FDR and made addition on account of the interest on FDR, the addition so made by the A.O. would not sustain or survive due to the reason that the assessment for five assessment years out of the six under consideration were not pending as on the date of search and consequently the A.O. would have no jurisdiction to make the addition in absence of any incriminating material found or seized during the course of search revealing such income. Hence, when the addition on account of interest on FDR is not sustainable in law then the suo moto declaration of the income by the assessee would not amount to furnishing of inaccurate particulars of income or concealment of particulars of income rather it

would be a bonafide explanation/cause for not furnishing income in the return of income filed U/s 139(1) of the Act. Hence, in the facts and circumstances of the case, the penalty levied U/s 271(1)(c) of the Act for all the six years is deleted.

6. In the result, all the six appeals of the assessee are allowed.

Order pronounced in the open court on 30th September, 2019

Sd/-
(विजय पाल राव)
(VIJAY PAL RAO)
न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 30th September, 2019

*Ranjan

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

1. अपीलार्थी / The Appellant- Shri Arun Kala, Jaipur.
2. प्रत्यर्थी / The Respondent- The DCIT, Central Circle-2, Jaipur.
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त(अपील) / The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No. 1214 to 1219/JP/2018)

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar